

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

**FORM 10-Q**

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

For the quarterly period ended September 23, 2022

OR

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number: 001-35249

**THE CHEFS' WAREHOUSE, INC.**

(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)

20-3031526  
(I.R.S. Employer  
Identification No.)

100 East Ridge Road  
Ridgefield, Connecticut 06877  
(Address of principal executive offices)

Registrant's telephone number, including area code: (203) 894-1345

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common Stock, par value \$0.01	CHEF	The NASDAQ Stock Market LLC

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

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

If an emerging growth company, indicate by check mark if 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.

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

Number of shares of common stock, par value \$.01 per share, outstanding at October 24, 2022: 38,270,107

THE CHEFS' WAREHOUSE, INC.

FORM 10-Q

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## CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

Statements in this report regarding the business of The Chefs' Warehouse, Inc. (the "Company") that are not historical facts are "forward-looking statements" that involve risks and uncertainties and are based on current expectations and management estimates; actual results may differ materially. Words such as "anticipates", "expects", "intends", "plans", "believes", "seeks", "estimates" and variations of these words and similar expressions are intended to identify forward-looking statements. These statements are not guarantees of future performance and are subject to risks, uncertainties and other factors, some of which are beyond our control, are difficult to predict and/or could cause actual results to differ materially from those expressed or forecasted in the forward-looking statements. The risks and uncertainties which could impact these statements include, but are not limited to the following: our sensitivity to general economic conditions, including disposable income levels and changes in consumer discretionary spending; our ability to expand our operations in our existing markets and to penetrate new markets through acquisitions; we may not achieve the benefits expected from our acquisitions, which could adversely impact our business and operating results; we may have difficulty managing and facilitating our future growth; conditions beyond our control could materially affect the cost and/or availability of our specialty food products or center-of-the-plate products and/or interrupt our distribution network; our increased distribution of center-of-the-plate products, like meat, poultry and seafood, involves increased exposure to price volatility experienced by those products; our business is a low-margin business and our profit margins may be sensitive to inflationary and deflationary pressures; because our foodservice distribution operations are concentrated in certain culinary markets, we are susceptible to economic and other developments, including adverse weather conditions, in these areas; fuel cost volatility may have a material adverse effect on our business, financial condition or results of operations; our ability to raise capital in the future may be limited; we may be unable to obtain debt or other financing, including financing necessary to execute on our acquisition strategy, on favorable terms or at all; interest charged on our outstanding debt may be adversely affected by changes in the method of determining the Secured Overnight Financing Rate ("SOFR"); our business operations and future development could be significantly disrupted if we lose key members of our management team; and significant public health epidemics or pandemics, including the COVID-19 pandemic, may adversely affect our business, results of operations and financial condition. Any forward-looking statements are made pursuant to the Private Securities Litigation Reform Act of 1995, Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, and, as such, speak only as of the date made. A more detailed description of these and other risk factors is contained in the Company's most recent Annual Report on Form 10-K filed with the Securities and Exchange Commission ("SEC") on February 22, 2022 and other reports, including this Quarterly Report on Form 10-Q, filed by the Company with the SEC since that date. The Company is not undertaking to update any information in the foregoing report until the effective date of its future reports required by applicable laws.

**PART I FINANCIAL INFORMATION**

**ITEM 1. CONSOLIDATED FINANCIAL STATEMENTS**

**THE CHEFS' WAREHOUSE, INC.  
CONSOLIDATED BALANCE SHEETS  
(Amounts in thousands, except share data)**

	September 23, 2022 (unaudited)	December 24, 2021
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 145,425	\$ 115,155
Accounts receivable, net of allowance of \$21,147 in 2022 and \$20,260 in 2021	208,939	172,540
Inventories, net	190,668	144,491
Prepaid expenses and other current assets	46,464	37,774
<b>Total current assets</b>	<b>591,496</b>	<b>469,960</b>
Property, plant and equipment, net	158,569	133,622
Operating lease right-of-use assets	135,286	130,701
Goodwill	245,428	221,775
Intangible assets, net	116,112	104,743
Deferred taxes, net	2,259	9,380
Other assets	3,609	3,614
<b>Total assets</b>	<b>\$ 1,252,759</b>	<b>\$ 1,073,795</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 142,963	\$ 118,284
Accrued liabilities	48,751	35,390
Short-term operating lease liabilities	17,180	15,882
Accrued compensation	21,929	22,321
Current portion of long-term debt	6,067	5,141
<b>Total current liabilities</b>	<b>236,890</b>	<b>197,018</b>
Long-term debt, net of current portion	493,148	394,160
Operating lease liabilities	131,910	127,296
Other liabilities and deferred credits	5,862	5,110
<b>Total liabilities</b>	<b>867,810</b>	<b>723,584</b>
Commitments and contingencies		
Stockholders' equity:		
Preferred Stock - \$0.01 par value, 5,000,000 shares authorized, no shares issued and outstanding at September 23, 2022 and December 24, 2021	—	—
Common Stock - \$0.01 par value, 100,000,000 shares authorized, 38,270,107 and 37,887,675 shares issued and outstanding at September 23, 2022 and December 24, 2021, respectively	383	380
Additional paid-in capital	322,505	314,242
Accumulated other comprehensive loss	(2,127)	(2,022)
Retained earnings	64,188	37,611
<b>Total stockholders' equity</b>	<b>384,949</b>	<b>350,211</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$ 1,252,759</b>	<b>\$ 1,073,795</b>

See accompanying notes to the consolidated financial statements

**THE CHEFS' WAREHOUSE, INC.**  
**CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE INCOME (LOSS)**  
(Unaudited)  
(Amounts in thousands, except share and per share amounts)

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 23, 2022	September 24, 2021	September 23, 2022	September 24, 2021
Net sales	\$ 661,856	\$ 484,321	\$ 1,822,063	\$ 1,187,506
Cost of sales	504,068	374,346	1,390,758	922,710
Gross profit	157,788	109,975	431,305	264,796
Selling, general and administrative expenses	130,255	99,431	364,828	270,034
Other operating expenses (income), net	5,458	105	10,504	(208)
Operating income (loss)	22,075	10,439	55,973	(5,030)
Interest expense	10,737	4,191	19,567	13,362
Income (loss) before income taxes	11,338	6,248	36,406	(18,392)
Provision for income tax expense (benefit)	3,061	2,792	9,829	(5,025)
Net income (loss)	\$ 8,277	\$ 3,456	\$ 26,577	\$ (13,367)
Other comprehensive (loss) income:				
Foreign currency translation adjustments	(156)	(90)	(105)	67
Comprehensive income (loss)	\$ 8,121	\$ 3,366	\$ 26,472	\$ (13,300)
Net income (loss) per share:				
Basic	\$ 0.22	\$ 0.09	\$ 0.72	\$ (0.36)
Diluted	\$ 0.21	\$ 0.09	\$ 0.68	\$ (0.36)
Weighted average common shares outstanding:				
Basic	37,120,926	36,875,784	37,047,653	36,701,927
Diluted	42,044,053	37,105,746	41,942,676	36,701,927

See accompanying notes to the consolidated financial statements.

**THE CHEFS' WAREHOUSE, INC.**  
**CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY**  
(Unaudited)  
(Amounts in thousands, except share amounts)

	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Loss	Retained Earnings	Total
	Shares	Amount				
<b>Balance December 24, 2021</b>	<b>37,887,675</b>	<b>\$ 380</b>	<b>\$ 314,242</b>	<b>\$ (2,022)</b>	<b>\$ 37,611</b>	<b>\$ 350,211</b>
Net income	—	—	—	—	1,385	1,385
Stock compensation	433,115	4	3,039	—	—	3,043
Warrants issued for acquisition	—	—	1,701	—	—	1,701
Cumulative translation adjustment	—	—	—	125	—	125
Shares surrendered to pay tax withholding	(64,329)	(1)	(2,039)	—	—	(2,040)
<b>Balance March 25, 2022</b>	<b>38,256,461</b>	<b>\$ 383</b>	<b>\$ 316,943</b>	<b>\$ (1,897)</b>	<b>\$ 38,996</b>	<b>\$ 354,425</b>
Net income	—	—	—	—	16,915	16,915
Stock compensation	16,131	—	2,939	—	—	2,939
Cumulative translation adjustment	—	—	—	(74)	—	(74)
Shares surrendered to pay tax withholding	(15,137)	—	(518)	—	—	(518)
<b>Balance June 24, 2022</b>	<b>38,257,455</b>	<b>\$ 383</b>	<b>\$ 319,364</b>	<b>\$ (1,971)</b>	<b>\$ 55,911</b>	<b>\$ 373,687</b>
Net income	—	—	—	—	8,277	8,277
Stock compensation	9,986	—	3,099	—	—	3,099
Exercise of stock options	3,407	—	69	—	—	69
Cumulative translation adjustment	—	—	—	(156)	—	(156)
Shares surrendered to pay tax withholding	(741)	—	(27)	—	—	(27)
<b>Balance September 23, 2022</b>	<b>38,270,107</b>	<b>\$ 383</b>	<b>\$ 322,505</b>	<b>\$ (2,127)</b>	<b>\$ 64,188</b>	<b>\$ 384,949</b>
<b>Balance December 25, 2020</b>	<b>37,274,768</b>	<b>\$ 373</b>	<b>\$ 303,734</b>	<b>\$ (2,051)</b>	<b>\$ 42,534</b>	<b>\$ 344,590</b>
Net loss	—	—	—	—	(17,921)	(17,921)
Stock compensation	673,430	6	2,452	—	—	2,458
Cumulative translation adjustment	—	—	—	81	—	81
Shares surrendered to pay tax withholding	(38,503)	—	(1,192)	—	—	(1,192)
<b>Balance March 26, 2021</b>	<b>37,909,695</b>	<b>\$ 379</b>	<b>\$ 304,994</b>	<b>\$ (1,970)</b>	<b>\$ 24,613</b>	<b>\$ 328,016</b>
Net income	—	—	—	—	1,098	1,098
Stock compensation	69,245	1	3,279	—	—	3,280
Warrants issued for acquisition	—	—	1,120	—	—	1,120
Cumulative translation adjustment	—	—	—	76	—	76
Shares surrendered to pay tax withholding	(17,077)	—	(541)	—	—	(541)
<b>Balance June 25, 2021</b>	<b>37,961,863</b>	<b>\$ 380</b>	<b>\$ 308,852</b>	<b>\$ (1,894)</b>	<b>\$ 25,711</b>	<b>\$ 333,049</b>
Net income	—	—	—	—	3,456	3,456
Stock compensation	(75,597)	—	2,710	—	—	2,710
Cumulative translation adjustment	—	—	—	(90)	—	(90)
Shares surrendered to pay tax withholding	(2,017)	—	(59)	—	—	(59)
<b>Balance September 24, 2021</b>	<b>37,884,249</b>	<b>\$ 380</b>	<b>\$ 311,503</b>	<b>\$ (1,984)</b>	<b>\$ 29,167</b>	<b>\$ 339,066</b>

See accompanying notes to the consolidated financial statements.

**THE CHEFS' WAREHOUSE, INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(Unaudited)  
(Amounts in thousands)

	Thirty-Nine Weeks Ended	
	September 23, 2022	September 24, 2021
<b>Cash flows from operating activities:</b>		
Net income (loss)	\$ 26,577	\$ (13,367)
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:		
Depreciation and amortization	17,667	16,270
Amortization of intangible assets	10,289	9,778
Provision (benefit) for allowance for doubtful accounts	3,138	(744)
Non-cash operating lease expense	1,329	505
Provision (benefit) for deferred income taxes	7,121	(4,855)
Amortization of deferred financing fees	1,621	1,832
Loss on debt extinguishment	142	—
Stock compensation	9,081	8,448
Change in fair value of contingent earn-out liabilities	8,358	(1,359)
Intangible asset impairment	—	597
Loss on asset disposal	17	257
Changes in assets and liabilities, net of acquisitions:		
Accounts receivable	(25,402)	(51,582)
Inventories	(40,519)	(49,148)
Prepaid expenses and other current assets	(9,848)	(3,304)
Accounts payable, accrued liabilities and accrued compensation	21,938	60,443
Other assets and liabilities	238	(101)
<b>Net cash provided by (used in) operating activities</b>	<b>31,747</b>	<b>(26,330)</b>
<b>Cash flows from investing activities:</b>		
Capital expenditures	(31,666)	(17,872)
Cash paid for acquisitions, net of cash received	(62,007)	(7,280)
<b>Net cash used in investing activities</b>	<b>(93,673)</b>	<b>(25,152)</b>
<b>Cash flows from financing activities:</b>		
Payment of debt, finance lease and other financing obligations	(171,434)	(35,918)
Proceeds from debt issuance	300,000	51,750
Payment of deferred financing fees	(11,258)	(1,450)
Proceeds from exercise of stock options	69	—
Surrender of shares to pay withholding taxes	(2,584)	(1,792)
Cash paid for contingent earn-out liability	(2,538)	(83)
Payments under asset-based loan facility	(20,000)	(20,000)
<b>Net cash provided by (used in) financing activities</b>	<b>92,255</b>	<b>(7,493)</b>
Effect of foreign currency on cash and cash equivalents	(59)	(89)
Net change in cash and cash equivalents	30,270	(59,064)
Cash and cash equivalents-beginning of period	115,155	193,281
<b>Cash and cash equivalents-end of period</b>	<b>\$ 145,425</b>	<b>\$ 134,217</b>

See accompanying notes to the consolidated financial statements.

**THE CHEFS' WAREHOUSE, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**(Unaudited)**  
**(Amounts in thousands, except share and per share amounts)**

**Note 1 - Operations and Basis of Presentation**

***Description of Business and Basis of Presentation***

The financial statements include the consolidated accounts of The Chefs' Warehouse, Inc. (the "Company"), and its wholly-owned subsidiaries. The Company's quarterly periods end on the thirteenth Friday of each quarter. Every six to seven years, the Company will add a fourteenth week to its fourth quarter to more closely align its year-end to the calendar year. Fiscal 2022 will include a fourteenth week in the fourth quarter. The Company's business consists of three operating segments: East Coast, Midwest and West Coast that aggregate into one reportable segment, foodservice distribution, which is concentrated primarily in the United States. The Company's customer base consists primarily of menu-driven independent restaurants, fine dining establishments, country clubs, hotels, caterers, culinary schools, bakeries, patisseries, chocolateries, cruise lines, casinos, specialty food stores, grocers and warehouse clubs.

***Consolidation***

The consolidated financial statements include all the accounts of the Company and its direct and indirect wholly-owned subsidiaries. All significant intercompany accounts and transactions have been eliminated.

***Unaudited Interim Financial Statements***

The accompanying unaudited consolidated financial statements and the related interim information contained within the notes to such unaudited consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP") and the applicable rules of the Securities and Exchange Commission ("SEC") for interim information and quarterly reports on Form 10-Q. Accordingly, they do not include all the information and disclosures required by GAAP for complete financial statements. These unaudited consolidated financial statements and related notes should be read in conjunction with the Company's audited consolidated financial statements and notes thereto for the fiscal year ended December 24, 2021 filed as part of the Company's Annual Report on Form 10-K, as filed with the SEC on February 22, 2022.

The unaudited consolidated financial statements appearing in this Form 10-Q have been prepared on the same basis as the audited consolidated financial statements included in the Company's Annual Report on Form 10-K, as filed with the SEC on February 22, 2022, and in the opinion of management, include all normal recurring adjustments that are necessary for the fair statement of the Company's interim period results. The year-end consolidated balance sheet data was derived from the audited financial statements but does not include all disclosures required by GAAP. Due to seasonal fluctuations, the COVID-19 pandemic and other factors, the results of operations for the thirteen and thirty-nine weeks ended September 23, 2022 are not necessarily indicative of the results to be expected for the full year.

The preparation of financial statements in conformity with GAAP requires management to make significant estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting periods. Actual results could differ from management's estimates.

**Note 2 – Summary of Significant Accounting Policies**

***Revenue Recognition***

Revenues from product sales are recognized at the point at which control of each product is transferred to the customer. The Company's contracts contain performance obligations which are satisfied when customers have physical possession of each product. The majority of customer orders are fulfilled within a day and customer payment terms are typically 14 to 60 days from delivery. Shipping and handling activities are costs to fulfill the Company's performance obligations. These costs are expensed as incurred and presented within *selling, general and administrative expenses* on the consolidated statements of operations. The Company offers certain sales incentives to customers in the form of rebates or discounts. These sales incentives are accounted as variable consideration. The Company estimates these amounts based on the expected amount to be provided to customers and records a corresponding reduction in revenue. The Company does not expect a significant reversal in the amount



of cumulative revenue recognized. Sales tax billed to customers is not included in revenue but rather recorded as a liability owed to the respective taxing authorities at the time the sale is recognized.

The following table presents the Company's net sales disaggregated by principal product category:

	Thirteen Weeks Ended				Thirty-Nine Weeks Ended			
	September 23, 2022		September 24, 2021		September 23, 2022		September 24, 2021	
Center-of-the-Plate	\$ 280,272	42.3 %	\$ 238,783	49.3 %	\$ 803,334	44.1 %	\$ 593,717	50.0 %
Dry Goods	108,908	16.5 %	66,455	13.7 %	291,020	16.0 %	163,352	13.8 %
Pastry	79,899	12.1 %	48,842	10.1 %	213,970	11.7 %	118,952	10.0 %
Cheese and Charcuterie	61,123	9.2 %	40,403	8.3 %	163,720	9.0 %	97,805	8.2 %
Produce	39,302	5.9 %	35,900	7.4 %	104,413	5.7 %	87,049	7.3 %
Dairy and Eggs	41,780	6.3 %	21,922	4.5 %	111,046	6.1 %	53,405	4.5 %
Oils and Vinegars	33,437	5.1 %	21,855	4.5 %	89,041	4.9 %	48,210	4.1 %
Kitchen Supplies	17,135	2.6 %	10,161	2.2 %	45,519	2.5 %	25,016	2.1 %
<b>Total</b>	<b>\$ 661,856</b>	<b>100 %</b>	<b>\$ 484,321</b>	<b>100 %</b>	<b>\$ 1,822,063</b>	<b>100 %</b>	<b>\$ 1,187,506</b>	<b>100 %</b>

The Company determines its product category classification based on how the Company currently markets its products to its customers. The Company's definition of its principal product categories may differ from the way in which other companies present similar information.

### ***Food Processing Costs***

Food processing costs include but are not limited to direct labor and benefits, applicable overhead and depreciation of equipment and facilities used in food processing activities. Food processing costs included in cost of sales were \$10,089 and \$7,524 for the thirteen weeks ended September 23, 2022 and September 24, 2021, respectively, and \$28,523 and \$19,599 for the thirty-nine weeks ended September 23, 2022 and September 24, 2021, respectively.

### **Note 3 – Net Income (Loss) per Share**

The following table sets forth the computation of basic and diluted net income (loss) per common share:

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 23, 2022	September 24, 2021	September 23, 2022	September 24, 2021
Net income (loss) per share:				
Basic	\$ 0.22	\$ 0.09	\$ 0.72	\$ (0.36)
Diluted	\$ 0.21	\$ 0.09	\$ 0.68	\$ (0.36)
Weighted average common shares:				
Basic	37,120,926	36,875,784	37,047,653	36,701,927
Diluted	42,044,053	37,105,746	41,942,676	36,701,927

Reconciliation of net income (loss) per common share:

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 23, 2022	September 24, 2021	September 23, 2022	September 24, 2021
<b>Numerator:</b>				
Net income (loss)	\$ 8,277	\$ 3,456	\$ 26,577	\$ (13,367)
Add effect of dilutive securities				
Interest on convertible notes, net of tax	683	—	2,048	—
Net income (loss) available to common shareholders	<u>\$ 8,960</u>	<u>\$ 3,456</u>	<u>\$ 28,625</u>	<u>\$ (13,367)</u>
<b>Denominator:</b>				
Weighted average basic common shares outstanding	37,120,926	36,875,784	37,047,653	36,701,927
Dilutive effect of unvested common shares	316,358	229,962	304,391	—
Dilutive effect of stock options and warrants	81,789	—	65,652	—
Dilutive effect of convertible notes	4,524,980	—	4,524,980	—
Weighted average diluted common shares outstanding	<u>42,044,053</u>	<u>37,105,746</u>	<u>41,942,676</u>	<u>36,701,927</u>

Potentially dilutive securities that have been excluded from the calculation of diluted net income (loss) per common share because the effect is anti-dilutive are as follows:

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 23, 2022	September 24, 2021	September 23, 2022	September 24, 2021
Restricted share awards (“RSAs”)	80,844	50,412	68,784	297,978
Stock options and warrants	—	126,359	—	122,956
Convertible notes	91,053	4,616,033	91,053	4,341,664

#### Note 4 – Fair Value Measurements

##### Assets and Liabilities Measured at Fair Value

The Company’s contingent earn-out liabilities are measured at fair value. These liabilities were estimated using Level 3 inputs. Long-term earn-out liabilities were \$4,130 and \$3,252 as of September 23, 2022 and December 24, 2021, respectively, and are reflected as *other liabilities and deferred credits* on the consolidated balance sheets. The remaining short-term earn-out liabilities are reflected as *accrued liabilities* on the consolidated balance sheets. The fair value of contingent consideration was determined based on a probability-based approach which includes projected results, percentage probability of occurrence and the application of a discount rate to present value the payments. A significant change in projected results, discount rate, or probabilities of occurrence could result in a significantly higher or lower fair value measurement. Changes in the fair value of contingent earn-out liabilities are reflected in *other operating expenses (income), net* on the consolidated statements of operations.

The following table presents the changes in Level 3 contingent earn-out liabilities:

	<b>Total</b>
Balance December 24, 2021	\$ 6,877
Acquisition value	1,200
Cash payments	(2,538)
Changes in fair value	8,358
Balance September 23, 2022	<u>\$ 13,897</u>

### ***Fair Value of Financial Instruments***

The following table presents the carrying value and fair value of the Company's convertible notes. In estimating the fair value of the convertible notes, the Company utilized Level 3 inputs including prevailing market interest rates to estimate the debt portion of the instrument and a Black Scholes valuation model to estimate the fair value of the conversion option. The Black Scholes model utilizes the market price of the Company's common stock, estimates of the stock's volatility and the prevailing risk-free interest rate in calculating the fair value estimate.

	<b>September 23, 2022</b>		<b>December 24, 2021</b>	
	<b>Carrying Value</b>	<b>Fair Value</b>	<b>Carrying Value</b>	<b>Fair Value</b>
Convertible Senior Notes	\$ 200,000	\$ 204,340	\$ 200,000	\$ 206,182
Convertible Unsecured Note	\$ 4,000	\$ 4,221	\$ 4,000	\$ 4,102

### **Note 5 – Acquisitions**

#### ***Capital Seaboard***

On December 28, 2021, pursuant to an asset purchase agreement, the Company acquired substantially all of the assets of CGC Holdings, Inc. ("Capital Seaboard"), a specialty seafood and produce distributor in Maryland. The purchase price was approximately \$31,036, consisting of \$28,000 paid in cash at closing, common stock warrants valued at \$1,701, and \$1,335 paid upon settlement of a net working capital true-up. The Company is in the process of finalizing a valuation of tangible and intangible assets of Capital Seaboard as of the acquisition date. When applicable, these valuations require the use of Level 3 inputs. Goodwill for the Capital Seaboard acquisition will be amortized over 15 years for tax purposes. The goodwill recorded primarily reflects the value of acquiring an established specialty seafood and produce distributor to leverage the Company's existing products in the markets served by Capital Seaboard, to supply Capital Seaboard's product offerings to our East Coast markets and any intangible assets that do not qualify for separate recognition.

#### ***Other Acquisitions***

During the thirty-nine weeks ended September 23, 2022, the Company completed three other acquisitions for an aggregate purchase price of approximately \$32,500, paid in cash, subject to customary working capital adjustments. The Company will also pay additional contingent consideration, if earned, in the form of earn-out amounts which could total \$2,000 in the aggregate. The Company is in the process of finalizing a valuation of the tangible and intangible assets as of the acquisition date. When applicable, these valuations require the use of Level 3 inputs. Goodwill of \$16,252 will be amortized over 15 years for tax purposes.

The Company reflected net sales and income before income taxes in its consolidated statement of operations related to the acquisitions follows:

	<b>Thirteen Weeks Ended</b>		<b>Thirty-Nine Weeks Ended</b>	
	<b>September 23, 2022</b>		<b>September 23, 2022</b>	
Net sales	\$ 58,466	\$ 135,260		
Income before income taxes	\$ 4,970	\$ 8,892		

The table below presents unaudited pro forma consolidated income statement information of the Company as if the acquisitions had occurred on December 26, 2020. The pro forma results were prepared from financial information obtained from the sellers of the business, as well as information obtained during the due diligence process associated with the acquisitions. The pro forma information is not necessarily indicative of the Company's results of operations had the acquisitions been completed on the above date, nor is it necessarily indicative of the Company's future results. The pro forma information does not reflect any cost savings from operating efficiencies or synergies that could result from the acquisitions, any incremental costs for transitioning to become a public company, and also does not reflect additional revenue opportunities following the acquisitions. The pro forma information reflects amortization and depreciation of the acquisitions at their respective fair values.

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 23, 2022	September 24, 2021	September 23, 2022	September 24, 2021
Net sales	\$ 698,650	\$ 544,562	\$ 1,871,994	\$ 1,357,312
Income (loss) before income taxes	\$ 11,699	\$ 7,875	\$ 37,152	\$ (16,040)

The table below sets forth the preliminary purchase price allocation for these acquisitions:

	Capital Seaboard	Other Acquisitions
Current assets	\$ 10,130	\$ 11,498
Customer relationships	7,250	11,100
Trademarks	2,280	1,000
Goodwill	8,334	16,252
Fixed assets	9,552	633
Other assets	122	18
Current liabilities	(6,632)	(6,801)
Earn-out liability	—	(1,200)
Total consideration	\$ 31,036	\$ 32,500

The Company recognized professional fees of \$728 and \$1,747 in operating expenses related to acquisition related activities during the thirteen and thirty-nine weeks ended September 23, 2022, respectively.

#### Note 6 – Inventories

Inventories consist primarily of finished product and are reflected net of adjustments for shrinkage, excess and obsolescence totaling \$9,616 and \$8,312 at September 23, 2022 and December 24, 2021, respectively.

#### Note 7 – Property, Plant and Equipment

Equipment, leasehold improvements and software as of September 23, 2022 and December 24, 2021 consisted of the following:

	Useful Lives	September 23, 2022	December 24, 2021
Land	Indefinite	\$ 5,542	\$ 5,020
Buildings	20 years	23,552	18,406
Machinery and equipment	5 - 10 years	30,845	28,099
Computers, data processing and other equipment	3 - 7 years	16,986	15,480
Software	3 - 7 years	42,399	39,799
Leasehold improvements	1 - 40 years	92,517	69,105
Furniture and fixtures	7 years	3,671	3,582
Vehicles	5 - 10 years	28,395	29,632
Construction-in-process		27,870	24,355
		271,777	233,478
Less: accumulated depreciation and amortization		(113,208)	(99,856)
Equipment, leasehold improvements and software, net		\$ 158,569	\$ 133,622

Construction-in-process at September 23, 2022 related primarily to the implementation of the Company's Enterprise Resource Planning ("ERP") system and the build-out of the Company's Miami distribution facility and at December 24, 2021 related primarily to the build-outs of the Company's Miami and Los Angeles distribution facilities. The net book value of equipment financed under finance leases at September 23, 2022 and December 24, 2021 was \$9,302 and \$10,874, respectively.

The components of depreciation and amortization expense were as follows:

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 23, 2022	September 24, 2021	September 23, 2022	September 24, 2021
Depreciation expense	\$ 4,455	\$ 3,903	\$ 13,255	\$ 11,679
Software amortization	\$ 1,457	\$ 1,707	\$ 4,412	\$ 4,591
	<u>\$ 5,912</u>	<u>\$ 5,610</u>	<u>\$ 17,667</u>	<u>\$ 16,270</u>

#### Note 8 – Goodwill and Other Intangible Assets

The changes in the carrying amount of goodwill are presented as follows:

Carrying amount as of December 24, 2021	\$ 221,775
Goodwill adjustments <sup>(1)</sup>	(792)
Acquisitions	24,586
Foreign currency translation	(141)
Carrying amount as of September 23, 2022	<u>\$ 245,428</u>

(1) The goodwill adjustments represent measurement period adjustments related to certain acquisitions completed in the prior year.

Other intangible assets as of September 23, 2022 and December 24, 2021 consisted of the following:

September 23, 2022	Weighted-Average Remaining Amortization Period	Gross Carrying Amount	Accumulated Amortization	Net Amount
Customer relationships	120 months	\$ 174,105	\$ (82,688)	\$ 91,417
Non-compete agreements	17 months	8,579	(8,218)	361
Trademarks	144 months	39,745	(15,411)	24,334
Total		<u>\$ 222,429</u>	<u>\$ (106,317)</u>	<u>\$ 116,112</u>

  

December 24, 2021	Weighted-Average Remaining Amortization Period	Gross Carrying Amount	Accumulated Amortization	Net Amount
Customer relationships	120 months	\$ 155,678	\$ (74,644)	\$ 81,034
Non-compete agreements	26 months	8,579	(8,018)	561
Trademarks	179 months	36,514	(13,366)	23,148
Total		<u>\$ 200,771</u>	<u>\$ (96,028)</u>	<u>\$ 104,743</u>

Amortization expense for other intangibles was \$3,470 and \$3,135 for the thirteen weeks ended September 23, 2022 and September 24, 2021, respectively, and \$10,289 and \$9,778 for the thirty-nine weeks ended September 23, 2022 and September 24, 2021, respectively.

Estimated amortization expense for other intangible assets for the remainder of the fiscal year ending December 30, 2022 and each of the next four fiscal years and thereafter is as follows:

2022	\$ 3,274
2023	12,796
2024	11,943
2025	11,529
2026	11,529
Thereafter	65,041
Total	<u>\$ 116,112</u>

## Note 9 – Debt Obligations

Debt obligations as of September 23, 2022 and December 24, 2021 consisted of the following:

	<b>September 23, 2022</b>	<b>December 24, 2021</b>
Senior secured term loans	\$ 300,000	\$ 168,675
Convertible senior notes	200,000	200,000
Asset-based loan facility	—	20,000
Finance lease and other financing obligations	9,732	11,602
Convertible unsecured note	4,000	4,000
Deferred finance fees and original issue premium (discount)	(14,517)	(4,976)
Total debt obligations	499,215	399,301
Less: current installments	(6,067)	(5,141)
Total debt obligations excluding current installments	<u>\$ 493,148</u>	<u>\$ 394,160</u>

On August 23, 2022, the Company entered into an eighth amendment (“Eight Amendment”) to its senior secured term loan credit agreement (“Term Credit Agreement”). The Company borrowed \$300,000 maturing on August 23, 2029 (“2029 Term Loans”), comprising of a refinancing of the then existing term loans balance under the Term Credit Agreement of \$167,391 and an incremental borrowing of \$132,609. The incremental funds are to be used for capital expenditures, permitted acquisitions, working capital, and general corporate purposes of the Company. Additionally, the Term Credit Agreement includes an accordion which permits the Company to request that the lenders extend additional Term Loans based on certain performance, leverage ratio and other restrictions. The Eight Amendment includes a springing maturity of June 22, 2024 if, by June 22, 2024, more than \$40,000 in principal remains outstanding on the Company’s Convertible Senior Notes has not been repaid, repurchased, redeemed or refinanced with permitted indebtedness having a maturity date not earlier than six months after August 23, 2029.

The interest charged on the 2029 Term Loans is equal to, at the Company’s option, either the Alternate Base Rate (as defined in the Eight Amendment) plus 375 basis points or the secured overnight financing rate (“SOFR”) for one, two, three or six-month interest periods chosen by the Company plus 475 basis points. The interest rate on the 2029 Term Loans at September 23, 2022 was 7.9%.

The Eight Amendment involved multiple members of a loan syndicate. The Company performed an analysis for each lender in accordance with ASC 470 “Debt” to determine whether the Eighth Amendment resulted in a substantial change to the remaining cash flows which is defined as a change in present value of remaining cash flows of 10% or more. As a result of the analysis, the Company incurred a loss on debt extinguishment of \$142 which represents the portion of unamortized deferred financing fees attributable to lenders that exited the loan syndicate. The transaction was accounted for as a modification for existing lenders that participated in the 2029 Term Loans. The Company deferred lender and third-party fees of \$10,852 as debt issuance costs, presented in other assets in the Company’s consolidated balance sheet, to be amortized over the term of the term loan. Arrangement and third-party transaction costs of \$4,498 were expensed as incurred.

The Eight Amendment removed the minimum liquidity covenant which required the Company to maintain at least \$35,000 of liquidity as of the last day of any fiscal quarter where EBITDA, as defined in the Term Credit Agreement, was less than \$10,000.

The following table summarizes the key terms as of the Term Loans as of September 23, 2022:

<b>Term Loans</b>	<b>Principal Outstanding</b>	<b>Interest Rate</b>	<b>Maturity Date</b>	<b>Scheduled Principal Payments</b>
2029 Term Loans	\$ 300,000	SOFR + 4.75%	August 23, 2029	0.25% per quarter

On March 11, 2022, the Company entered into a third amendment to its asset-based loan facility (“ABL Facility”) which increased the aggregate commitments from \$150,000 to \$200,000. The interest rate charged on borrowings under the ABL Facility is equal to a spread plus, at the Company’s option, either the Base Rate (as defined in the ABL Credit Agreement) or a forward-looking term rate based on the secured overnight financing rate term (except for swingline loans) for one-, three-, or six-month interest periods chosen by the Company. The ABL Facility matures on March 11, 2027 subject to a springing maturity date that occurs 90 days prior to the earliest maturity date under the Company’s senior secured term loan facility or

March 24, 2024 if the Company's 1.875% Convertible Senior Notes due 2024 in an aggregate principal amount in excess of \$40,000 remain outstanding that have not been repaid, repurchased, redeemed or refinanced having a maturity date not earlier than six months after March 11, 2027.

The ABL Credit Agreement contains customary affirmative covenants, negative covenants and events of default as more particularly described in the ABL Credit Agreement. The Company is required to comply with a minimum consolidated fixed charge coverage ratio of 1:1 if the amount of availability under the ABL Facility falls below the greater of \$14,000 and 10%, of the lesser of the aggregate commitments and the borrowing base then in effect.

The third amendment was accounted for as a debt modification. The Company incurred transaction costs of \$406 which were capitalized as deferred financing fees, presented in *other assets* on the Company's consolidated balance sheets, to be amortized over the term of the ABL Facility.

On September 23, 2022, the Company fully paid all borrowings outstanding under the ABL and had reserved \$23,181 of the ABL Facility for the issuance of letters of credit. As of September 23, 2022, funds totaling \$176,820 were available for borrowing under the ABL Facility.

The net carry value of the Company's Convertible Senior Notes as of September 23, 2022 and December 24, 2021 was:

	September 23, 2022	December 24, 2021
Principal amount outstanding	\$ 200,000	\$ 200,000
Unamortized deferred financing fees and premium	(2,014)	(2,686)
Net carry value	<u>\$ 197,986</u>	<u>\$ 197,314</u>

The components of interest expense on the Company's Convertible Senior Notes were as follows:

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 23, 2022	September 24, 2021	September 23, 2022	September 24, 2021
Coupon interest	\$ 938	\$ 938	\$ 2,813	\$ 2,656
Amortization of deferred financing fees and premium	\$ 224	\$ 224	\$ 672	\$ 689
Total interest	<u>\$ 1,162</u>	<u>\$ 1,162</u>	<u>\$ 3,485</u>	<u>\$ 3,345</u>

## Note 10 – Stockholders' Equity

### Equity Awards

The following table reflects the activity of RSAs during the thirty-nine weeks ended September 23, 2022:

	Time-based		Performance-based		Market-based	
	Shares	Weighted Average Grant Date Fair Value	Shares	Weighted Average Grant Date Fair Value	Shares	Weighted Average Grant Date Fair Value
Unvested at December 24, 2021	617,996	\$ 28.33	187,437	\$ 32.04	185,129	\$ 31.44
Granted	183,244	33.60	167,261	32.44	167,261	29.12
Vested	(315,722)	26.43	—	—	—	—
Forfeited	(15,691)	29.83	(21,420)	32.14	(21,423)	30.82
Unvested at September 23, 2022	469,827	\$ 31.61	333,278	\$ 32.23	330,967	\$ 30.31

The Company granted 517,766 RSAs to its employees at a weighted average grant date fair value of \$31.41 during the thirty-nine weeks ended September 23, 2022. These awards are a mix of time-, market- and performance-based grants that generally vest over a range of periods up to four years. The Company recognized expense totaling \$3,099 and \$2,710 on its RSAs during the thirteen weeks ended September 23, 2022 and September 24, 2021, respectively and \$9,081 and \$8,448 during the thirty-nine weeks ended September 23, 2022 and September 24, 2021, respectively.

At September 23, 2022, the total unrecognized compensation cost for unvested RSAs was \$21,353 and the weighted-average remaining period was approximately 2.1 years. Of this total, \$11,051 related to RSAs with time-based vesting provisions and \$10,302 related to RSAs with performance- and market-based vesting provisions. At September 23, 2022, the weighted-average remaining period for time-based vesting and performance-based vesting RSAs were approximately 2.2 years and 2.0 years, respectively.

No share-based compensation expense related to the Company's RSAs or stock options has been capitalized. As of September 23, 2022, there were 2,053,840 shares available for grant under the 2019 Omnibus Equity Incentive Plan.

The following table summarizes stock option activity during the thirty-nine weeks ended September 23, 2022:

	Shares	Weighted Average Exercise Price	Aggregate Intrinsic Value	Weighted Average Remaining Contractual Term (in years)
Outstanding December 24, 2021	115,639	\$ 20.23	\$ 2,051	6.2
Exercised	(3,407)	20.23		
Outstanding September 23, 2022	112,232	\$ 20.23	\$ 1,127	3.5
Exercisable at September 23, 2022	112,232	20.23	\$ 1,127	3.5

#### Note 11 – Related Parties

The Chefs' Warehouse Mid-Atlantic, LLC, a subsidiary of the Company, leases a distribution facility that is 100% owned by entities controlled by Christopher Pappas, the Company's chairman, president and chief executive officer, and John Pappas, the Company's vice chairman and one of its directors, and are deemed to be affiliates of these individuals. Expense related to this facility totaled \$123 during the thirteen weeks ended September 23, 2022 and September 24, 2021, and \$369 during the thirty-nine weeks ended September 23, 2022 and September 24, 2021.

#### Note 12 – Income Taxes

The Company's effective tax rate was 27.0% and 44.7% thirteen weeks ended September 23, 2022 and September 24, 2021 and 27.0% and 27.3% for the thirty-nine weeks ended September 23, 2022 and September 24, 2021. The effective tax rate varies from the 21% statutory rate primarily due to state taxes. The high effective tax rate for the thirteen weeks ended September 24, 2021 was driven by various discrete items.

As a result of the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), the Company had carried back federal net operating losses resulting in a federal income tax refund receivable of \$21,250, which is classified within *prepaid expenses and other current assets* on the Company's consolidated balance sheets as of September 23, 2022 and December 24, 2021. The IRS is experiencing significant processing delays driven by an increase in net operating loss carryback requests as a result of the CARES Act, along with other factors. As a result, the processing and expected receipt of the federal income tax refund receivable has been significantly delayed. The Company is currently working with IRS Taxpayer's Advocate Services and consultants to resolve the processing issue. While progress has been made with the IRS and the Company expects to receive the refund within one year, the exact timing of the receipt is difficult to predict.



**Note 13 – Supplemental Disclosures of Cash Flow Information**

	Thirty-Nine Weeks Ended	
	September 23, 2022	September 24, 2021
Supplemental cash flow disclosures:		
Cash paid (received) for income taxes	\$ 3,483	\$ (194)
Cash paid for interest, net of cash received	\$ 17,636	\$ 10,690
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows from operating leases	\$ 20,835	\$ 18,965
Operating cash flows from finance leases	\$ 325	\$ 422
ROU assets obtained in exchange for lease liabilities:		
Operating leases	\$ 21,779	\$ 13,308
Finance leases	\$ 791	\$ 536
Other non-cash investing and financing activities:		
Warrants issued for acquisitions	\$ 1,701	\$ 1,120
Contingent earn-out liabilities for acquisitions	\$ 1,200	\$ 3,400

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

Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") is provided as a supplement to the accompanying consolidated financial statements and footnotes to help provide an understanding of our financial condition, changes in our financial condition and results of operations. The following discussion should be read in conjunction with information included in our Annual Report on Form 10-K filed with the Securities and Exchange Commission ("SEC") on February 22, 2022. Unless otherwise indicated, the terms "Company", "Chefs' Warehouse", "we", "us" and "our" refer to The Chefs' Warehouse, Inc. and its subsidiaries.

### ***Business Overview***

We are a premier distributor of specialty foods in nine of the leading culinary markets in the United States. We offer more than 50,000 stock-keeping units ("SKUs"), ranging from high-quality specialty foods and ingredients to basic ingredients and staples and center-of-the-plate proteins. We serve more than 35,000 customer locations, primarily located in our nineteen geographic markets across the United States and Canada, and the majority of our customers are independent restaurants and fine dining establishments. We also sell certain of our products directly to consumers through our Allen Brothers and "Shop Like a Chef" retail channels.

### ***Effect of the COVID-19 Pandemic on our Business and Operations***

The COVID-19 pandemic ("Pandemic") had an adverse impact on numerous aspects of our business and those of our customers including, but not limited to, demand for our products, cost inflation and labor shortages. Despite these challenges, we continued to provide our core customers with high touch service, executed on our cost control measures and returned to profitability beginning in the second quarter of fiscal 2021. We continue to experience sequential improvement in our business which has contributed to organic sales growth of \$107.2 million compared to the prior year quarter.

The extent to which the Pandemic may impact our financial condition or results of operations is uncertain and will depend on future developments including new information that may emerge on the severity or transmissibility of the disease, new variants, government responses, trends in infection rates, development and distribution of effective medical treatments and vaccines, and future consumer spending behavior, among others.

### ***Recent Acquisitions***

On December 28, 2021, pursuant to an asset purchase agreement, we acquired substantially all of the assets of CGC Holdings, Inc. ("Capital Seaboard"), a specialty seafood and produce distributor in Maryland. The purchase price was approximately \$31.0 million consisting of \$28.0 million paid in cash at closing, common stock warrants of \$1.7 million, and \$1.3 million paid upon settlement of a net working capital true-up.

During the thirty-nine weeks ended September 23, 2022, the Company completed three other acquisitions for an aggregate purchase price of approximately \$32.5 million, paid in cash, subject to customary working capital adjustments. The Company will also pay additional contingent consideration, if earned, in the form of earn-out amounts which could total \$2.0 million in the aggregate.

## RESULTS OF OPERATIONS

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	September 23, 2022	September 24, 2021	September 23, 2022	September 24, 2021
Net sales	\$ 661,856	\$ 484,321	\$ 1,822,063	\$ 1,187,506
Cost of sales	504,068	374,346	1,390,758	922,710
Gross profit	157,788	109,975	431,305	264,796
Selling, general and administrative expenses	130,255	99,431	364,828	270,034
Other operating expenses (income), net	5,458	105	10,504	(208)
Operating income (loss)	22,075	10,439	55,973	(5,030)
Interest expense	10,737	4,191	19,567	13,362
Income (loss) before income taxes	11,338	6,248	36,406	(18,392)
Provision for income tax expense (benefit)	3,061	2,792	9,829	(5,025)
Net income (loss)	\$ 8,277	\$ 3,456	\$ 26,577	\$ (13,367)

Management evaluates the results of operations and cash flows using a variety of key performance indicators, including net sales compared to prior periods and internal forecasts, costs of our products and results of our cost-control initiatives, and use of operating cash. These indicators are discussed throughout the “Results of Operations” and “Liquidity and Capital Resources” sections of this MD&A.

### Thirteen Weeks Ended September 23, 2022 Compared to Thirteen Weeks Ended September 24, 2021

#### Net Sales

	2022	2021	\$ Change	% Change
Net sales	\$ 661,856	\$ 484,321	\$ 177,535	36.7 %

Organic growth contributed \$107.2 million, or 22.2%, to sales growth and the remaining sales growth of \$70.3 million, or 14.5%, resulted from acquisitions. Organic case count increased approximately 18.3% in our specialty category. In addition, specialty unique customers and placements increased 25.9% and 42.1%, respectively, compared to the prior year period. Organic pounds sold in our center-of-the-plate category increased 11.6% compared to the prior year. Estimated inflation was 15.0% in our specialty category and 2.2% in our center-of-the-plate category compared to the prior year period.

#### Gross Profit

	2022	2021	\$ Change	% Change
Gross profit	\$ 157,788	\$ 109,975	\$ 47,813	43.5 %
Gross profit margin	23.8 %	22.7 %		

Gross profit dollars increased primarily as a result of increased sales and price inflation. Gross profit margin increased approximately 113 basis points. Gross profit margins decreased 133 basis points in the Company’s specialty category and increased 238 basis points in the Company’s center-of-the-plate category. Estimated inflation was 15.0% in the Company’s specialty category and 2.2% in the center-of-the-plate category compared to the prior year period. Specialty margins decreased primarily due to significant year-over-year product cost inflation. Margin rates in the center-of-the-plate category increased as a result of the reopening of favorable margin markets versus the same period in 2021 and year-over-year deflation in certain protein categories.

#### Selling, General and Administrative Expenses

	2022	2021	\$ Change	% Change
Selling, general and administrative expenses	\$ 130,255	\$ 99,431	\$ 30,824	31.0 %
Percentage of net sales	19.7 %	20.5 %		

The increase in selling, general and administrative expenses was primarily due to higher costs associated with compensation and benefits, facilities costs, and fuel costs to support sales growth. Our ratio of selling, general and administrative expenses to net sales decreased predominately due to sales growth which contributed to improved fixed cost leverage in the quarter.

**Other Operating Expenses, Net**

	<b>2022</b>	<b>2021</b>	<b>\$ Change</b>	<b>% Change</b>
Other operating expenses, net	\$ 5,458	\$ 105	\$ 5,353	5,098.1 %

The increase in net other operating expenses was primarily due to non-cash charges of \$4.7 million for changes in the fair value of our contingent earn-out liabilities compared to non-cash credits of \$0.1 million in the prior year period.

**Interest Expense**

	<b>2022</b>	<b>2021</b>	<b>\$ Change</b>	<b>% Change</b>
Interest expense	\$ 10,737	\$ 4,191	\$ 6,546	156.2 %

Interest expense increased primarily due to incurred arrangement and third-party transaction fees of \$4.5 million and a \$0.1 million loss on debit extinguishment from the refinancing of our term loan. Additionally, we had higher amounts of debt outstanding as a result our \$300.0 million term loan issuance in August 2022 and increases in the variable portion of interest rates charged on our outstanding debt.

**Provision for Income Taxes**

	<b>2022</b>	<b>2021</b>	<b>\$ Change</b>	<b>% Change</b>
Provision for income tax expense (benefit)	\$ 3,061	\$ 2,792	\$ 269	9.6 %
Effective tax rate	27.0 %	44.7 %		

The effective tax rate in the prior period was driven by various discrete items. The Company's effective tax rate excluding these discrete items was approximately 29.2%.

**Thirty-Nine Weeks Ended September 23, 2022 Compared to Thirty-Nine Weeks Ended September 24, 2021**

**Net Sales**

	<b>2022</b>	<b>2021</b>	<b>\$ Change</b>	<b>% Change</b>
Net sales	\$ 1,822,063	\$ 1,187,506	\$ 634,557	53.4 %

Organic growth contributed \$435.8 million, or 36.7%, to sales growth and the remaining sales growth of \$198.8 million, or 16.7%, resulted from acquisitions. Organic case count increased approximately 31.3% in our specialty category. In addition, specialty unique customers and placements increased 30.3% and 46.4%, respectively, compared to the prior year period. Organic pounds sold in our center-of-the-plate category increased 16.4% compared to the prior year. Estimated inflation was 15.5% in our specialty category and 11.6% in our center-of-the-plate category compared to the prior year period.

**Gross Profit**

	<b>2022</b>	<b>2021</b>	<b>\$ Change</b>	<b>% Change</b>
Gross profit	431,305	264,796	166,509	62.9 %
Gross profit margin	23.7 %	22.3 %		

Gross profit dollars increased primarily as a result of sales growth and price inflation. Gross profit margin increased approximately 137 basis points. Gross profit margins decreased 31 basis points in the Company's specialty category and increased 202 basis points in the Company's center-of-the-plate category. Estimated inflation was 15.5% in our specialty category and 11.6% in our center-of-the-plate category compared to the prior year period. Higher inflation compressed margin rates in the specialty categories, while margin rates in the center-of-the-plate category were buoyed primarily by the reopening of favorable margin markets in the 2022 period.

***Selling, General and Administrative Expenses***

	<b>2022</b>	<b>2021</b>	<b>\$ Change</b>	<b>% Change</b>
Selling, general and administrative expenses	364,828	270,034	94,794	35.1 %
Percentage of net sales	20.0 %	22.7 %		

The increase in selling, general and administrative expenses was primarily due to higher costs associated with compensation and benefits, facilities costs, and fuel costs to support sales growth. Our ratio of selling, general and administrative expenses to net sales decreased predominately due to sales growth which contributing to improved fixed cost leverage in the quarter.

***Other Operating Expenses (Income), Net***

	<b>2022</b>	<b>2021</b>	<b>\$ Change</b>	<b>% Change</b>
Other operating expenses (income), net	10,504	(208)	10,712	(5,150.0)%

The increase in net other operating expense relates primarily to non-cash charges of \$8.4 million for changes in the fair value of our contingent earn-out liabilities in the fiscal 2022 period compared to non-cash credits of \$1.4 million in the prior year period. The prior year period also includes a \$0.6 million impairment of Cambridge trademarks as a result of a shift in brand strategy to leverage our Allen Brothers brand in our New England region during the second quarter of fiscal 2021.

***Interest Expense***

	<b>2022</b>	<b>2021</b>	<b>\$ Change</b>	<b>% Change</b>
Interest expense	19,567	13,362	6,205	46.4 %

Interest expense increased primarily due to incurred arrangement and third-party transaction fees of \$4.5 million and a \$0.1 million loss on debit extinguishment from the refinancing of our term loan. Additionally, we had higher amounts of debt outstanding as a result our \$300.0 million term loan issuance in August 2022 and increases in the variable portion of interest rates charged on our outstanding debt.

***Provision for Income Taxes***

	<b>2022</b>	<b>2021</b>	<b>\$ Change</b>	<b>% Change</b>
Provision for income tax expense (benefit)	9,829	(5,025)	14,854	(295.6)%
Effective tax rate	27.0 %	27.3 %		

The increase in income tax expense is due to pre-tax income in the current period compared to a pre-tax loss in the prior year period.

## LIQUIDITY AND CAPITAL RESOURCES

We finance our day-to-day operations and growth primarily with cash flows from operations, borrowings under our senior secured credit facilities and other indebtedness, operating leases, trade payables and equity financing.

### *Indebtedness*

The following table presents selected financial information on our indebtedness (in thousands):

	<b>September 23, 2022</b>	<b>December 24, 2021</b>
Senior secured term loan	\$ 300,000	\$ 168,675
Total convertible debt	204,000	204,000
Borrowings outstanding on asset-based loan facility	—	20,000
Finance leases and other financing obligations	9,732	11,602
<b>Total</b>	<b>\$ 513,732</b>	<b>\$ 404,277</b>

As of September 23, 2022, we have various floating- and fixed-rate debt instruments with varying maturities for an aggregate principal amount of \$504.0 million.

On August 23, 2022, we entered into an eighth amendment to its senior secured term loan credit agreement in which we borrowed \$300.0 million maturing on August 23, 2029. See Note 9 “Debt Obligations” to our consolidated financial statements for a full description.

On March 11, 2022, we entered into a third amendment to our asset-based loan facility ABL Facility which increased the aggregate commitments from \$150.0 million to \$200.0 million. See Note 9 “Debt Obligations” to our consolidated financial statements for a full description.

### *Liquidity*

The following table presents selected financial information on liquidity (in thousands):

	<b>September 23, 2022</b>	<b>December 24, 2021</b>
Cash and cash equivalents	\$ 145,425	\$ 115,155
Working capital, excluding cash and cash equivalents	209,181	157,787
Availability under asset-based loan facility	176,820	109,459
<b>Total</b>	<b>\$ 531,426</b>	<b>\$ 382,401</b>

We expect our capital expenditures, excluding cash paid for acquisitions, for fiscal 2022 will be approximately \$36.0 million to \$45.0 million. We believe our existing balances of cash and cash equivalents, working capital and the availability under our asset-based loan facility, are sufficient to satisfy our working capital needs, capital expenditures, debt service and other liquidity requirements associated with our current operations over the next 12 months.

### *Cash Flows*

The following table presents selected financial information on cash flows (in thousands):

	<b>Thirty-Nine Weeks Ended</b>	
	<b>September 23, 2022</b>	<b>September 24, 2021</b>
Net income (loss)	\$ 26,577	\$ (13,367)
Non-cash charges	\$ 58,763	\$ 30,729
Changes in working capital	\$ (53,593)	\$ (43,692)
Net cash provided by (used in) operating activities	\$ 31,747	\$ (26,330)
Net cash used in investing activities	\$ (93,673)	\$ (25,152)
Net cash provided by (used in) financing activities	\$ 92,255	\$ (7,493)

Net cash provided by operations was \$31.7 million for the thirty-nine weeks ended September 23, 2022 compared to net cash used in operating activities of consisting of \$13.4 million for the thirty-nine weeks ended September 24, 2021. The increase in cash provided by operating activities was primarily due to the increased net income, net of non-cash charges, in the current year of \$85.3 million compared to \$17.4 million in the prior year period. This improvement in cash-based profitability is primarily due to a 53.4% increase in sales compared to the prior year period. The sales growth also resulted in higher working capital (increased accounts receivable and inventory partially offset by higher accounts payable). The working capital growth of \$9.9 million versus the prior year period partially offset the favorable impact of increased cash-based profitability. The Company's increased working capital investment in the current year is the result of rapid sales growth driven by our recovery from the pandemic. We expect working capital growth to moderate in the future as sales growth normalizes.

Net cash used in investing activities was \$93.7 million for the thirty-nine weeks ended September 23, 2022, driven by capital expenditures of \$31.7 million which includes the purchase of our distribution facility in Columbus, Ohio and \$62.0 million in cash paid for acquisitions.

Net cash provided financing activities was \$92.3 million for the thirty-nine weeks ended September 23, 2022 driven by the \$300.0 million issuance of senior secured term loans maturing in 2029 ("2029 Term Loans"). This was partially offset by \$171.4 million of principal payments predominately driven by the pay off our 2025 tranche of senior secured term loans and \$11.3 million of deferred financing fees paid in connection with the 2029 Term Loans. We paid \$20.0 million to pay down all borrowings outstanding on our asset based loan facility. We also paid \$2.6 million for shares surrendered to pay tax withholding related to the vesting of equity incentive plan awards and \$2.5 million of earn-out liability payments classified as financing activities.

### ***Seasonality***

Excluding our direct-to-consumer business, we generally do not experience any material seasonality. However, our sales and operating results may vary from quarter to quarter due to factors such as changes in our operating expenses, management's ability to execute our operating and growth strategies, personnel changes, demand for our products, supply shortages, weather patterns and general economic conditions.

Our direct-to-consumer business is subject to seasonal fluctuations, with direct-to-consumer center-of-the-plate protein sales typically higher during the holiday season in our fourth quarter; accordingly, a disproportionate amount of operating cash flows from this portion of our business is generated by our direct-to-consumer business in the fourth quarter of our fiscal year. Despite a significant portion of these sales occurring in the fourth quarter, there are operating expenses, principally advertising and promotional expenses, throughout the year.

The Pandemic has had a material impact on our business and operations and those of our customers. Our net sales were most significantly impacted during the second quarter of fiscal 2020 when, in an effort to limit the spread of the virus, federal, state and local governments began implementing various restrictions that resulted in the closure of non-essential businesses in many of the markets we serve, which forced our customers in those markets to either transition their establishments to take-out service, delivery service or temporarily cease operations.

### ***Inflation***

Our profitability is dependent on, among other things, our ability to anticipate and react to changes in the costs of key operating resources, including food and other raw materials, labor, energy and other supplies and services. Substantial increases in costs and expenses could impact our operating results to the extent that such increases cannot be passed along to our customers. The impact of inflation and deflation on food, labor, energy and occupancy costs can significantly affect the profitability of our operations.

### **Critical Accounting Policies and Estimates**

The preparation of the Company's consolidated financial statements requires it to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosure of contingent assets and liabilities. The SEC has defined critical accounting policies as those that are both most important to the portrayal of the Company's financial condition and results and require its most difficult, complex or subjective judgments or estimates. Based on this definition, we believe our critical accounting policies include the following: (i) determining our allowance for doubtful accounts, (ii) inventory valuation, with regard to determining inventory balance adjustments for excess and obsolete inventory, (iii) business combinations, (iv) valuing goodwill and intangible assets, (v) self-insurance reserves, (vi) accounting for income taxes and (vii)

contingent earn-out liabilities. Our critical accounting policies and estimates are described in the Form 10-K filed with the SEC on February 22, 2022.



### ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

#### *Interest Rate Risk*

As of September 23, 2022, we had an aggregate \$300.0 million of indebtedness outstanding under the Term Loan that bore interest at variable rates. A 100 basis point increase in market interest rates would decrease our after tax earnings by approximately \$2.2 million per annum, holding other variables constant.

### ITEM 4. CONTROLS AND PROCEDURES

#### *Evaluation of Disclosure Controls and Procedures*

The Company, under the supervision and with the participation of its management, including the Chief Executive Officer and the Chief Financial Officer, evaluated the effectiveness of the design and operation of the Company's "disclosure controls and procedures" (as defined in Rule 13a-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act") as of the end of the period covered by this report. Based on that evaluation, the Chief Executive Officer and the Chief Financial Officer concluded that the Company's disclosure controls and procedures were effective as of September 23, 2022.

#### *Changes in Internal Control over Financial Reporting*

There were no changes in our internal control over financial reporting during the quarter ended September 23, 2022 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## PART II. OTHER INFORMATION

### ITEM 1. LEGAL PROCEEDINGS

We are involved in legal proceedings, claims and litigation arising out of the ordinary conduct of our business. Although we cannot assure the outcome, management presently believes that the result of such legal proceedings, either individually or in the aggregate, will not have a material adverse effect on our consolidated financial statements, and no material amounts have been accrued in our consolidated financial statements with respect to these matters.

### ITEM 1A. RISK FACTORS

There have been no material changes to our risk factors as previously disclosed in Part I, Item 1A, included in our Annual Report on Form 10-K for the year ended December 24, 2021 filed with the SEC on February 22, 2022. In addition to the information contained herein, you should consider the risk factors disclosed in our Annual Report on Form 10-K.

### ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

	Total Number of Shares Repurchased(1)	Average Price Paid Per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Number (or Approximate Dollar Value) of Shares That May Yet Be Purchased Under the Plans or Programs
June 25, 2022 to July 22, 2022	—	\$ —	—	—
July 23, 2022 to August 19, 2022	741	35.01	—	—
August 20, 2022 to September 23, 2022	—	—	—	—
Total	741	\$ 35.01	—	—

(1) During the thirty-nine weeks ended September 23, 2022, we withheld 741 shares of our common stock to satisfy tax withholding requirements related to restricted shares of our common stock awarded to our officers and key employees resulting from either elections under 83(b) of the Internal Revenue Code of 1986, as amended, or upon vesting of such awards.

**ITEM 3. DEFAULTS UPON SENIOR SECURITIES**

None.

**ITEM 4. MINE SAFETY DISCLOSURES**

None.

**ITEM 5. OTHER INFORMATION**

None.

**ITEM 7. EXHIBITS**

<b>Exhibit No.</b>	<b>Description</b>
<a href="#">10.1†</a>	Amendment No. 4, dated as of August 23, 2022, to the ABL Facility.
<a href="#">10.2†</a>	Redlined Amended ABL Credit Agreement, dated as of August 23, 2022.
<a href="#">10.3†</a>	Amendment No. 8, dated as of August 23, 2022, to the Term Loan Credit Agreement.
<a href="#">10.4†</a>	Redlined Amended Term Loan Credit Agreement, dated as of August 23, 2022.
<a href="#">31.1</a>	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
<a href="#">31.2</a>	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
<a href="#">32.1</a>	Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
<a href="#">32.2</a>	Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS	XBRL Instance Document – the instance document does not appear on the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	XBRL Taxonomy Extension Label Linkbase Document
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document
104	Cover Page Interactive Data File - the cover page XBRL tags are embedded within the Inline XBRL document.
†	Filed herewith

**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized on October 26, 2022.

**THE CHEFS' WAREHOUSE, INC.  
(Registrant)**

Date: October 26, 2022

/s/ James Leddy

James Leddy  
Chief Financial Officer  
(Principal Financial Officer)

Date: October 26, 2022

/s/ Timothy McCauley

Timothy McCauley  
Chief Accounting Officer  
(Principal Accounting Officer)

**FOURTH AMENDMENT TO CREDIT AGREEMENT**

This FOURTH AMENDMENT TO CREDIT AGREEMENT (this "Amendment"), dated as of August 25, 2022, by and among DAIRYLAND USA CORPORATION, a New York corporation ("Dairyland"), CHEFS' WAREHOUSE PARENT, LLC, a Delaware limited liability company (together with Dairyland, the "Borrowers"), THE CHEFS' WAREHOUSE, INC., a Delaware corporation ("Holdings"), the other Loan Parties party hereto, the Lenders party hereto and BMO Harris Bank N.A. ("BMO"), as administrative agent for the Lenders (in such capacity, the "Agent").

## WITNESSETH:

**WHEREAS**, the Borrowers, Holdings and the other Loan Parties party thereto have entered into that certain Credit Agreement, dated as of June 29, 2018 (as amended by the First Amendment to Credit Agreement, dated as of November 18, 2019, the Second Amendment to Credit Agreement, dated as of February 24, 2021, and the Third Amendment to Credit Agreement and First Amendment to Pledge and Security Agreement, dated as of March 11, 2022, and as otherwise amended, restated, amended and restated, supplemented or modified from time to time prior to the date hereof, the "Existing Credit Agreement"), by and among the Borrowers, Holdings, the other Loan Parties party thereto, certain Lenders party thereto and the Agent;

**WHEREAS**, pursuant to and in accordance with Section 9.02 of the Existing Credit Agreement, the Borrowers have requested that the Lenders amend, and all of the Lenders under the Existing Credit Agreement on the Fourth Amendment Effective Date (as defined below) party hereto constituting the "Required Lenders" under the Existing Credit Agreement (the "Fourth Amendment Consenting Lenders") have agreed to so amend, the Existing Credit Agreement in the manner set forth in Section 2 hereof; and

**WHEREAS**, the Agent and the Fourth Amendment Consenting Lenders are willing, on the terms and subject to the conditions set forth below, to enter into the amendments, modifications and agreements set forth in this Amendment.

**NOW, THEREFORE**, in consideration of the premises and the mutual agreements herein contained and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Defined Terms. Unless otherwise defined herein, capitalized terms used herein shall have the respective meanings ascribed thereto in the Existing Credit Agreement, as amended hereby (the "Amended Credit Agreement").

2. Amendments. Subject to the satisfaction (or waiver in accordance with Section 9.02 of the Existing Credit Agreement) of the conditions precedent set forth in Section 5 below:

- a. The Existing Credit Agreement is hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the underlined text (indicated textually in the same manner as the following example: underlined text) as set forth in the Amended Credit Agreement attached hereto as Annex A.
- b. The Schedules to the Existing Credit Agreement are hereby amended and restated in their entirety with the Schedules to the Amended Credit Agreement attached hereto as Annex B.

Any Schedule, Exhibit or other attachment to the Existing Credit Agreement not amended pursuant to the terms of this Amendment or otherwise included hereto as Annex A and/or Annex B shall remain in effect without any amendment or other modification thereto (other than as provided in Section 7 below).

3. Representations and Warranties. In order to induce the Fourth Amendment Consenting Lenders and the Agent to enter into this Amendment, each Loan Party represents and warrants that the following statements are true and correct on the date hereof:

(a) each of the representations and warranties contained in the Loan Documents are true and correct in all material respects (provided that any representation or warranty that is qualified by materiality or Material Adverse Effect shall be true and correct in all respects) on and as of the Fourth Amendment Effective Date except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in all material respects (or, in the case of any representation or warranty qualified by materiality or Material Adverse Effect, in all respects) on and as of such earlier date;

(b) the transactions contemplated by this Amendment are within each Loan Party's organizational powers and have been duly authorized by all necessary organizational actions and, if required, actions by equity holders;

(c) this Amendment has been duly executed and delivered by such Loan Party and constitutes a legal, valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law;

(d) the transactions contemplated by this Amendment (i) do not require any material consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect and except for filings necessary to perfect Liens created pursuant to the Loan Documents, (ii) will not violate any Requirement of Law applicable to any Loan Party or any of its Restricted Subsidiaries, (iii) will not violate or result in a default under any indenture, agreement or other instrument binding upon any Loan Party or any of its Restricted Subsidiaries or the assets of any Loan Party or any of its Restricted Subsidiaries, or give rise to a right thereunder to require any payment to be made by any Loan Party or any of its Restricted Subsidiaries, and (iv) will not result in the creation or imposition of any Lien on any asset of any Loan Party or any of its Restricted Subsidiaries, except Liens created pursuant to the Loan Documents, or subject to the Intercreditor Agreement, the Term Loan Documents, except, in each case referred to in clauses (ii), (iii) and (iv), where such violation or Lien would not reasonably be expected to result in a Material Adverse Effect; and

(e) as of the date hereof and immediately after giving effect to this Amendment, no Default or Event of Default has occurred and is continuing.

4. Conditions to Effectiveness. The effectiveness of this Amendment is subject to the satisfaction (or waiver in accordance with Section 9.02 of the Existing Credit Agreement) of the following conditions (the date on which all such conditions are so satisfied or waived is referred to herein as the "Fourth Amendment Effective Date"):

(a) the Agent shall have received a certificate, dated the Fourth Amendment Effective Date, executed by the President, a Vice President or a Financial Officer of the Borrower Representative, certifying that, on the Fourth Amendment Effective Date, (i) the representations and warranties contained in this Amendment and the other Loan Documents are true and correct in all material respects (provided that any representation or warranty that is qualified by materiality or Material Adverse Effect shall be true and correct in all respects) on such date except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in all material respects (or, in the case of any representation or warranty qualified by materiality or Material Adverse Effect, in all respects) on such earlier date; and (ii) on the Fourth Amendment Effective Date and immediately after giving effect to this Amendment, no Default or Event of Default has occurred and is continuing;

(b) Holdings and the Borrowers shall have paid to the Agent all accrued fees, and all reasonable and documented costs and expenses due and payable under this Amendment (including under

Section 8 hereof) to the extent invoiced at least two Business Days prior to the Fourth Amendment Effective Date; and

(c) the Agent shall have received counterparts of this Amendment duly executed by Holdings, the Borrowers, each other Loan Party, the Agent and each Fourth Amendment Consenting Lender.

5. GOVERNING LAW AND WAIVER OF JURY TRIAL.

(f) This Amendment shall be governed by, and construed in accordance with, the laws of the State of New York without regard to conflict of law principles (other than sections 5-1401 and 5-1402 of the New York General Obligations Law).

(g) To the fullest extent permitted by applicable law, each Loan Party hereby irrevocably submits to the exclusive jurisdiction of any New York State court or federal court sitting in the County of New York and the Borough of Manhattan in respect of any claim, suit, action or proceeding arising out of or relating to the provisions of this Amendment and irrevocably agree that all claims in respect of any such claim, suit, action or proceeding may be heard and determined in any such court and that service of process therein may be made by certified mail, postage prepaid, to the address set forth in, or provided pursuant to, Section 9.01 of the Amended Credit Agreement. Each Loan Party hereby waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of venue of any such claim, suit, action or proceeding brought in any such court, and any claim that any such claim, suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Amendment shall affect any right that the Agent or any Lender may otherwise have to bring any action or proceeding relating to this Amendment against any Loan Party or its properties in the courts of any jurisdiction.

(h) Each Loan Party hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Amendment in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(i) Each party to this Amendment irrevocably consents to service of process in the manner provided for notices in Section 9.01 of the Existing Credit Agreement. Nothing in this Amendment will affect the right of any party to this Amendment to serve process in any other manner permitted by law.

(j) EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AMENDMENT, THE AMENDED CREDIT AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AMENDMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

6. Counterparts; Integration; Effectiveness. This Amendment may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Amendment constitutes the entire contract among the parties relating to the subject matter hereof and supersedes any

and all previous agreements and understandings, oral or written, relating to the subject matter hereof. This Amendment shall become effective on the Fourth Amendment Effective Date. Except as provided in Section 4, this Amendment shall become effective when it shall have been executed and delivered by the Agent and when the Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Amendment by telecopy, e-mailed .pdf or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this Amendment. The words “execution,” “signed,” “signature,” “delivery,” and words of like import in or relating to any document to be signed in connection with this Amendment and the transactions contemplated hereby shall be deemed to include Electronic Signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

7. Reference to and Limited Effect on the Existing Credit Agreement and the Other Loan Documents.

(d) On and after the Fourth Amendment Effective Date, (x) each reference in the Amended Credit Agreement to “this Agreement”, “hereunder”, “hereof”, “herein” or words of like import referring to the Existing Credit Agreement, and (y) each reference in the other Loan Documents to the “Credit Agreement”, “thereunder”, “thereof”, “therein” or words of like import referring to the Existing Credit Agreement shall mean and be a reference to the Amended Credit Agreement.

(e) Except as specifically amended by this Amendment, the Existing Credit Agreement and each of the other Loan Documents shall remain in full force and effect and are hereby ratified and confirmed.

(f) The execution, delivery and performance of this Amendment shall not constitute a waiver of any provision of, or operate as a waiver of any right, power or remedy of the Agent or the Lenders under, the Amended Credit Agreement or any of the other Loan Documents.

(g) Each Loan Party hereby (i) ratifies, confirms and reaffirms its liabilities, its payment and performance obligations (contingent or otherwise) and its agreements under the Existing Credit Agreement and the other Loan Documents and (ii) acknowledges, ratifies and confirms that such liabilities, obligations and agreements constitute valid and existing Obligations under the Amended Credit Agreement, in each case, to the extent such Loan Party is a party thereto. In addition, each Loan Party hereby ratifies, confirms and reaffirms (i) the liens and security interests granted by it and as created and perfected under the Collateral Documents and any other Loan Documents and (ii) that each of the Collateral Documents to which it is a party remains in full force and effect notwithstanding the effectiveness of this Amendment. Without limiting the generality of the foregoing, each Loan Party further agrees (A) that any reference to “Obligations” contained in any Collateral Documents shall include, without limitation, the “Obligations” (as such term is defined in the Amended Credit Agreement) and (B) that the related guarantees and grants of security contained in such Collateral Documents shall include and extend to such Obligations. This Amendment shall not constitute a modification of the Existing Credit Agreement, except as specified under Section 2 hereto, or a course of dealing with the Agent or any Lender at variance with the Existing Credit Agreement, as applicable, such as to require further notice by the Agent or any Lender to require strict compliance with the terms of the Amended Credit Agreement and the other Loan Documents in the future, except as expressly set forth herein. This Amendment contains the entire agreement among the Loan Parties and the Fourth Amendment Consenting Lenders contemplated by this Amendment. No Loan Party has any knowledge of any challenge to the Agent’s or any Lender’s claims arising under the Loan Documents or the effectiveness of the Loan Documents. The Agent and Lenders reserve all rights, privileges and remedies under the Loan Documents. Nothing in this Amendment is intended, or shall be construed, to constitute a novation or an accord and satisfaction of any of the Obligations, or otherwise with respect to the Existing Credit



Agreement or any other Loan Document, or to constitute a mutual departure from the strict terms, provisions and conditions of the Existing Credit Agreement or any other Loan Document other than with respect to the amendments set forth in Section 2 hereof, or to modify, affect or impair the perfection, priority or continuation of the security interests in, security titles to or other Liens on any Collateral for the Obligations.

(h) Each Loan Party hereby acknowledges that it has reviewed the terms and provisions of this Amendment and consents to the amendment of the Existing Credit Agreement effected pursuant to this Amendment.

(i) Each Loan Party that is not a Borrower acknowledges and agrees that (i) notwithstanding the conditions to effectiveness set forth in this Amendment, such Loan Party is not required by the terms of the Existing Credit Agreement or any other Loan Document to consent to the amendments to the Existing Credit Agreement effected pursuant to this Amendment and (ii) nothing in the Amended Credit Agreement, this Amendment or any other Loan Document shall be deemed to require the consent of such Loan Party to any future amendments to the Amended Credit Agreement.

(j) The parties hereto acknowledge and agree that, for all purposes under the Amended Credit Agreement and the other Loan Documents, this Amendment constitutes a "Loan Document" under, and as defined in, the Amended Credit Agreement.

8. Expenses. The Borrowers and Holdings agree, jointly and severally, to pay on demand all reasonable and documented out-of-pocket costs and expenses incurred by the Agent in connection with the preparation, negotiation and execution of this Amendment, including, without limitation, all reasonable, documented and invoiced attorney costs, to the extent and as provided in Section 9.03(a) of the Existing Credit Agreement.

9. Severability. Any provision of this Amendment held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions thereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

10. Headings. Section headings used herein are for convenience of reference only, are not part of this Amendment and shall not affect the construction of, or be taken into consideration in interpreting, this Amendment.

11. Conflicts. In the event of any conflict between the terms of this Amendment and the terms of the Amended Credit Agreement or any of the other Loan Documents, the terms of this Amendment shall govern.

*[SIGNATURE PAGES FOLLOW]*

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered by their respective proper and duly authorized officers as of the day and year first written above.

**CHEFS' WAREHOUSE PARENT, LLC,**  
as a Borrower

By: /s/ Alexandros Aldous  
Name: Alexandros Aldous  
Title: General Counsel, Corporate Secretary and  
Chief Government Relations Officer

**DAIRYLAND USA CORPORATION,**  
as a Borrower

By: /s/ Alexandros Aldous  
Name: Alexandros Aldous  
Title: General Counsel, Corporate Secretary and  
Chief Government Relations Officer

[SIGNATURE PAGE TO FOURTH AMENDMENT TO CREDIT AGREEMENT]

**THE CHEFS' WAREHOUSE MID ATLANTIC, LLC  
BEL CANTO FOODS, LLC  
THE CHEFS' WAREHOUSE WEST COAST, LLC  
THE CHEFS' WAREHOUSE OF FLORIDA, LLC  
THE CHEFS' WAREHOUSE, INC.  
MICHAEL'S FINER MEATS, LLC  
MICHAEL'S FINER MEATS HOLDINGS, LLC  
THE CHEFS' WAREHOUSE MIDWEST, LLC  
THE CHEFS' WAREHOUSE PASTRY DIVISION, INC.  
QZ ACQUISITION (USA), INC.  
QZINA SPECIALTY FOODS NORTH AMERICA (USA), INC.  
QZINA SPECIALTY FOODS, INC., a Florida corporation  
QZINA SPECIALTY FOODS, INC., a Washington corporation  
QZINA SPECIALTY FOODS (AMBASSADOR), INC.  
CW LV REAL ESTATE LLC  
ALLEN BROTHERS 1893, LLC  
THE GREAT STEAKHOUSE STEAKS, LLC  
DEL MONTE CAPITOL MEAT COMPANY HOLDINGS, LLC  
DEL MONTE CAPITOL MEAT COMPANY, LLC  
FELLS POINT HOLDINGS, LLC  
FELLS POINT, LLC  
CHEFS' WAREHOUSE TRANSPORTATION, LLC  
DAIRYLAND HP LLC  
CAMBRIDGE, LLC  
CAMBRIDGE PROTEIN HOLDINGS, LLC  
DAIRYLAND PRODUCE, LLC  
DAIRYLAND PRODUCE HOLDINGS, LLC  
CHEFS' WAREHOUSE MIDDLE EAST HOLDINGS, LLC  
CHEFS' WAREHOUSE MIDDLE EAST, LLC**

By: /s/ Alexandros Aldous  
Name: Alexandros Aldous  
Title: General Counsel, Corporate Secretary and  
Chief Government Relations Officer

[SIGNATURE PAGE TO FOURTH AMENDMENT TO CREDIT AGREEMENT]

**BMO HARRIS BANK N.A.,**  
as Agent and as a Lender

By: /s/ Elizabeth Mitchell  
Name: Elizabeth Mitchell  
Title: Director

[SIGNATURE PAGE TO FOURTH AMENDMENT TO CREDIT AGREEMENT]

**BANK OF AMERICA, N.A.,**  
as Lender

By: /s/ Matthew Bourgeois  
Name: Matthew Bourgeois  
Title: Senior Vice President

[SIGNATURE PAGE TO FOURTH AMENDMENT TO CREDIT AGREEMENT]

**JPMORGAN CHASE BANK, N.A.,**  
as Lender

By: /s/ Anne Hall  
Name: Anne Hall  
Title: Authorized Officer

[SIGNATURE PAGE TO FOURTH AMENDMENT TO CREDIT AGREEMENT]

[SIGNATURE PAGE TO FOURTH AMENDMENT TO CREDIT AGREEMENT]

ANNEX A

AMENDED CREDIT AGREEMENT

(See attached)



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AMENDED AND RESTATED CREDIT AGREEMENT

Dated as of June 29, 2018  
as amended by the First Amendment to Credit Agreement, dated as of November 18, 2019, the Second Amendment to Credit Agreement,  
dated as of February 24, 2021, ~~and~~ the Third Amendment to Credit Agreement, dated as of March 11, 2022, and the Fourth Amendment to  
Credit Agreement, dated as of August 25, 2022

among

CHEFS' WAREHOUSE PARENT, LLC and  
DAIRYLAND USA CORPORATION,  
each as a Borrower,

THE CHEFS' WAREHOUSE, INC.,  
THE CHEFS' WAREHOUSE MID-ATLANTIC, LLC,  
BEL CANTO FOODS, LLC,  
THE CHEFS' WAREHOUSE WEST COAST, LLC,  
THE CHEFS' WAREHOUSE OF FLORIDA, LLC,  
MICHAEL'S FINER MEATS, LLC,  
MICHAEL'S FINER MEATS HOLDINGS, LLC,  
THE CHEFS' WAREHOUSE MIDWEST, LLC,  
FELLS POINT HOLDINGS, LLC,  
and  
the Other Loan Parties Party Hereto,  
as Guarantors,

CERTAIN FINANCIAL INSTITUTIONS,  
as Lenders,

and

BMO HARRIS BANK N.A.,  
as Administrative Agent and Swingline Lender

BMO CAPITAL MARKETS AND JPMORGAN CHASE BANK, N.A.,  
as Joint Arrangers and Joint Bookrunners

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EXHIBITS:

- Exhibit A – Form of Assignment and Assumption
- Exhibit B – [Intentionally Omitted]
- Exhibit C – [Intentionally Omitted]
- Exhibit D – List of Closing Documents
- Exhibit E – Form of Compliance Certificate
- Exhibit F – Joinder Agreement
- Exhibit G-1 – U.S. Tax Certificate (For Foreign Lenders that are not Partnerships for U.S. Federal Income Tax Purposes)
- Exhibit G-2 – U.S. Tax Certificate (For Foreign Participants that are not Partnerships for U.S. Federal Income Tax Purposes)
- Exhibit G-3 – U.S. Tax Certificate (For Foreign Participants that are Partnerships for U.S. Federal Income Tax Purposes)
- Exhibit G-4 – U.S. Tax Certificate (For Foreign Lenders that are Partnerships for U.S. Federal Income Tax Purposes)
- Exhibit H – Form of Borrowing Base



CREDIT AGREEMENT dated as of June 29, 2018 (as amended by the First Amendment to Credit Agreement, dated as of November 18, 2019, the Second Amendment to Credit Agreement, dated as of February 24, 2021, ~~and~~ the Third Amendment to Credit Agreement, dated as of March 11, 2022, and the Fourth Amendment to Credit Agreement, dated as of August 25, 2022 (as it may be further amended ~~or~~, restated, amended and restated or otherwise modified from time to time, this “Agreement”) among CHEFS’ WAREHOUSE PARENT, LLC, a Delaware limited liability company (“CW Parent”), and DAIRYLAND USA CORPORATION, a New York corporation (“Dairyland”), as Borrowers, the other Loan Parties party hereto, the Lenders party hereto, and BMO HARRIS BANK N.A., as Administrative Agent.

The parties hereto agree as follows:

## Article I.

### DEFINITIONS

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

“1.875% Convertible Notes” means the 1.875% Convertible Senior Notes due 2024 issued by Holdings pursuant to an Indenture dated as of November 22, 2019, between Holdings and The Bank of New York Mellon Trust Company, N.A., as Trustee (as amended in accordance with its terms).

“ABL Priority Collateral” has the meaning assigned thereto in the Intercreditor Agreement, and is intended to indicate that portion of the Collateral subject to a first priority perfected Lien in favor of the Administrative Agent and the other secured parties for which it acts.

“Account” has the meaning assigned to such term in the Security Agreement.

“Account Debtor” means any Person obligated on an Account.

“Acquisition Consideration” has the meaning assigned to it in the “Permitted Acquisition” definition.

“Adjusted Term SOFR” means, with respect to any Interest Period, an interest rate per annum equal to the sum of (i) Term SOFR plus (ii) 0.10% (10 basis points) for a one-month Interest Period, 0.15 % (15 basis points) for a three-month Interest Period, and 0.25% (25 basis points) for a six-month Interest Period; provided, that if Adjusted Term SOFR so determined shall be less than the Floor, then Adjusted Term SOFR shall be deemed to be the Floor.

“Administrative Agent” means BMO Harris Bank N.A., in its capacity as administrative agent for the Lenders hereunder and any successor Administrative Agent appointed pursuant to the terms of this Agreement.

“Administrative Questionnaire” means an administrative questionnaire in a form supplied by the Administrative Agent or otherwise acceptable to the Administrative Agent.

“Affected Financial Institution” means (a) any EEA Financial Institution or (b) any UK Financial Institution.

“Affected Foreign Subsidiary” means any Foreign Subsidiary to the extent 66 2/3% or more of the voting Equity Interests of such Foreign Subsidiary being pledged to support the Secured Obligations could reasonably be expected to cause a Deemed Dividend Issue.

“Affiliate” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.



“Agent Party” has the meaning assigned to such term in Section 9.01(d).

“Aggregate Commitment” means the aggregate of the Commitments of all of the Lenders, as reduced or increased from time to time pursuant to the terms and conditions hereof. As of the Third Amendment Effective Date, the Aggregate Commitment is \$200,000,000.

“Aggregate Revolving Exposure” means, at any time, the aggregate Revolving Exposures of all the Lenders.

“Agreement” has the meaning ascribed to it in the preamble.

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to any Borrower or any Affiliate of any Borrower from time to time concerning or relating to bribery or corruption.

“Applicable Percentage” means, with respect to any Lender, the percentage of the Aggregate Commitment represented by such Lender’s Commitment; provided that, in the case of Section 2.20 when a Defaulting Lender shall exist, “Applicable Percentage” ~~shall~~ mean means the percentage of the Aggregate Commitment (disregarding any Defaulting Lender’s Commitment) represented by such Lender’s Commitment. If the Commitments have terminated or expired, the Applicable Percentages shall be determined based upon the Commitments most recently in effect, giving effect to any assignments and to any Lender’s status as a Defaulting Lender at the time of determination.

“Applicable Pledge Percentage” means 100% but 65% in the case of a pledge by the Borrowers or any Domestic Subsidiary of its Equity Interests in an Affected Foreign Subsidiary or its Equity Interests in a FSHCO.

“Applicable Rate” means, for any day, with respect to any SOFR Loan or any Base Rate Loan, as the case may be, the applicable rate per annum set forth below under the caption “SOFR Spread” or “Base Rate Spread”, as the case may be, based upon the Average Availability for the immediately preceding Fiscal Quarter; provided that, for the first Fiscal Quarter ending after the Third Amendment Effective Date, the “Applicable Rate” shall be determined as if Category 1 was applicable:

	<u>Average Availability:</u>	<u>SOFR Spread</u>	<u>Base Rate Spread</u>
<u>Category 1:</u>	> 40%	1.25%	0.50%
<u>Category 2:</u>	≤ 40%	1.50%	0.75%

For purposes of the foregoing, the Applicable Rate shall be determined as of the first day of each Fiscal Quarter, based upon the Average Availability for the immediately preceding Fiscal Quarter; provided that the Average Availability shall be deemed to be in Category 2 at the option of the Administrative Agent or at the request of the Required Lenders if the Borrowers fail to deliver the Borrowing Base Certificates (including any required financial information in support thereof) required to be delivered by them pursuant to Section 5.01, during the period from the expiration of the time for delivery thereof until such Borrowing Base Certificates (and required information) are so delivered.

“Approved Fund” has the meaning assigned to such term in Section 9.04(b).

“Assignment and Assumption” means an assignment and assumption agreement entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.04), and accepted by the Administrative Agent, in substantially the form of Exhibit A or any other form approved by the Administrative Agent in its reasonable discretion.

“Authorized Officer” means, with respect to any Loan Party, the chief executive officer, the president, a Financial Officer or any other officer of such Loan Party with responsibility for the administration of the relevant portion of this Agreement.

“Availability” means, at any time, an amount equal to (a) the Line Cap minus (b) the Aggregate Revolving Exposure (calculated, with respect to any Defaulting Lender, as if such Defaulting Lender had funded its Applicable Percentage of all outstanding Borrowings).

“Availability Period” means the period from and including the Third Amendment Effective Date to but excluding the earlier of the Maturity Date and the date of termination of the Commitments.

“Available Commitment” means, at any time, the Aggregate Commitment then in effect minus the Aggregate Revolving Exposure (calculated, with respect to any Defaulting Lender, as if such Defaulting Lender had funded its Applicable Percentage of all outstanding Borrowings).

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an Interest Period or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark pursuant to this Agreement, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed (but not then-reinstated) from the definition of “Interest Period” pursuant to clause (b)(iv) of Section 2.14.

“Average Availability” means for any period, the average daily amount of Availability during such period.

“Average Life” means, as of the date of determination, with respect to any Indebtedness, the quotient obtained by dividing (i) the sum of the products of (A) the numbers of years (calculated to the nearest one-twelfth) from the date of determination to the dates of each successive scheduled principal payment of such Indebtedness multiplied by (B) the amount of such payment by (ii) the sum of all such payments.

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

“Bail-In Legislation” means (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation, rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“Banking Services” means each and any of the following bank services provided to any Loan Party or any Subsidiary by any Lender or any of its Affiliates: (a) credit cards for commercial customers (including, without limitation, “commercial credit cards” and purchasing cards), (b) stored value cards, (c) merchant processing services and (d) treasury management services (including, without limitation, controlled disbursement, automated clearinghouse transactions, return items, any direct debit scheme or arrangement, overdrafts and interstate depository network services).

“Banking Services Obligations” means any and all obligations of the Loan Parties or any Subsidiary, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor) in connection with Banking Services.

“Banking Services Reserves” means all Reserves which the Administrative Agent from time to time establishes in its Permitted Discretion for Banking Services then provided or outstanding.

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

“Bankruptcy Event” means, with respect to any Person, such Person becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business, appointed for it, or, in the good faith determination of the Administrative Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment; provided that a Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof; provided, further, that such ownership interest does not result in or provide such Person with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Person (or such Governmental Authority or instrumentality), to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

“Base Rate” means, for any day, a fluctuating rate per annum equal to the highest of (a) the rate of interest announced by BMO from time to time as its prime rate for such day (with any change in such rate announced by BMO taking effect at the opening of business on the day specified in the public announcement of such change); (b) the Federal Funds Rate for such day, plus 0.50%; or (c) the sum of (i) Adjusted Term SOFR for a one-month tenor in effect on such day plus (ii) 1.00%. Any change in the Base Rate due to a change in the prime rate, the Federal Funds Rate or Term SOFR, as applicable, shall be effective from and including the effective date of the change in such rate. If the Base Rate is being used as an alternative rate of interest pursuant to Section 2.14, then the Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above; provided that if the Base Rate as so determined shall be less than the Floor, then the Base Rate shall be deemed to be the Floor.

“Base Rate Borrowing” means a Borrowing that accrues interest based on the Base Rate.

“Base Rate Loan” means a Loan that accrues interest based on the Base Rate.

“Benchmark” means, initially, the Term SOFR Reference Rate; provided that if a Benchmark Transition Event and the related Benchmark Replacement Date have occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to, and in accordance with, Section 2.14.

“Benchmark Replacement” means, for any Available Tenor, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date:

(a) Daily Simple SOFR; or

(b) the sum of: (i) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower Representative as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities at such time in the United States and (ii) the related Benchmark Replacement Adjustment.

If the Benchmark Replacement as determined pursuant to clause (a) or (b) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor.

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower Representative for the applicable Corresponding Tenor giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date and/or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities at such time in the United States.

“Benchmark Replacement Date” means, with respect to any Benchmark, the earliest to occur of the following events with respect to such then-current Benchmark:

(c) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event”, the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(d) in the case of clause (c) of the definition of “Benchmark Transition Event”, the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by or on behalf of the administrator of such Benchmark (or such component thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be no longer representative or not to comply with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks; provided, that such non-representativeness or non-compliance will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Event” means, with respect to any Benchmark, the occurrence of one or more of the following events with respect to such then-current Benchmark:

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the ~~Federal Reserve~~ Board, the Federal Reserve Bank of New York, the Term SOFR Administrator, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely;

provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer, or as of a specified future date will no longer be, representative or do not, or as a specified future date will not, comply with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Unavailability Period” means, with respect to any Benchmark, the period (if any) (a) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark in accordance with Section 2.14 and (b) ending at the time that a Benchmark Replacement has replaced such then-current Benchmark in accordance with Section 2.14.

“Beneficial Owner” means, with respect to any U.S. Federal withholding Tax, the beneficial owner, for U.S. Federal income tax purposes, to whom such Tax relates.

~~“Beneficial Ownership Certification” means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.~~

“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.

“Benefit Plan” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of Section 3(42) of ERISA or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“BHC Act Affiliate” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“BMO” means BMO Harris Bank N.A.

“Board” means the Board of Governors of the Federal Reserve System of the United States of America.

“Borrower” or “Borrowers” means, individually or collectively, CW Parent and Dairyland.

“Borrower Representative” has the meaning assigned to such term in Section 11.01.

“Borrowing” means (a) Revolving Loans of the same Type, made, converted or continued on the same date and, in the case of SOFR Loans, as to which a single Interest Period is in effect, (b) Loans of the same Type, made, converted or continued on the same date and, in the case of SOFR Loans, as to which a single Interest Period is in effect, (c) a Swingline Loan, (d) a Protective Advance and (e) an Overadvance.

“Borrowing Base” means, at any time, the sum of (a) 90% of Eligible Accounts of the Loan Parties (other than Holdings) at such time plus (b) the lesser of (i) 75% of the Eligible Inventory of the Loan Parties (other than Holdings) at such time, valued at the lower of cost or market value, determined on a first-in-first-out basis and (ii) the product of 90% multiplied by the Net Orderly Liquidation Value

(expressed as a percentage) identified in the most recent inventory appraisal ordered by the Administrative Agent multiplied by the Eligible Inventory of the Loan Parties (other than Holdings), valued at the lower of cost or market value, determined on a first-in-first-out basis, minus (c) Reserves. The Borrowing Base at any time shall be determined by reference to the most recent Borrowing Base Certificate delivered to the Administrative Agent pursuant to Section 5.01(g) (or, prior to the delivery of the initial Borrowing Base Certificate pursuant to Section 5.01(g), the Borrowing Base Certificate delivered pursuant to Section 4.01(g)), as adjusted to give effect to Reserves determined in the Permitted Discretion of the Administrative Agent following such delivery.

Notwithstanding the foregoing, no assets acquired by the Loan Parties pursuant to any Permitted Acquisition shall be included in the calculation of the Borrowing Base until such time as a Field Exam (and, if required by the Administrative Agent, an Inventory appraisal) shall have been completed with respect to such assets, in each case, to the reasonable satisfaction of the Administrative Agent, including the establishment of Reserves required in the Administrative Agent's Permitted Discretion; provided that, Eligible Accounts and Eligible Inventory acquired pursuant to any Permitted Acquisition but for which no Inventory appraisal or no Field Exam has been completed may be included in the Borrowing Base, so long as (i) the aggregate amount of such acquired assets included in the Borrowing Base shall not at any time exceed 10% of the Borrowing Base (calculated without the inclusion of such acquired assets). For purposes of clarity, any such Eligible Accounts and Eligible Inventory included in the Borrowing Base pursuant to the proviso of the immediately preceding sentence shall be subject to all future appraisals and Field Exams conducted pursuant to Section 5.06 or Section 5.12, as applicable, after the acquisition thereof.

"Borrowing Base Certificate" means a certificate, signed and certified as accurate and complete by a Financial Officer of the Borrower Representative, in substantially the form of Exhibit H or another form which is acceptable to the Administrative Agent in its sole discretion.

"Borrowing Request" means a request by the Borrower Representative for a Revolving Borrowing in accordance with Section 2.03.

"Business Day" means any day ~~this~~that is not a Saturday, Sunday or other day on which commercial banks in New York City or Chicago are authorized or required by law to remain closed.

"Capital Expenditures" means, without duplication, any expenditure or commitment to expend money for any purchase or other acquisition of any asset which would be classified as a fixed or capital asset on a consolidated balance sheet of Holdings and its Subsidiaries prepared in accordance with GAAP.

"Capital Lease Obligations" of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, in each case, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

"Cash Dominion Period" has the meaning assigned to such term in the Security Agreement.

"Change in Control" means ~~(a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the SEC thereunder as in effect on the Effective Date) other than (i) Christopher Pappas, John Pappas, Dean Facatselis or Kay Facatselis (collectively, the "Permitted Holders"), (ii) the officers, directors or management of Holdings as of the Effective Date or (iii) any corporation, limited liability company or partnership owned and controlled directly or indirectly by any Person or Persons described in clauses (i) and (ii), of Equity Interests representing more than 50% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of Holdings or an event or series of events by which (a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act, but excluding any employee benefit plan of such person or its Subsidiaries and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) other than one or more of the Permitted Holders becomes the "beneficial owner" (as defined in Rules 13d-3 and~~

13d-5 under the Exchange Act, except that a person or group shall be deemed to have "beneficial ownership" of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an "option right"), directly or indirectly, of more than 50.0% of the Equity Interests of Holdings entitled to vote for members of the board of directors or equivalent governing body of Holdings on a fully-diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right) or (b) Holdings shall cease to own and control all of the outstanding Equity Interests of any of the Borrowers on a fully diluted basis.

“Change in Law” means the occurrence, after the Effective Date (or with respect to any Lender, if later, the date on which such Lender becomes a Lender), of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority, or (c) the making or issuance of any request, rules, guideline, requirement or directive (whether or not having the force of law) by any Governmental Authority; provided however, that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements and directives thereunder, issued in connection therewith or in implementation thereof, and (ii) all requests, rules, guidelines, requirements and directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law” regardless of the date enacted, adopted, issued or implemented.

“Charges” has the meaning assigned to such term in Section 9.17.

“Class” when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans, Swingline Loans, Protective Advances or Overadvances.

“Code” means the Internal Revenue Code of 1986, as amended.

“Co-Syndication Agent” means each of JPMCB and Bank of America, N.A. in its capacity as co-syndication agent for the credit facility evidenced by this Agreement.

“Collateral” means any and all property owned by a Person that is covered by or purported to be covered by the Collateral Documents and any and all other property of any Loan Party, now existing or hereafter acquired, that may at any time be or become subject to a Lien in favor of the Administrative Agent, on behalf of itself and the Lenders and other Secured Parties, to secure the Secured Obligations; provided that “Collateral” shall not include any Excluded Assets or, for the avoidance of doubt, any of the Equity Interests in, or property or assets of, the Excluded Subsidiary.

“Collateral Access Agreement” has the meaning assigned to such term in the Security Agreement.

“Collateral Documents” means, collectively, the Security Agreement, any short form intellectual property security agreement and all other agreements, instruments and documents executed in connection with this Agreement that are intended to create, perfect or evidence Liens to secure the Secured Obligations.

“Collection Account” has the meaning assigned to such term in the Security Agreement.

“Commercial LC Exposure” means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding commercial Letters of Credit plus (b) the aggregate amount of all LC Disbursements relating to commercial Letters of Credit that have not yet been reimbursed by or on behalf of the Borrowers. The Commercial LC Exposure of any Lender at any time shall be its Applicable Percentage of the aggregate Commercial LC Exposure at such time.

“Commitment” means, with respect to each Lender, the commitment, if any, of such Lender to make Revolving Loans and to acquire participations in Letters of Credit, Overadvances, Protective

Advances and Swingline Loans hereunder, expressed as an amount representing the maximum aggregate permitted amount of such Lender's Revolving Exposure hereunder, as such commitment may be reduced or increased from time to time pursuant to (a) Section 2.09 and (b) assignments by or to such Lender pursuant to Section 9.04. The initial amount of each Lender's Commitment is set forth on the Commitment Schedule, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Commitment, as applicable.

"Commitment Schedule" means the Schedule attached hereto identified as such.

"Commodity Exchange Act" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"Communications" has the meaning assigned to such term in Section 9.01(d).

"Compliance Certificate" means a certificate of a Financial Officer of Holdings in substantially the form of Exhibit E or such other form which is approved by the Administrative Agent from time to time in its reasonable discretion.

"Conforming Changes" means, with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Base Rate," the definition of "Business Day," the definition of "Interest Period," the definition of "U.S. Government Securities Business Day," the timing and frequency of determining rates and making payments of interest, the timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent (in consultation with the Borrower Representative) decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Administrative Agent (in consultation with the Borrower Representative) decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

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

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Convertible Springing Date" means March 24, 2024; provided that, if the "Term Loan Obligations Payment Date" (as defined in the Intercreditor Agreement) has occurred or the earliest "Maturity Date" under (and as defined in) the Term Loan Agreement (or words of similar import reflecting a maturity date under any amendment, restatement or replacement of the Term Loan Agreement) cannot occur prior to December 1, 2024, then "Convertible Springing Date" shall be deemed to be September 1, 2024.

"Covered Entity" means any of the following:

- (a) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (b) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or



(c) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Covered Party” has the meaning set forth in Section 9.22.

“Credit Party” means the Administrative Agent, the Issuing Bank, the Swingline Lender or any other Lender.

“CW LV Real Estate” means CW LV Real Estate LLC, a Delaware limited liability company.

“CW Parent” has the meaning ascribed to it in the preamble.

“Daily Simple SOFR” means, for any day (a “SOFR Rate Day”), a rate per annum equal to SOFR for the day (such day “SOFR Determination Date”) that is five U.S. Government Securities Business Days prior to (i) if such SOFR Rate Day is a U.S. Government Securities Business Day, such SOFR Rate Day or (ii) if such SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such SOFR Rate Day, in each case, as such SOFR is published by the Term SOFR Administrator on the Term SOFR Administrator’s website.

“Dairyland” has the meaning ascribed to it in the preamble.

“Dairyland HP” means Dairyland HP LLC, a Delaware limited liability company.

“Dairyland HP Facility” means the premises at 200-240 Food Center Drive, Bronx, New York.

[“Dairyland HP Indebtedness” means the Indebtedness \(including, without limitation, loans and Guarantees\) incurred under the New Markets Tax Credit Financing.](#)

“Deemed Dividend Issue” means, with respect to any Foreign Subsidiary, such Foreign Subsidiary’s accumulated and undistributed earnings and profits being deemed to be repatriated to Holdings or the applicable parent Domestic Subsidiary under Section 956 of the Code and the effect of such repatriation causing materially adverse tax consequences to Holdings or such parent Domestic Subsidiary, in each case as determined by the Borrower Representative in its commercially reasonable judgment acting in good faith and in consultation with its legal and tax advisors.

“Default” means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“Defaulting Lender” means any Lender that (a) has failed, within two (2) Business Days of the date required to be funded or paid, to (i) fund any portion of its Loans, (ii) fund any portion of its participations in Letters of Credit or Swingline Loans or (iii) pay over to any Credit Party any other amount required to be paid by it hereunder, unless, in the case of clause (i) above, such Lender notifies the Administrative Agent in writing that such failure is the result of such Lender’s good faith determination that a condition precedent to funding (specifically identified and including the particular Default, if any) has not been satisfied; (b) has notified any Borrower or any Credit Party in writing, or has made a public statement, to the effect that it does not intend or expect to comply with any of its funding obligations under this Agreement (unless such writing or public statement indicates that such position is based on such Lender’s good faith determination that a condition precedent to funding a Loan under this Agreement (specifically identified and including the particular Default, if any) cannot be satisfied) or generally under other agreements in which it commits to extend credit; (c) has failed, within three (3) Business Days after request by a Credit Party, acting in good faith, to provide a certification in writing from an authorized officer of such Lender that it will comply with its obligations to fund prospective Loans and participations in then outstanding Letters of Credit and Swingline Loans under this Agreement; provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon such

Credit Party's receipt of such certification in form and substance satisfactory to it and the Administrative Agent, or (d) has become the subject of a (i) Bankruptcy Event or (ii) Bail-In Action.

"Designated Non-Cash Consideration" means the fair market value of non-cash consideration received by the Borrowers or one of their Restricted Subsidiaries in connection with a disposition that is so designated as Designated Non-Cash Consideration pursuant to a certificate of an Authorized Officer, setting forth the basis of such valuation, less the amount of cash or cash equivalents received in connection with a subsequent payment, redemption, retirement, sale or other disposition of such Designated Non-Cash Consideration. A particular item of Designated Non-Cash Consideration will no longer be considered to be outstanding when and to the extent it has been paid, redeemed or otherwise retired or sold or otherwise disposed of in compliance with Section 6.05.

"Dilution Percent" means the percent, determined as of the most recently received Field Exams, equal to (a) bad debt write-downs or write-offs, discounts, returns, promotions, credits, credit memos and other dilutive items with respect to Accounts, divided by (b) gross sales.

"Dilution Reserve" means, at any date of determination, (a) the percentage amount by which the Dilution Percent exceeds zero percent (0%) times (b) the amount of Eligible Accounts of the Loan Parties.

"Dollars" or "\$" refers to lawful money of the United States of America.

"Domestic Subsidiary" means a Subsidiary organized under the laws of a jurisdiction located in the United States of America.

"EBITDA" means, for any period, Net Income for such period *plus* (a) without duplication and to the extent deducted in determining Net Income for such period, the sum of (i) Interest Expense for such period, (ii) income tax expense for such period net of tax refunds, (iii) all amounts attributable to depreciation and amortization expense for such period, (iv) any extraordinary non-cash charges for such period, (v) any other non-cash charges for such period (but excluding any non-cash charge in respect of an item that was included in Net Income in a prior period and any non-cash charge that relates to the write-down or write-off of inventory or accounts receivable), (vi) non-recurring fees, cash charges and other cash expenses made or incurred in connection with a completed Permitted Acquisition, (vii) non-recurring cash charges related to workers' compensation claims, (viii) non-recurring fees, cash charges and other cash expenses, in an aggregate amount not to exceed \$10,000,000 for any period of four (4) consecutive Fiscal Quarters and (ix) expected cost savings, operating improvements, expense reductions, ~~other operating improvements and expense reductions~~ and product margin synergies and product cost and other synergies ("Expected Cost Savings") projected by the Borrower Representative in good faith to be realized as a result of any asset sale, merger or other business combination, acquisition, investment, disposition or divestiture, operating improvement and expense reductions, restructurings, cost saving initiatives, any similar initiative and/or specified transaction taken or to be taken by Holdings or any of its Restricted Subsidiaries, net of the amount of actual benefits realized during such period from such actions ~~(any such action, a "Cost Saving Initiative"); provided that (A) a duly completed certificate signed by a Financial Officer of the Borrower Representative shall be delivered to the Administrative Agent certifying that such Expected Cost Savings are reasonably expected identifiable and factually supportable in the good faith judgment of the Borrower Representative, together with reasonably detailed evidence in support thereof, (B) such Expected Cost Savings and~~ are reasonably anticipated to be realized within ~~twelve~~eighteen (~~12~~18) months after the ~~related Cost Saving Initiative, (C) no change, acquisition, disposition or other transaction that is expected to result in such~~ Expected Cost Savings ~~shall be added to the extent duplicative of any expenses or charges otherwise added to EBITDA, whether through a pro forma adjustment or otherwise for the applicable period, and (D); provided, further, that~~ the aggregate amount that can be added back in reliance on this clause (ix), shall not exceed ~~+0~~+20% of EBITDA in any period (calculated before giving effect to any such add-backs and adjustments and which ~~+0~~+20% cap shall not apply to amounts added back in reliance on any other clause in this definition of "EBITDA"), minus (b) without duplication and to the extent included in Net Income, any extraordinary gains and any non-cash items of income for such period, all calculated for Holdings and its Restricted Subsidiaries on a consolidated basis in accordance with GAAP.

“ECP” means an “eligible contract participant” as defined in Section 1(a)(18) of the Commodity Exchange Act or any regulations promulgated thereunder and the applicable rules issued by the Commodity Futures Trading Commission and/or the SEC.

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in ~~clauses~~clause (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegatee) having responsibility for the resolution of any EEA Financial Institution.

“Effective Date” means the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 9.02).

“Electronic Signature” means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record.

“Electronic System” means any electronic system, including e-mail, e-fax, web portal access for any Borrower, Intralinks<sup>®</sup>, ClearPar<sup>®</sup>, Debt Domain, Syndtrak and any other Internet or extranet-based site, whether such electronic system is owned, operated or hosted by the Administrative Agent and the Issuing Bank and any of its respective Related Parties or any other Person, providing for access to data protected by passcodes or other security system.

“Eligible Accounts” means, at any time, the Accounts of any Loan Party which in accordance with the terms hereof are not excluded as ineligible by virtue of one or more of the criteria set forth below. Eligible Accounts shall not include any Account of a Loan Party:

- (e) which is not subject to a first priority perfected security interest in favor of the Administrative Agent;
- (f) which is subject to any Lien other than (i) a Lien in favor of the Administrative Agent, (ii) a Permitted Encumbrance which does not have priority over the Lien in favor of the Administrative Agent or (iii) a Lien permitted under Section 6.02(a)(ii);
- (g) (i) which is unpaid more than ninety (90) days after the date of the original invoice therefor or more than sixty (60) days after the original due date therefor (“Overage”) (when calculating the amount under this clause (i), for the same Account Debtor, the Administrative Agent shall include the net amount of such Overage and add back any credits, but only to the extent that such credits do not exceed the total gross receivables from such Account Debtor), or (ii) which has been written off the books of such Loan Party or otherwise designated as uncollectible;
- (h) which is owing by an Account Debtor for which more than 50% of the Accounts owing from such Account Debtor and its Affiliates are ineligible hereunder;
- (i) which is owing by an Account Debtor to the extent the aggregate amount of Accounts owing from such Account Debtor and its Affiliates to all Loan Parties exceeds 20% of the aggregate amount of Eligible Accounts of all Loan Parties, but only to the extent of such excess;

(j) with respect to which any covenant, representation or warranty contained in any Loan Document with respect to such Account has been breached or is not true in any material respect (or, with respect to any covenant, representation or warranty which is subject to any materiality qualifier, has been breached or is not true in any respect);

(k) which (i) does not arise from the sale of goods or performance of services in the ordinary course of business, (ii) is not evidenced by an invoice or other documentation reasonably satisfactory to the Administrative Agent which has been sent to the Account Debtor, (iii) represents a progress billing, (iv) is contingent upon such Loan Party's completion of any further performance, (v) represents a sale on a bill-and-hold, guaranteed sale, sale-and-return, sale on approval, consignment, or any other repurchase or return basis or (vi) relates to payments of interest;

(l) for which the goods giving rise to such Account have not been shipped to the Account Debtor or for which the services giving rise to such Account have not been performed by such Loan Party or if such Account was invoiced more than once;

(m) with respect to which any check or other instrument of payment has been returned uncollected for any reason;

(n) which is owed by an Account Debtor which has (i) applied for, suffered, or consented to the appointment of any receiver, custodian, trustee, or liquidator of its assets, (ii) had possession of all or a material part of its property taken by any receiver, custodian, trustee or liquidator, (iii) filed, or had filed against it, any request or petition for liquidation, reorganization, arrangement, adjustment of debts, adjudication as bankrupt, winding-up, or voluntary or involuntary case under any state or federal bankruptcy laws (other than post-petition accounts payable of an Account Debtor that is a debtor-in-possession under the Bankruptcy Code and reasonably acceptable to the Administrative Agent), (iv) admitted in writing its inability, or is generally unable to, pay its debts as they become due, (v) become insolvent, or (vi) ceased operation of its business;

(o) which, to the actual knowledge of such Loan Party, is owed by any Account Debtor which has sold all or substantially all of its assets;

(p) which is owed by an Account Debtor which (i) does not maintain its chief executive office in the U.S. (including any territory thereof) or Canada or (ii) is not organized under applicable law of the U.S., any state of the U.S., or the District of Columbia, Canada, or any province of Canada unless, in any such case, such Account is backed by a letter of credit reasonably acceptable to the Administrative Agent and such letter of credit is subject to a first priority perfected Lien in favor of the Administrative Agent;

(q) which is owed in any currency other than U.S. dollars or Canadian dollars;

(r) which is owed by (i) any Governmental Authority of any country other than the U.S. unless such Account is backed by a Letter of Credit reasonably acceptable to the Administrative Agent which is in the possession of, and is directly drawable by, the Administrative Agent, or (ii) any Governmental Authority of the U.S., or any department, agency, public corporation, or instrumentality thereof, unless the Federal Assignment of Claims Act of 1940, as amended (31 U.S.C. § 3727 et seq. and 41 U.S.C. § 15 et seq.), and any other steps necessary to perfect the Lien of the Administrative Agent in such Account have been complied with to the Administrative Agent's satisfaction in its Permitted Discretion;

(s) which is owed by any Affiliate of any Loan Party, any Permitted Holder, or any employee, officer, director, agent or stockholder (other than a stockholder of Holdings) of any Loan Party or any of its Affiliates;

(t) which is owed by an Account Debtor or any Affiliate of such Account Debtor to which any Loan Party is indebted, but only to the extent of such indebtedness, or is subject to any

security, deposit, progress payment, retainage or other similar advance made by or for the benefit of an Account Debtor, in each case to the extent thereof;

(u) which is subject to any counterclaim, deduction, defense, setoff or dispute, but only to the extent of any such counterclaim, deduction, defense, setoff or dispute;

(v) which is evidenced by any promissory note, chattel paper or instrument;

(w) which is owed by an Account Debtor (i) located in any jurisdiction which requires filing of a "Notice of Business Activities Report" or other similar report in order to permit such Loan Party to seek judicial enforcement in such jurisdiction of payment of such Account, unless such Loan Party has filed such report or qualified to do business in such jurisdiction or (ii) which is a Sanctioned Person;

(x) (i) with respect to which such Loan Party has made any agreement with the Account Debtor for any reduction thereof (other than discounts and adjustments given in the ordinary course of business), but only to the extent of any such reduction or (ii) which was partially paid and such Loan Party created a new receivable for the unpaid portion of such Account;

(y) which does not comply in all material respects with the requirements of all applicable laws and regulations, whether Federal, state or local;

(z) which is for goods that have been sold under a purchase order or pursuant to the terms of a contract or other agreement or understanding (written or oral) that indicates or purports that any Person other than such Loan Party has or has had an ownership interest in such goods, or which indicates any party other than such Loan Party as payee or remittance party; or

(aa) which was created on cash on delivery terms.

In determining the amount of an Eligible Account of a Loan Party, the face amount of an Account may, in the Administrative Agent's Permitted Discretion, be reduced by, without duplication, to the extent not reflected in such face amount, (i) the amount of all accrued and actual discounts, claims, credits or credits pending, promotional program allowances, price adjustments, finance charges or other allowances (including any amount that such Borrower may be obligated to rebate to an Account Debtor pursuant to the terms of any agreement or understanding (written or oral)) and (ii) the aggregate amount of all cash received in respect of such Account but not yet applied by such Loan Party to reduce the amount of such Account.

"Eligible Inventory" means, at any time, the Inventory of any Loan Party which in accordance with the terms hereof is not excluded as ineligible by virtue of one or more of the criteria set forth below. Eligible Inventory of a Loan Party shall not include any Inventory:

(d) which is not subject to a first priority perfected Lien in favor of the Administrative Agent;

(e) which is subject to any Lien other than (i) a Lien in favor of the Administrative Agent, (ii) a Permitted Encumbrance which does not have priority over the Lien in favor of the Administrative Agent or (iii) a Lien permitted under Section 6.02(a)(ii);

(f) which is in the Administrative Agent's Permitted Discretion, slow moving, obsolete, unmerchantable, defective, used or unfit for sale;

(g) with respect to which any covenant, representation or warranty contained in any Loan Document with respect to such Inventory has been breached or is not true in any material respect (or, with respect to any covenant, representation or warranty which is subject to any materiality qualifier, has been breached or is not true in any respect) and which is not in material

compliance with all standards imposed by any Governmental Authority having regulatory authority over such Inventory, its use or sale;

(h) in which any Person other than such Loan Party shall (i) have any direct or indirect ownership, interest or title or (ii) be indicated on any purchase order or invoice with respect to such Inventory as having or purporting to have an interest therein;

(i) which is not finished goods or which constitutes work-in-process, raw materials, spare or replacement parts, subassemblies, packaging and shipping material, manufacturing supplies, samples, prototypes, displays or display items, bill-and-hold or ship-in-place goods, goods that are returned or marked for return, repossessed goods, defective or damaged goods, goods held on consignment, or goods which are not of a type held for sale in the ordinary course of business;

(j) which is not located in the U.S.;

(k) which is located in any location leased by such Loan Party unless (i) the aggregate value of Inventory of the Loan Parties at such location exceeds \$100,000 and (ii) (x) the lessor has delivered to the Administrative Agent a Collateral Access Agreement or (y) a Reserve for rent, charges and other amounts due or to become due with respect to such facility has been established by the Administrative Agent in its Permitted Discretion;

(l) which is located in any third party warehouse or is in the possession of a bailee (other than a third party processor) and is not evidenced by a Document, unless (i) the aggregate value of Inventory of the Loan Parties at such third party warehouse or in the possession of such bailee, as applicable, exceeds \$100,000 and (ii) (x) such warehouseman or bailee has delivered to the Administrative Agent a Collateral Access Agreement and such other documentation as the Administrative Agent may require or (y) an appropriate Reserve has been established by the Administrative Agent in its Permitted Discretion;

(m) which is being processed offsite at a third party location or outside processor, or is in-transit to or from such third party location or outside processor;

(n) which is a discontinued product or component thereof, unless such discontinuance does not adversely impact the saleability of the remaining Inventory;

(o) which is the subject of a consignment by such Loan Party as consignor;

(p) which is a liquid dairy product, eggs or produce;

(q) which contains or bears any intellectual property rights licensed to such Loan Party by any Person other than a Loan Party unless the Administrative Agent is reasonably satisfied that it may sell or otherwise dispose of such Inventory without (i) infringing the rights of such licensor, (ii) violating any contract with such licensor, or (iii) incurring any liability with respect to payment of royalties other than royalties incurred pursuant to sale of such Inventory under the current licensing agreement relating thereto;

(r) which is not reflected in a current perpetual inventory report of such Loan Party;

(s) for which reclamation rights have been asserted by the seller; or

(t) which has been acquired from a Sanctioned Person.

“Environmental Laws” means all laws (including, without limitation, common law), rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to the

environment, preservation or reclamation of natural resources, the management, release or threatened release of any Hazardous Material or to public or worker health and safety matters.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of Holdings or any Subsidiary directly or indirectly resulting from or based upon (a) any violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) any exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Equity Interests” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest. Notwithstanding the foregoing, neither Permitted Convertible Notes nor Permitted Call Spread Swap Agreements shall constitute Equity Interests.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with a Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“ERISA Event” means (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the failure to satisfy the “minimum funding standard” (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by any Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by any Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by any Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal of any Borrower or any of its ERISA Affiliates from any Plan or Multiemployer Plan; or (g) the receipt by any Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from any Borrower or any ERISA Affiliate of any notice, concerning the imposition upon any Borrower or any of its ERISA Affiliates of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

“EventEvents of Default” has the meaning assigned to such term in Article VII.

“Exchange Act” means the Securities Exchange Act of 1934.

“Excluded Assets” means (a) (i) any lease, license, contract, document, instrument or agreement to which any Loan Party is a party or (ii) property subject to a purchase money security interest, Capital Lease Obligation or similar arrangements permitted under this Agreement or the other Loan Documents, in the case of each of clauses (i) and (ii), to the extent that the creation of a Lien on such assets would, under the express terms thereof, violate or invalidate the terms of, or constitute a default under, such lease, license, contract, document, instrument, agreement, purchase money security interest, Capital Lease Obligation or similar arrangement or create a right of termination in favor of any other party thereto (other than a Loan Party) (other than to the extent (i) that any such term has been waived or (ii) any such term would be rendered ineffective pursuant to Sections 9-406, 9-408, 9-409 or other applicable provisions of

the UCC of any relevant jurisdiction or any other applicable law (including bankruptcy laws) or principles of equity); provided that, immediately upon the ineffectiveness, lapse or termination of any such express term, such assets shall automatically cease to constitute “Excluded Assets”, (b) any Trademark (as defined in the Security Agreement) application filed on an intent to use basis until such time as a statement of use has been filed and accepted by the U.S. Patent and Trademark Office, (c) any Equity Interests in any Subsidiary that is not a Pledge Subsidiary, (d) (i) any Equity Interests in any Affected Foreign Subsidiary or FSHCO representing more than 65% of the total voting Equity Interests in such Affected Foreign Subsidiary or FSHCO, (ii) Equity Interests which constitute margin stock (within the meaning of Regulation U of the ~~Federal Reserve~~ Board) and (iii) Equity Interests in any Person other than wholly-owned Subsidiaries, (e) any fee-owned real property and all leasehold interests in real property, (f) any leasehold interest of Dairyland HP in the Dairyland HP Facility, (g) Fixtures (as defined in the Security Agreement) located at the Dairyland HP Facility, (h) rights and obligations in connection with the Master Operating Sublease, dated as of April 26, 2012, between Dairyland and Dairyland HP, relating to the Dairyland HP Facility, as the same may be amended from time to time, (i) any property of the Excluded Subsidiary and (j) motor vehicles, rolling stock or other assets subject to certificates of title (unless otherwise capable of perfection by filing of UCC financing statements); provided that, (x) “Excluded Assets” shall not include any proceeds, products, substitutions or replacements of Excluded Assets (unless such proceeds, products, substitutions or replacements would otherwise constitute Excluded Assets) and (y) other than with respect to assets described in the foregoing clause (f), the foregoing exclusions shall not apply to any asset or property of Holdings and its Subsidiaries on which a Lien has been granted in favor of the Term Loan Agent to secure the Term Loan Obligations. The Loan Parties shall use commercially reasonable efforts to obtain a Collateral Access Agreement from the lessor of each leased property, mortgagee of owned property or bailee or consignee with respect to any warehouse, processor or converter facility or other location where Collateral is stored or located, but the failure to obtain any such Collateral Access Agreement shall not constitute a Default.

“Excluded Subsidiary Subsidiaries” means ~~any~~(a) Insurance Subsidiaries (including any trust established by any such Insurance Subsidiary as grantor pursuant to applicable insurance regulations); ~~(b) any Subsidiary that is not wholly owned, directly or indirectly, by any of the Loan Parties, (c) any Immaterial Subsidiary, (d) any Subsidiary that is prohibited by applicable Requirement of Law or contractual obligations existing on the Fourth Amendment Effective Date (or, in the case of any newly acquired Subsidiary, in existence at the time of acquisition but not entered into in contemplation thereof) from Guaranteeing the Obligations or if Guaranteeing the Obligations would require governmental (including regulatory) or third party consent, unless such consent has been obtained (it being agreed that there shall be no obligation on any Borrower or any Restricted Subsidiary to obtain any such consent), (e) any other Subsidiary with respect to which (x) Guaranteeing the Obligations would result in any material adverse Tax consequences (as reasonably determined by the Borrower Representative) or (y) the cost of providing a Guarantee of the Obligations shall be excessive in view of the practical benefits to be obtained by the Lenders therefrom (as reasonably determined by the Borrower Representative and the Administrative Agent), (f) any Foreign Subsidiary of any Borrower, (g) any Unrestricted Subsidiary, (h) any special purpose securitization vehicle (or similar entity) or non-profit Subsidiary, and (i) any FSHCO.~~

“Excluded Swap Obligation” means, with respect to any Loan Party, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Loan Party of, or the grant by such Loan Party of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Loan Party’s failure for any reason to constitute an ECP at the time the Guarantee of such Loan Party or the grant of such security interest becomes or would become effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient: (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed by the United States of America or as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the



jurisdiction ~~imposing such Tax~~ (or any political subdivision thereof) imposing such Tax or (ii) that are Other Connection Taxes; (b) in the case of a Lender, U.S. Federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan, Letter of Credit or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan, Letter of Credit or Commitment (other than pursuant to an assignment request by the Borrowers under Section 2.19(b)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.17, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender acquired the applicable interest in a Loan, Letter of Credit or Commitment or to such Lender immediately before it changed its lending office; (c) Taxes attributable to such Recipient's failure to comply with Section 2.17(f); and (d) any U.S. Federal withholding Taxes imposed under FATCA.

"Existing Credit Agreement" means the Credit Agreement, dated as of June 22, 2016, by and among the Borrowers, the other loan parties party thereto, the lenders party thereto, and JPMCB, as administrative agent.

"Existing Letters of Credit" has the meaning assigned to such term in Section 2.06(a).

"Expected Cost Savings" has the meaning specified in the "EBITDA" definition.

"Farm Products" means farm products of every kind and nature, including crops and products of crops, wherever located, including (a) "farm products" (as such term is defined in any Farm Products Law and/or the UCC in any jurisdiction) and (b) "perishable agricultural commodities" (as such term is defined in any Farm Products Law).

"Farm Products Law" means (a) the Food Security Act, (b) PACA, (c) the PSA, (d) PFPFA, (e) Article 20 of the Agriculture and Markets Law of the State of New York or (f) any other federal, state, or local laws from time to time in effect that are applicable to the Loan Parties' business and which regulate any matters pertaining to Farm Products, in each case, as the same now exists or may hereafter from time to time be amended, modified, recodified, or supplemented, together with all rules and regulations thereunder.

"Farm Products Notice" has the meaning ascribed to such term in Section 3.20.

"Farm Products Seller" means, individually and collectively, sellers, producers or suppliers of any Farm Products.

"FATCA" means (a) Sections 1471 through 1474 of the Code, as of the Effective Date (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), (b) any current or future regulations or official interpretations thereof and any agreement entered into pursuant to Section 1471(b)(1) of the Code, and (c) any intergovernmental agreement between the U.S. and a non-U.S. jurisdiction which facilitates the implementation of any law or regulation referred to in clause (a) above and any fiscal or regulatory legislation, rules or official administrative practices adopted pursuant to any such intergovernmental agreement.

"FCCR Test Period" means any period (a) commencing on the last day of the most recent period of four (4) consecutive Fiscal Quarters then ended for which financial statements have been delivered pursuant to Section 5.01(a) or (b) (or, if prior to the date of the delivery of the first financial statements to be delivered pursuant to Section 5.01(a) or (b), the most recent financial statements referred to in Section 3.04(a)) on or prior to the date on which Availability is less than the greater of (A) 10% of the Line Cap and (B) \$14,000,000 at any time and (b) ending on the day after Availability has exceeded the greater of (A) 10% of the Line Cap and (B) \$14,000,000 for thirty (30) consecutive days.

"FDA" means the United States Food and Drug Administration, or any successor Governmental Authority.

"FDC Act" means the United States Food, Drug, and Cosmetic Act (21 U.S.C. 201 *et seq.*) as amended to date together with any rules or regulations promulgated thereunder.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to BMO on such day on such transactions as determined by the Administrative Agent. For the avoidance of doubt, if the Federal Funds Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Field Exam” means any visit and inspection of the properties, assets and records of any Loan Party during normal business hours and during the term of this Agreement, which shall include access to such properties, assets and records sufficient to permit the Administrative Agent or its representatives to examine, audit and make extracts from any Loan Party’s books and records, make examinations and audits of any Loan Party’s other financial matters and Collateral as Administrative Agent deems appropriate in its Permitted Discretion, and discussions with its officers, employees, agents, advisors and independent accountants regarding such Loan Party’s business, financial condition, assets, prospects and results of operations.

“Financial Officer” means, with respect to any Person(s), the chief financial officer, principal accounting officer, treasurer or controller of such Person(s).

“Financials” means the annual, quarterly or monthly financial statements, and accompanying certificates and other documents, of Holdings and its Subsidiaries required to be delivered pursuant to Section 5.01(a), 5.01(b) or 5.01(c).

“First Lien Leverage Ratio” means, on any date, the ratio of (a) Total Net Indebtedness that is secured by a Lien on any assets of the Restricted Group on a *pari passu* basis with the Obligations on such date to (b) EBITDA for the most recent Test Period.

“First Tier Foreign Subsidiary” means each Foreign Subsidiary with respect to which any one or more of the Loan Parties directly owns or Controls more than 50% of such Foreign Subsidiary’s issued and outstanding Equity Interests.

“Fiscal Month” means any fiscal month in a Fiscal Year.

“Fiscal Quarter” means each of four consecutive three-Fiscal Month periods in each Fiscal Year.

“Fiscal Year” means the 52- or 53-week period ending in the month of December that Holdings uses for accounting and financial reporting purposes, which period does not necessarily conform to the calendar year. All references in the Loan Documents to the Fiscal Year shall be deemed to refer to the year end that Holdings actually uses for financial reporting purposes.

“Fixed Amounts” has the meaning assigned to such term in Section 1.05(d).

“Fixed Charge Coverage Ratio” means, for any period, the ratio of (a) EBITDA minus Unfinanced Capital Expenditures to (b) Fixed Charges, all calculated for Holdings and its Subsidiaries on a consolidated basis in accordance with GAAP.

“Fixed Charges” means, for any period, without duplication, cash Interest Expense, plus scheduled principal payments on Indebtedness actually made, plus expense for taxes paid in cash, plus Restricted Payments paid in cash, plus Capital Lease Obligation payments, plus cash payments (excluding cash payments financed solely with the proceeds of issuances of ~~equity~~ Equity Interests by Holdings) made in connection with any earn-out obligation relating to any acquisition, divestiture, merger or similar transaction that are not accounted for or reflected in the consolidated statements of operations of Holdings and its Restricted Subsidiaries provided pursuant to Section 5.01(a), 5.01(b) or 5.01(c) hereof, all calculated for Holdings and its Restricted Subsidiaries on a consolidated basis in accordance with GAAP.

“Flood Laws” has the meaning assigned to such term in Section 8.10.

“Floor” means the rate per annum of interest equal to 0.00%.

~~“Foreign Lender” means a Lender that is not a U.S. Person.~~

“Food Security Act” means the Food Security Act of 1985, as the same now exists or may from time to time hereafter be amended, restated, modified, recodified or supplemented, together with all rules, regulations and interpretations thereunder or related thereto.

~~“Foreign Lender” means a Lender that is not a U.S. Person.~~

“Foreign Subsidiary” means any Subsidiary which is not a Domestic Subsidiary.

~~“Fourth Amendment” means that certain Fourth Amendment to Credit Agreement, dated as of August 25, 2022, by and among the Borrowers, Holdings, the other Loan Parties party thereto, the Lenders party thereto, the Issuing Banks party thereto and the Administrative Agent.~~

~~“Fourth Amendment Effective Date” has the meaning assigned to such term in the Fourth Amendment.~~

~~“FSHCO” means any Subsidiary that owns no material assets other than the Equity Interests of one or more “controlled foreign corporations” as defined in Section 957 of the Code.~~  
Affected Foreign Subsidiaries.

“Funding Account” has the meaning assigned to such term in Section 4.01(f).

“GAAP” means generally accepted accounting principles in the United States of America.

“Governmental Authority” means the government of the United States of America, any other nation or, in each case, any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, including any central bank, stock exchange, regulatory body, arbitrator, public sector entity, supra-national entity (including the European Union and the European Central Bank) and any self-regulatory organization (including the National Association of Insurance Commissioners).

“Governmental Permits” means all authorizations, approvals, licenses, registrations, certificates or exemptions issued by any Governmental Authority to Borrowers that are required or necessary for the development, manufacture, distribution, marketing, storage, transportation, use, or sale of the Loan Parties’ products.

“Guarantee” of or “Guaranteeing” by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

“Guaranteed Obligations” has the meaning assigned to such term in Section 10.01.

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

“Holdings” means The Chefs’ Warehouse, Inc., a Delaware corporation.

“Immaterial Subsidiary” means any Restricted Subsidiary that does not, as of the last day of the most recent Test Period, have assets with a fair market value in excess of 5.0% of the consolidated total assets of the Restricted Group as of such date and revenues in excess of 5.0% of the consolidated revenues of the Restricted Group for such Test Period; provided that the aggregate amount of assets and revenues of Restricted Subsidiaries constituting Immaterial Subsidiaries shall not at any time exceed 7.5% of the consolidated total assets or consolidated revenues of the Restricted Group.

“Incurrence-Based Amounts” has the meaning assigned to such term in Section 1.05(d).

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (g) all Guarantees by such Person of Indebtedness of others, (h) all Capital Lease Obligations of such Person, (i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, (j) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances, (k) all obligations of such Person under any liquidated earn-out and (l) any other Off-Balance Sheet Liability of such Person. The Indebtedness of any Person shall include the Indebtedness of any other Person (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor; provided that Indebtedness shall not include earn out obligations relating to Permitted Acquisitions to the extent the conditions for payment thereof (other than the occurrence of a date certain) have not yet been satisfied. Notwithstanding the foregoing and for avoidance of doubt, obligations arising under any Permitted Call Spread Swap Agreement shall not be considered Indebtedness.

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

“Indemnitee” has the meaning assigned to such term in Section 9.03(b).

“Ineligible Institution” has the meaning assigned to such term in Section 9.04(b).

“Information” has the meaning assigned to such term in Section 9.12.

“Insurance Subsidiary” has the meaning assigned to such term in Section 6.04(r).

“Intercreditor Agreement” means the Intercreditor Agreement, dated as of June 22, 2016, by and among BMO, as ABL Representative (after giving effect to the joinder to the Intercreditor Agreement referred to in Section 4.01(n)), the Term Loan Agent, as Term Loan Representative, and each of the Loan Parties party thereto, as amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

“Interest Election Request” means a request by the Borrower Representative to convert or continue a Borrowing in accordance with Section 2.08.

“Interest Expense” means, for any period, total interest expense (including that attributable to Capital Lease Obligations) of Holdings and its Subsidiaries for such period with respect to all outstanding Indebtedness of Holdings and its Subsidiaries (including all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptances and net costs under Swap Agreements in respect of interest rates to the extent such net costs are allocable to such period in accordance with GAAP), calculated on a consolidated basis for Holdings and its Subsidiaries for such period in accordance with GAAP.

“Interest Payment Date” means (a) as to any SOFR Borrowing, (i) the last day of each Interest Period applicable to such SOFR Borrowing; provided that if any Interest Period for a SOFR Borrowing is greater than three months, the respective dates that fall every three months after the beginning of such Interest Period shall also constitute “Interest Payment Dates”, (ii) any date on which such Loan is prepaid or converted, in whole or in part, and (iii) the Maturity Date; and (b) as to any Base Rate Loan (including a Swingline Loan), (i) the first day of each month with respect to interest accrued through the last day of the immediately preceding month, (ii) any date on which such Loan is prepaid or converted, in whole or in part, and (iii) the Maturity Date; provided, further, that interest accruing at the interest rate specified in Section 2.13(d) shall be payable from time to time upon demand of the Administrative Agent.

“Interest Period” means, with respect to any SOFR Borrowing, the period commencing on the date of such SOFR Borrowing (including by continuation or conversion) and ending on the numerically corresponding day in the calendar month that is one, three or six months thereafter, in each case, as the Borrower Representative may elect; provided that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (ii) any Interest Period pertaining to a SOFR Borrowing that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period, (iii) no Interest Period shall extend beyond the Maturity Date and (iv) unless reinstated in accordance with Section 2.14(b)(iv), no tenor that has been removed from this definition pursuant to Section 2.14 shall be available for specification in a Borrowing Request or an Interest Election Request. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“Inventory” has the meaning assigned to such term in the Security Agreement.

“IRS” means the United States Internal Revenue Service.

“Issuing Bank” means, individually and collectively, each of (i) BMO, in its capacity as the issuer of Letters of Credit hereunder, (ii) JPMCB, solely in its capacity as the issuer of the Existing Letters of Credit and (iii) any other Lender from time to time designated by the Borrower Representative as an Issuing Bank, with the consent of such Lender and the Administrative Agent, and their respective successors in such capacity as provided in Section 2.06(i). Any Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by its Affiliates, in which case the term “Issuing Bank” shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate (it being agreed that such Issuing Bank shall, or shall cause such Affiliate to, comply with the requirements of Section 2.06 with respect to such Letters of Credit). At any time there is more than one Issuing Bank, all singular references to the Issuing Bank shall mean any Issuing Bank, either Issuing Bank, each Issuing Bank, the Issuing Bank that has issued the applicable Letter of Credit, or both (or all) Issuing Banks, as the context may require.

“Issuing Bank Sublimits” means, as of the Third Amendment Effective Date, (i) \$30,000,000, in the case of BMO and (ii) such amount as shall be designated to the Administrative Agent and the Borrower Representative in writing by an Issuing Bank; provided that any Issuing Bank shall be

permitted, with the consent of the Borrower Representative, at any time to increase or reduce its Issuing Bank Sublimit upon providing five (5) days' prior written notice thereof to the Administrative Agent.

“JPMCB” means JPMorgan Chase Bank, N.A., a national banking association, in its individual capacity, and its successors.

“Joinder Agreement” means a Joinder Agreement in substantially the form of Exhibit F.

“Latest Maturity Date” means, as of any date of determination, the latest maturity date or termination date applicable to any Loan hereunder at such time.

“LCA Election” has the meaning assigned to such term in Section 1.04(b).

“LCA Test Date” has the meaning assigned to such term in Section 1.04(b).

“LC Collateral Account” has the meaning assigned to such term in Section 2.06(j).

“LC Disbursement” means a payment made by the Issuing Bank pursuant to a Letter of Credit.

“LC Exposure” means, at any time, the sum of the Commercial LC Exposure and the Standby LC Exposure at such time. The LC Exposure of any Lender at any time shall be its Applicable Percentage of the aggregate LC Exposure at such time.

“Lead Arrangers” means each of BMO and JPMCB in their respective capacities as joint bookrunner and joint lead arranger for the credit facility evidenced by this Agreement.

“Lender Parent” means, with respect to any lender, any Person as to which such Lender is, directly or indirectly, a subsidiary.

“Lenders” means the Persons listed on Commitment Schedule and any other Person that shall have become a Lender hereunder pursuant to Section 2.09 or pursuant to an Assignment and Assumption or other documentation contemplated hereby, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption or other documentation contemplated hereby. Unless the context otherwise requires, the term “Lenders” includes the Swingline Lender and the Issuing Bank.

“Letter of Credit” means any letter of credit issued pursuant to this Agreement.

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust or similar instrument, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

“Limited Condition Acquisition” means any purchase or other acquisition, by merger, amalgamation, consolidation or otherwise, by the Borrowers or any Subsidiary thereof of Equity Interests in, or all or substantially all the assets of (or all or substantially all the assets constituting a business unit, division, product line or line of business of), any Person the consummation of which is not conditioned on the availability of, or on obtaining, third party financing.

“Line Cap” means, at any time, the lesser of (a) the Aggregate Commitment and (b) the Borrowing Base then in effect.

“Loan Documents” means this Agreement, any promissory notes issued pursuant to this Agreement, the Collateral Documents, the Loan Guaranty, the Intercreditor Agreement and any agreements (including any Letter of Credit applications) between the Borrower Representative and any Issuing Bank regarding such Issuing Bank's Issuing Bank Sublimit or the respective rights and

obligations between any Borrower and any Issuing Bank in connection with the issuance of Letters of Credit. Any reference in this Agreement or any other Loan Document to a Loan Document shall include all appendices, exhibits or schedules thereto, and all amendments, restatements, supplements or other modifications thereto, and shall refer to this Agreement or such Loan Document as the same may be in effect at any and all times such reference becomes operative.

“Loan Guarantor” means each Loan Party.

“Loan Guaranty” means Article X of this Agreement and each separate Guarantee, in form and substance satisfactory to the Administrative Agent, as it may be amended or modified and in effect from time to time.

“Loan Parties” means Holdings, the Borrowers and the Borrowers’ ~~Domestic~~ Subsidiaries (other than ~~the~~ Excluded ~~Subsidiary~~ Subsidiaries) who become a party to this Agreement pursuant to a Joinder Agreement or otherwise and their successors and assigns.

“Loans” means the loans and advances made by the Lenders pursuant to this Agreement, including Swingline Loans, Overadvances and Protective Advances

“Material Adverse Effect” means a material adverse effect on (a) the business, assets, operations, properties or condition (financial or otherwise) of the Loan Parties taken as a whole, (b) the ability of any Loan Party to perform any of its obligations under the Loan Documents to which it is a party, (c) the Collateral, or the Administrative Agent’s Liens (on behalf of itself and the other Secured Parties) on the Collateral or the priority of such Liens, in each case, as to Collateral having an aggregate value in excess of ~~\$5,000,000~~ 10,000,000, or (d) the rights of or benefits available to the Administrative Agent, the Issuing Bank or the Lenders under any of the Loan Documents (other than with respect to Collateral having an aggregate value of ~~\$5,000,000~~ 10,000,000 or less), in each case excluding any effect resulting from or arising in connection with the COVID-19 pandemic.

“Material Indebtedness” means Indebtedness (other than the Loans and Letters of Credit), or obligations in respect of one or more Swap Agreements, in each case of any one or more of Holdings and its Restricted Subsidiaries in an aggregate principal amount exceeding ~~\$10,000,000~~ 15,000,000. For purposes of determining Material Indebtedness, the “obligations” of any Loan Party or any Subsidiary in respect of any Swap Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that such Loan Party or such Subsidiary would be required to pay if such Swap Agreement were terminated at such time.

“Maturity Date” means the earliest of (i) March 11, 2027, (ii) if the “Term Loan Obligations Payment Date” (as defined in the Intercreditor Agreement) has not occurred, the date that occurs ninety (90) days prior to the earliest “Maturity Date” under (and as defined in) the Term Loan Agreement (or words of similar import reflecting a maturity date under any amendment, restatement or replacement of the Term Loan Agreement) and (iii) if, by March 24, 2024, 1.875% Convertible Notes in an aggregate principal amount in excess of \$40,000,000 remain outstanding that have not either been repaid, repurchased or redeemed or refinanced with Indebtedness permitted hereunder having a maturity date not earlier than six months after March 11, 2027, the Convertible Springing Date.

“Maximum Rate” has the meaning assigned to such term in Section 9.17.

“Moody’s” means Moody’s Investors Service, Inc.

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

“Net Income” means, for any period, the consolidated net income (or loss) of Holdings and its Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP; provided that there shall be excluded (a) ~~(except as set forth in Section 1.05) the income (or deficit) of any Person accrued prior to the date it becomes a Subsidiary or is merged into or consolidated with Holdings or any of its Subsidiaries~~ [reserved], (b) the income (or deficit) of any Person (other than a Restricted Subsidiary) in which Holdings or any of its Restricted Subsidiaries has an ownership interest, except to the extent that

any such income is actually received by Holdings or such Restricted Subsidiary in the form of dividends or similar distributions ~~and~~, (c) the undistributed earnings of any Restricted Subsidiary to the extent that the declaration or payment of dividends or similar distributions by such Restricted Subsidiary is not at the time permitted by the terms of any contractual obligation (other than under any Loan Document) or Requirement of Law applicable to such Restricted Subsidiary, and (d) the income (or loss) of all Unrestricted Subsidiaries.

“Net Orderly Liquidation Value” means, with respect to Inventory of any Person, the orderly liquidation value thereof as determined in a manner acceptable to the Administrative Agent in its Permitted Discretion based on the most recent appraisal of such Inventory, completed in accordance with the terms hereof by an appraiser reasonably acceptable to the Administrative Agent, net of all costs of liquidation thereof.

“New Markets Tax Credit Financing” means a secured credit facility provided by Commercial Lending II LLC, as a lender, to Dairyland HP, as borrower, entered into as of April 26, 2012, in an aggregate principal amount of \$11,000,000, pursuant to the New Markets Tax Credit Program established as part of the Community Renewal Tax Relief Act of 2000.

“Non-Consenting Lender” has the meaning assigned to such term in Section 9.02(e).

“Non-U.S. Lender” means a Lender that is not a U.S. Person.

“Obligated Party” has the meaning assigned to such term in Section 10.02.

“Obligations” means all unpaid principal of and accrued and unpaid interest on the Loans, all LC Exposure, all accrued and unpaid fees and all expenses, reimbursements, indemnities and other obligations and indebtedness (including interest and fees accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), obligations and liabilities of any of the Loan Parties to any of the Lenders, the Administrative Agent, the Issuing Bank or any indemnified party, individually or collectively, existing on the Effective Date or arising thereafter, direct or indirect, joint or several, absolute or contingent, matured or unmatured, liquidated or unliquidated, secured or unsecured, arising by contract, operation of law or otherwise, arising or incurred under this Agreement or any of the other Loan Documents or in respect of any of the Loans made or reimbursement or other obligations incurred or any of the Letters of Credit or other instruments at any time evidencing any thereof.

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“Off-Balance Sheet Liability” of a Person means (a) any repurchase obligation or liability of such Person with respect to accounts or notes receivable sold by such Person, (b) any indebtedness, liability or obligation under any so-called “synthetic lease” transaction entered into by such Person, or (c) any indebtedness, liability or obligation arising with respect to any other transaction which is the functional equivalent of or takes the place of borrowing but which does not constitute a liability on the balance sheets of such Person (other than operating leases).

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

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



“Overadvance” has the meaning assigned to such term in Section 2.05(b).

“PACA” means the Perishable Agricultural Commodities Act, 1930, as amended, 7 U.S.C. Section 499a et seq., as the same now exists or may from time to time hereafter be amended, restated, modified, recodified or supplemented, together with all rules, regulations and interpretations thereunder or related thereto.

“Parent” means, with respect to any Lender, the Person as to which such Lender is, directly or indirectly, a subsidiary.

“Participant” has the meaning assigned to such term in Section 9.04(c).

“Participant Register” has the meaning assigned to such term in Section 9.04(c).

“Payment Condition” means, with respect to any proposed designated action on any date, a condition that is satisfied if either of the following conditions are satisfied:

(ab) both (x) after giving effect to such proposed designated action as if it occurred on the first day of such Pro Forma Period, the pro forma Availability shall be greater than the greater of (A) 15% (or, if the proposed designated action is an acquisition, investment, sale, transfer or disposition, 12.5%) of the Line Cap and (B) \$21,000,000 (or, if the proposed designated action is an acquisition, investment, sale, transfers, or dispositions, \$17,500,000) both immediately prior to and after giving effect to such action and on an average daily basis at all times during such Pro Forma Period and (ii) the Fixed Charge Coverage Ratio, computed on a pro forma basis for the period of four consecutive fiscal quarters ending on the most recent fiscal quarter of Holdings for which financial statements have been delivered pursuant to Section 5.01(a) or 5.01(b) (or, prior to the delivery of any such financial statements, ending on the last Fiscal Quarter included in the financial statements referred to in Section 3.04(a)), shall be equal to or greater than 1.00 to 1.00; or

(ac) after giving effect to such proposed designated action as if it occurred on the first day of the applicable Pro Forma Period, the pro forma Availability shall be greater than the greater of (A) 17.5% (or, if the proposed designated action is an acquisition, investment, sale, transfer or disposition, 15%) of the Line Cap and (B) \$24,500,000 (or, if the proposed designated action is an acquisition, investment, sale, transfer or disposition, \$21,000,000), both immediately prior to and after giving effect to such action and on an average daily basis at all times during such Pro Forma Period.

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“Permitted Acquisition” means, any acquisition (whether by purchase, merger, consolidation or otherwise) or series of related acquisitions by any Loan Party (other than Holdings) of (i) all or substantially all the assets of or (ii) all or substantially all the Equity Interests in, a Person or division or line of business of a Person, if at the time of and immediately after giving effect thereto:

(1) subject to Section 1.04(b), no Event of Default under clauses (a), (b), (h), (i) or (j) of Article VII has occurred and is continuing or would arise after giving effect thereto;

(2) such Person or division or line of business is engaged in the same or a similar line of business as the Borrowers and the Restricted Subsidiaries or business reasonably related, complementary or ancillary thereto or a logical extension thereof (including, without limitation, food and beverage service, distribution, wholesale and retail); and

~~(3) all actions required to be taken with respect to such acquired or newly formed Subsidiary under Section 5.13 shall have been taken within the time periods set out therein;~~

(4) the Payment Condition shall be satisfied with respect to such acquisition;

~~(5) if the Acquisition Consideration (as defined below) paid in respect of such acquisition exceeds \$25,000,000, the Borrower Representative shall have delivered to the Administrative Agent (i) a certificate of a Financial Officer of Holdings, in form and substance reasonably satisfactory to the Administrative Agent, certifying the requirements set forth in this definition have been satisfied, and (ii) to the extent reasonably requested by the Administrative Agent, related historical financial statements (including consolidated balance sheets, income statements and cash flow statements) and projections;~~

~~(6) in the case of an acquisition or merger in the form of a merger and/or consolidation involving a Loan Party (other than Holdings), a Loan Party is the surviving entity of such merger and/or consolidation;~~

~~(7) with respect to any such acquisitions or series of related acquisitions consummated after the Fourth Amendment Effective Date, the total consideration paid or payable (including all transaction costs, Indebtedness incurred, assumed and/or reflected on a consolidated balance sheet of the Loan Parties and their Restricted Subsidiaries after giving effect to such acquisition and the maximum amount of all deferred payments, including earnouts) (such amounts, collectively, the "Acquisition Consideration") for all acquisitions consummated during the term of this Agreement after the Fourth Amendment Effective Date where either (x) the target becomes a Restricted Subsidiary but not a Loan Party hereunder or (v) the acquired assets do not become Collateral shall not exceed \$10,000,000, in the aggregate for all such acquisitions, the greater of \$110,000,000 and 85% of EBITDA on a pro forma basis (taking into account the proposed acquisition) for the most recent Test Period at the time of such acquisition (in each case, after giving effect to any time periods contained in Section 5.14); and~~

~~(8) the Borrower Representative shall have delivered to the Administrative Agent final executed material documentation relating to such acquisition promptly after any reasonable request therefor by the Administrative Agent.~~

Notwithstanding the foregoing and subject to the last two sentences of the definition of "Borrowing Base", no Accounts or Inventory acquired by a Loan Party in a Permitted Acquisition shall be included as Eligible Accounts or Eligible Inventory until a Field Exam (and, if required by the Administrative Agent, an Inventory appraisal) with respect thereto has been completed to the reasonable satisfaction of the Administrative Agent, including the establishment of Reserves required in the Administrative Agent's Permitted Discretion; provided that, Field Exam and appraisals in connection with Permitted Acquisitions shall not count against the limited number of Field Exams or appraisals which may be conducted hereunder or for which expense reimbursement may be sought hereunder.

"Permitted Call Spread Swap Agreements" means (a) any Swap Agreement (including, but not limited to, any bond hedge transaction or capped call transaction) pursuant to which Holdings acquires an option requiring the counterparty thereto to deliver to Holdings shares of common stock of Holdings, the cash value of such shares or a combination thereof from time to time upon exercise of such option and (b) any Swap Agreement pursuant to which Holdings issues to the counterparty thereto warrants to acquire common stock of Holdings (whether such warrant is settled in shares, cash or a combination thereof), in each case entered into by Holdings in connection with the issuance of Permitted Convertible Notes (other than Permitted Convertible Seller Notes); provided that (i) the terms, conditions and covenants of each such Swap Agreement shall be such as are customary for Swap Agreements of such type (as determined by the Board of Directors of Holdings in good faith) and (ii) in the case of clause (b) above, such Swap Agreement would be classified as an equity instrument in accordance with GAAP, and the settlement of such Swap Agreement does not require Holdings to make any payment in cash or cash equivalents that would disqualify such Swap Agreement from so being classified as an equity instrument.

"Permitted Convertible Notes" means, collectively, (a) Permitted Convertible Seller Notes and (b) any other unsecured notes issued by Holdings that are convertible into common stock of Holdings, cash or any combination thereof; provided that, for purposes of clause (b) of this definition, the Indebtedness thereunder satisfies the following requirements: (i) both immediately prior to and immediately after giving effect (including pro forma effect) thereto to the incurrence of such Indebtedness, no Default or Event of Default shall exist or result therefrom, (ii) such Indebtedness matures after, and

does not require any scheduled amortization or other scheduled payments of principal prior to (A) with respect to any 1.875% Convertible Notes, November 30, 2024, (B) with respect to such Indebtedness incurred prior to the Fourth Amendment Effective Date (other than any 1.875% Convertible Notes), the date that is six (6) months after the Latest Maturity Date immediately prior to giving effect to the Fourth Amendment, and (C) with respect to such Indebtedness incurred on or after the Fourth Amendment Effective Date, the date that is six (6) months after the Latest Maturity Date immediately after giving effect to the Fourth Amendment (it being understood that, in each case, neither (x) any provision requiring an offer to purchase such Indebtedness as a result of change of control or asset sale or other fundamental change nor (y) any early conversion of any Permitted Convertible Notes in accordance with the terms thereof shall violate the foregoing restriction), (iii) such Indebtedness is not guaranteed by any Subsidiary of Holdings other than the Loan Guarantors (which guarantees, if such Indebtedness is subordinated, shall be expressly subordinated to the Secured Obligations on terms not less favorable to the Lenders than the subordination terms of such Subordinated Indebtedness) and (iv) the covenants applicable to such Indebtedness are not more onerous or more restrictive in any material respect (taken as a whole) than the applicable covenants set forth in this Agreement.

“Permitted Convertible Seller Notes” means, collectively, those certain Convertible Subordinated Non-Negotiable Promissory Notes, dated as of April 6, 2015, issued by Del Monte Capitol Meat Company, LLC (a subsidiary of Holdings) to each of (i) TJ Seafood, LLC evidencing Subordinated Indebtedness in the aggregate principal amount of \$7,350,000 and (ii) T.J. Foodservice Co., Inc. evidencing Subordinated Indebtedness in an aggregate principal amount of \$29,400,000 and in each case, that are convertible solely into common stock of Holdings.

“Permitted Discretion” means a determination made in good faith and in the exercise of reasonable (from the perspective of a secured asset-based lender) business judgment.

“Permitted Encumbrances” means:

- (a) Liens imposed by law for Taxes that are not yet delinquent or are being contested in compliance with Section 5.04;
- (b) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that (i) are not overdue by more than thirty (30) days or (ii) (A) are being contested in ~~compliance with Section 5.04;~~ good faith by appropriate proceedings, (B) for which the applicable Loan Party or Restricted Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP, and (C) if being contested in good faith by appropriate proceedings, the failure to make payment pending such contest would not reasonably be expected to result in a Material Adverse Effect;
- (c) pledges and deposits made in the ordinary course of business in compliance with workers’ compensation, unemployment insurance and other social security laws or regulations;
- (d) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;
- (e) judgment liens in respect of judgments that do not constitute an Event of Default under clause (k) of Article VII;
- (f) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business of the Borrowers that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of any if Holdings or the Subsidiaries; and

(g) Liens in favor of, or claims or rights of any producer, grower or seller under PACA, the Food Security Act, PSA or PFPA relating to aggregate obligations of \$250,000 or less.

~~“Permitted Holders” has the meaning assigned to such term in the definition of “Change in Control”.~~

~~“Permitted Holdings Dividends” means dividends paid by a Loan Party to Holdings~~Holder” means any one or more of the following:

(i) Christopher Pappas;

(ii) John Pappas;

(iii) the officers, directors or management of Holdings as of the Fourth Amendment Effective Date; or

(iv) any trust, corporation, limited liability company, partnership or other entity owned and controlled directly or directly by any Person or Persons described in the immediately preceding clauses (i), (ii) and (iii).

~~(i) to the extent actually used substantially concurrently by Holdings to pay the same, in amounts necessary to pay (x) such franchise taxes and other fees required to maintain the legal existence of Holdings and (y) out-of-pocket legal, accounting and filing costs and other expenses in the nature of overhead in the ordinary course of business of Holdings; provided, that the aggregate amount of dividends paid under this clause (i) shall not exceed \$2,500,000 in any period of twelve consecutive months;~~

~~(ii) in amounts necessary to enable (x) Holdings to repurchase or redeem its Equity Interest or (y) Holdings or the holders of Holdings’ Equity Interests to pay withholding taxes due as a result of its ownership of Holdings or any other Loan Party; provided, that (x) the aggregate amount of such dividends shall not exceed \$2,500,000 in any period of twelve consecutive months and (y) such dividend shall be actually used for a purpose set forth above substantially concurrently with the making of such dividend;~~

~~(iii) to the extent necessary to permit, and actually used substantially concurrently by, Holdings to discharge the consolidated Tax liabilities of the Loan Parties or Taxes attributable to the distributions used to pay such consolidated Tax liabilities; and~~

~~(iv) to the extent used substantially concurrently by Holdings to make payments in respect of Indebtedness permitted to be incurred by Holdings hereunder, which payments are permitted under Section 6.08(b).~~

“Permitted Investments” means:

(a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof;

(b) investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, the highest credit rating obtainable from S&P or from Moody’s;

(c) investments in certificates of deposit, banker’s acceptances and time deposits maturing within 180 days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized

under the laws of the United States of America or any State thereof which has a combined capital and surplus and undivided profits of not less than \$500,000,000;

(d) fully collateralized repurchase agreements with a term of not more than thirty (30) days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria described in clause (c) above; and

(e) money market funds that (i) comply with the criteria set forth in SEC Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated AAA by S&P and Aaa by Moody's and (iii) have portfolio assets of at least \$5,000,000,000.

“Permitted Ratio Debt” means Indebtedness incurred by the Borrowers or any Loan Party in the form of one or more series of notes or loans; provided that (i) such Indebtedness shall rank *pari passu* or junior in right of payment to the Secured Obligations (provided, that, the Liens securing such Indebtedness shall be junior to the Administrative Agent’s Liens in respect of ABL Priority Collateral), (ii) such Indebtedness shall not have a shorter Average Life than the remaining Average Life of the then-existing Loans or a maturity date earlier than the Latest Maturity Date (or, if such Indebtedness is secured on a junior basis to the Secured Obligations or unsecured, a maturity date earlier than the date that is 91 days after the Latest Maturity Date), (iii) such Indebtedness is not at any time guaranteed by any Person that is not a Loan Party or secured by any assets other than the Collateral, and (iv) in the case of such Indebtedness that is secured, such Indebtedness shall be subject to an intercreditor agreement reasonably acceptable to the Administrative Agent (for the avoidance of doubt, in the case of such Indebtedness that is unsecured, (x) scheduled payments of interest and (y) conversion into common Equity Interests shall be permitted).

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“PPFA” means the Poultry Producers Financial Protection Act of 1987, as the same now exists or may from time to time hereafter be amended, restated, modified, recodified or supplemented, together with all rules, regulations and interpretations thereunder or related thereto.

“Plan” means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which any Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Platform” means Debt Domain, Intralinks, Syndtrak or a substantially similar electronic transmission system.

“Pledge Subsidiary” means (i) each Domestic Subsidiary (other than any Excluded Subsidiary) and (ii) each First Tier Foreign Subsidiary.

“pro forma basis” or “pro forma effect” means, as to any Person, for any Specified Transaction identified by the Borrowers that occurs (i) during any applicable Test Period or (ii) subsequent to any applicable Test Period ended prior to or simultaneously with the occurrence of such Specified Transaction (the “Reference Period”) for which any ratio or test is being calculated (including the calculation of First Lien Leverage Ratio, Total Leverage Ratio, Secured Leverage Ratio, Fixed Charge Coverage Ratio, EBITDA or any other ratio or test under any applicable provision of this Agreement or any other Loan Document), such calculation as will give effect to such Specified Transaction as if such Specified Transaction had occurred on the first day of such Reference Period and, to the extent applicable, to the historical earnings and cash flows associated with the assets acquired or disposed of and any related incurrence or reduction of Indebtedness, all in accordance with Article 11 of Regulation S-X under the Securities Act, and that:

(a) in calculating EBITDA or any component thereof, effect shall be given to any Specified Transaction and any Expected Cost Savings arising therefrom or relating thereto, in each case, that occurred during the Reference Period or, with respect to any such event or transaction included in

clauses (a) and (b) of the definition of Specified Transactions, that are reasonably identifiable and factually supportable and are reasonably anticipated to occur within 18 months of the closing date of such Specified Transaction;

(b) in making any determination on a pro forma basis or of pro forma effect, (x) all Indebtedness (including Indebtedness issued, incurred or assumed as a result of, or to finance, any relevant transactions and for which the financial effect is being calculated, whether incurred under the Loan Documents or otherwise) issued, incurred, assumed or repaid during the Reference Period (or with respect to Indebtedness repaid, during the Reference Period or subsequent to the end of the Reference Period and prior to, or simultaneously with, the event for which the calculation of any such ratio is made) shall be deemed to have been issued, incurred, assumed or repaid on the first day of such Reference Period and (y) interest expense of such Person attributable to interest on any Indebtedness, for which pro forma effect is being given as provided in the preceding clause (x), bearing floating interest rates shall be computed on a pro forma basis as if the rates that would have been in effect during the Reference Period for which pro forma effect is being given had been actually in effect during such Reference Period;

(c) with respect to (x) any re-designation of an Unrestricted Subsidiary as an Restricted Subsidiary, effect shall be given to such Subsidiary re-designation and all other Subsidiary redesignations after the first day of the relevant Reference Period and on or prior to the date of the respective Subsidiary re-designation then being designated, collectively, and (y) any designation of a Restricted Subsidiary as an Unrestricted Subsidiary, effect shall be given to such designation and all other designations of Subsidiaries as Unrestricted Subsidiaries after the first day of the relevant Reference Period and on or prior to the date of the then applicable designation of a Subsidiary as an Unrestricted Subsidiary, collectively, and in each of the foregoing clauses (x) and (y), Unrestricted Subsidiaries shall be treated as if they were not consolidated with any other member of the Restricted Group and otherwise accounts of Unrestricted Subsidiaries shall be eliminated for purposes of any such calculation;

(d) notwithstanding anything to the contrary in this definition, for purposes of calculating any “net” ratio test utilized in any debt incurrence test (including the First Lien Leverage Ratio, Total Leverage Ratio, Secured Leverage Ratio, Fixed Charge Coverage Ratio or any other ratio or test under any applicable provision of this Agreement or any other Loan Document), such ratio shall be calculated after giving effect to any such incurrence on a pro forma basis, and in each case, with respect to any commitment, assuming a borrowing of the maximum amount of loans available thereunder, and such calculation shall be made excluding the cash proceeds of any such Indebtedness for purposes of calculating any such ratio; and

(e) notwithstanding anything to the contrary in this definition or in any classification under GAAP of any Person, business, assets or operations in respect of which a definitive agreement for the asset sale, transfer, disposition or lease thereof has been entered into as discontinued operations, no pro forma effect shall be given to the classification thereof as discontinued operations (and the EBITDA or any component thereof attributable to any such Person, business, assets or operations shall not be excluded for any purposes hereunder) until such asset sale, transfer, disposition or lease shall have been consummated.

“Pro Forma Period” means the period commencing thirty (30) days prior to the date of any proposed designated action and ending on the date of such proposed designated action.

“Projections” has the meaning assigned to such term in Section 5.01(f).

“Protective AdvanceAdvances” has the meaning assigned to such term in Section 2.04(a).

“PSA” means the Packers and Stockyard Act of 1921, 7 U.S.C. 181, as the same now exists or may from time to time hereafter be amended, restated, modified, recodified or supplemented, together with all rules, regulations and interpretations thereunder or related thereto.

“PTE” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

“QFC Credit Support” has the meaning set forth in Section 9.22.

“Qualified ECP Guarantor” means, in respect of any Swap Obligation, each Loan Guarantor that has total assets exceeding \$10,000,000 at the time the relevant Guarantee or grant of the relevant security interest becomes or would become effective with respect to such Swap Obligation or such other Person as constitutes an ECP and can cause another Person to qualify as an ECP at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“Recipient” means, as applicable, (a) the Administrative Agent, (b) any Lender and (c) any Issuing Bank.

“Reference Period” has the meaning specified in the “pro forma basis” or “pro forma effect” definition.

“Register” has the meaning assigned to such term in Section 9.04(b)(iv).

“Related Parties” means, with respect to any specified Person, such Person’s Affiliates and the respective directors, officers, partners, members, trustees, employees, agents, administrators, managers, representatives and advisors of such Person and such Person’s Affiliates.

“Relevant Governmental Body” means the Board ~~of Governors of the Federal Reserve System~~ and/or the Federal Reserve Bank of New York or a committee officially endorsed or convened by the Board ~~of Governors of the Federal Reserve System~~ and/or the Federal Reserve Bank of New York or, in each case, any successor thereto.

“Report” means reports prepared by the Administrative Agent or another Person showing the results of appraisals, Field Exams or audits pertaining to the assets of the Loan Parties from information furnished by or on behalf of the Borrowers, after the Administrative Agent has exercised its rights of inspection pursuant to this Agreement, which Reports may be distributed to the Lenders by the Administrative Agent.

“Required Lenders” means, subject to Section 2.20, at any time, Lenders having Revolving Exposures and unused Commitments representing more than 50% of the sum of the total Revolving Exposures and unused Commitments at such time; provided that, at any time that there are two (2) or more Lenders, “Required Lenders” must include at least two (2) Lenders (that are not Affiliates of one another).

“Requirement of Law” means, with respect to any Person, (a) the charter, articles or certificate of organization or incorporation and bylaws or other organizational or governing documents of such Person and (b) any statute, law (including common law), treaty, rule, regulation, code, ordinance, order, decree, writ, judgment, injunction or determination of any arbitrator or court or other Governmental Authority (including Environmental Laws), in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Rescindable Amount” has the meaning specified in Section 2.18(e).

“Reserves” means any and all reserves which the Administrative Agent deems necessary, in its Permitted Discretion, to maintain (including, without limitation, reserves for accrued and unpaid interest on the Secured Obligations, Banking Services Reserves, the Dilution Reserve, the Subordinated Seller Note Reserve, reserves in respect of liens arising pursuant to any Farm Products Law, volatility reserves, reserves for rent at locations leased by any Loan Party and for consignee’s, warehousemen’s and bailee’s

charges, reserves for Inventory shrinkage, reserves for customs charges and shipping charges related to any Inventory in transit, reserves for Swap Agreement Obligations, and reserves for taxes, fees, assessments, and other governmental charges) with respect to the Collateral or any Loan Party. Notwithstanding the foregoing, the Administrative Agent may not implement new Reserves or increase the amount of any existing Reserves without at least three (3) Business Days' prior written notice to the Borrower Representative; provided that, (i) no such prior notice shall be required after the occurrence and during the continuance of an Event of Default or for changes to any Reserves resulting solely by virtue of mathematical calculations of the amount of the Reserves in accordance with the methodology of calculation previously utilized and (ii) upon such notice, the Borrowers will not be permitted to borrow so as to exceed the Borrowing Base after giving effect to such new or modified Reserves. The amount of any Reserve established by the Administrative Agent, and any change in the amount of any Reserve, shall have a reasonable relationship to the event, condition or other matter that is the basis for such Reserve or such change. Notwithstanding anything herein to the contrary, Reserves shall not duplicate eligibility criteria contained in the definition of Eligible Accounts, Eligible Inventory or any other Reserve then established.

“Resolution Authority” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“Restricted Group” means, collectively, Holdings, the Borrowers and the Borrowers’ Restricted Subsidiaries.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in Holdings or any of its Subsidiaries to their Equity Interest holders in such capacity, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests in Holdings or its Subsidiaries or any option, warrant or other right to acquire any such Equity Interests in Holdings or its Subsidiaries, or any payment of management or similar fees to any Person. Notwithstanding the foregoing, and for the avoidance of doubt, (i) the conversion of (including any cash payment upon conversion), or payment of any principal or premium on, or payment of any interest with respect to, any Permitted Convertible Notes shall not constitute a Restricted Payment and (ii) any payment with respect to, or early unwind or settlement of, any Permitted Call Spread Swap Agreement shall not constitute a Restricted Payment.

“Restricted Subsidiary” means any Subsidiary of the Borrowers other than an Unrestricted Subsidiary.

“Revolving Exposure” means, with respect to any Lender at any time, the sum of (a) the outstanding principal amount of such Lender’s Revolving Loans, its LC Exposure and its Swingline Exposure at such time plus (b) an amount equal to its Applicable Percentage of the aggregate principal amount of Protective Advances outstanding at such time plus (c) an amount equal to its Applicable Percentage of the aggregate principal amount of Overadvances outstanding at such time.

“Revolving Loan” means a Loan made pursuant to Section 2.01.

~~“Sale and Leaseback Transaction” has the meaning assigned to such term in Section 6.06.~~

“S&P” means S&P Global Ratings, a Standard & Poor’s Financial Services LLC business, or any successor thereto.

~~“Sale and Leaseback Transaction” has the meaning assigned to such term in Section 6.06.~~

“Sanctioned Country” means, at any time, a country, region or territory which is itself the subject or target of any Sanctions (at the time of this Agreement, Crimea, Cuba, Iran, North Korea, Sudan and Syria).

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC, the U.S. Department of State, the United Nations Security



Council, the European Union, any European Union member state, Her Majesty's Treasury of the United Kingdom or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b).

“Sanctions” means all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC or the U.S. Department of State or (b) the United Nations Security Council, the European Union, any European Union member state, Her Majesty's Treasury of the United Kingdom or other relevant sanctions authority.

“SEC” means the United States Securities and Exchange Commission.

“Secured Leverage Ratio” means, on any date, the ratio of (a) Total Net Indebtedness that is secured by a Lien on any assets of the Restricted Group on such date to (b) EBITDA for the most recent Test Period.

“Secured Obligations” means all Obligations, together with all (i) Banking Services Obligations and (ii) Swap Agreement Obligations owing to one or more Lenders or their respective Affiliates; provided, however, that the definition of “Secured Obligations” shall not create any guarantee by any Guarantor of (or grant of security interest by any Guarantor to support, as applicable) any Excluded Swap Obligations of such Guarantor for purposes of determining any obligations of any Guarantor.

“Secured Parties” means (a) the Administrative Agent, (b) the Lenders, (c) the Issuing Bank, (d) each provider of Banking Services, to the extent the Banking Services Obligations in respect thereof constitute Secured Obligations, (e) each counterparty to any Swap Agreement, to the extent the obligations thereunder constitute Secured Obligations, (f) the beneficiaries of each indemnification obligation undertaken by any Loan Party under any Loan Document, and (g) the successors and assigns of each of the foregoing.

“Security Agreement” means that certain Pledge and Security Agreement (including any and all supplements thereto), dated as of ~~the date hereof~~ June 29, 2018, among the Loan Parties and the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, and any other pledge or security agreement entered into, after the date of this Agreement by any other Loan Party (as required by this Agreement or any other Loan Document) or any other Person for the benefit of the Administrative Agent and the other Secured Parties, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“Settlement” has the meaning assigned to such term in Section 2.05(d).

“Settlement Date” has the meaning assigned to such term in Section 2.05(d).

“SOFR” means a rate equal to the secured overnight financing rate as administered by the Federal Reserve Bank of New York ~~(or a successor administrator of the secured overnight financing rate)~~.

“SOFR Borrowing” means a Borrowing that accrues interest based on Adjusted Term SOFR, other than pursuant to clause (c) of the definition of “Base Rate.”

“SOFR Loan” means a Loan that accrues interest based on Adjusted Term SOFR, other than pursuant to clause (c) of the definition of “Base Rate.”

~~“Specified Earn-Out Payment” means any payment made by a Loan Party or any Subsidiary in respect of earn-out obligations arising pursuant to that certain Additional Earn-Out Agreement, dated as of April 6, 2015, by and among, *inter alia*, Holdings, T.J. Foodservice Co., Inc., TJ Seafood, LLC, and John DeBenedetti, as the Sellers' Representative (as defined therein).~~

“Specified Transaction” means (a) any acquisition (including any Permitted Acquisition), investment, sale, transfer or other disposition of assets or property, (b) any merger or consolidation, or any similar transaction, (c) any incurrence, issuance or repayment of indebtedness, (d) any Restricted Payment, (e) any Subsidiary designation or re-designation under Section 5.16 hereof, or (f) any other event, in each case of the foregoing clauses (a) through (f), to the extent permitted by this Agreement and with respect to which the terms of this Agreement or any other Loan Documents permitting such transaction require compliance with a test or ratio (including compliance with a First Lien Leverage Ratio, Total Leverage Ratio, Secured Leverage Ratio or Fixed Charge Coverage Ratio) hereunder or thereunder to be calculated on a “pro forma basis” or to be given “pro forma effect.”

“Standby LC Exposure” means, at any time, the sum of (a) the aggregate undrawn amount of all standby Letters of Credit outstanding at such time plus (b) the aggregate amount of all LC Disbursements relating to standby Letters of Credit that have not yet been reimbursed by or on behalf of the Borrowers at such time. The Standby LC Exposure of any Lender at any time shall be its Applicable Percentage of the aggregate Standby LC Exposure at such time.

“Statements” has the meaning assigned to such term in Section 2.18(g).

“Subordinated Seller Note Reserve” means, to the extent any Indebtedness is outstanding under the Permitted Convertible Seller Notes, a reserve established by the Administrative Agent on January 6, 2021 in an amount equal to the aggregate principal amount of Indebtedness outstanding under the Permitted Convertible Seller Notes; provided that, (a) the Subordinated Seller Note Reserve shall be reduced to zero on the date that the aggregate amount of Indebtedness in respect of the Permitted Convertible Seller Notes is paid in full in accordance with the terms hereof and (b) at any time that the Subordinated Seller Note Reserve is applicable, the amount of the Subordinated Seller Note Reserve shall automatically be reduced on a dollar-for-dollar basis by the amount of any reductions in the principal amount of Indebtedness outstanding under the Permitted Convertible Seller Notes.

“Subordinated Indebtedness” of a Person means any Indebtedness of such Person (including seller notes) which is subordinated to the Secured Obligations on terms and, if secured, pursuant to an intercreditor agreement, reasonably satisfactory to the Administrative Agent.

“subsidiary” means, with respect to any Person (the “parent”) at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

“Subsidiary” means any direct or indirect subsidiary of Holdings.

“Supermajority Lenders” means, subject to Section 2.20, at any time, Lenders having Revolving Exposures and unused Commitments representing more than 66 2/3% of the sum of the total Revolving Exposures and unused Commitments at such time; provided that, at any time that there are two (2) or more Lenders, “Supermajority Lenders” must include at least two (2) Lenders (that are not Affiliates of one another).

“Supported QFC” has the meaning set forth in Section 9.22.

“Swap Agreement” means any agreement with respect to any swap, forward, spot, future, credit default or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for

payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrowers or the Subsidiaries shall be a Swap Agreement.

“Swap Agreement Obligations” means any and all obligations of the Loan Parties and their Subsidiaries, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), under (a) any and all Swap Agreements permitted hereunder with a Lender or an Affiliate of a Lender, and (b) any and all cancellations, buy backs, reversals, terminations or assignments of any such Swap Agreement transaction.

“Swap Obligation” means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act or any rules or regulations promulgated thereunder.

“Swingline Exposure” means, at any time, the sum of the aggregate principal amount of all outstanding Swingline Loans. The Swingline Exposure of any Lender at any time shall be its Applicable Percentage of the aggregate Swingline Exposure.

“Swingline Lender” means BMO, in its capacity as lender of Swingline Loans hereunder. Any consent required of the Administrative Agent or any Issuing Bank shall be deemed to be required of the Swingline Lender and any consent given by BMO in its capacity as Administrative Agent or Issuing Bank shall be deemed given by BMO in its capacity as Swingline Lender.

“Swingline Loan” has the meaning assigned to such term in Section 2.05(a).

“Taxes” means any and all present or future taxes, levies, imposts, duties, deductions, withholdings, (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Term Loan Agent” means Jefferies Finance LLC, in its capacity as administrative agent and collateral agent under the Term Loan Agreement (or any successor agent thereunder or under any replacement thereof).

“Term Loan Agreement” means that certain Credit Agreement, dated as of June 22, 2016, among Dairyland and CW Parent, as borrowers, the other Loan Parties from time to time party thereto, the Term Loan Agent and the lenders from time to time party thereto, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time and as replaced or refinanced in whole or in part (whether with the same group of lenders or a different group of lenders) in accordance with the terms hereof and of the Intercreditor Agreement.

“Term Loan Documents” means, collectively, the Term Loan Agreement and all other agreements, instruments, documents and certificates executed and/or delivered in connection therewith, as the same may be amended, restated, supplemented or otherwise modified from time to time in accordance with the terms hereof and of the Intercreditor Agreement.

“Term Loan Obligations” means the Indebtedness and other obligations of Holdings and its Subsidiaries under the Term Loan Documents.

“Term Loan Priority Collateral” has the meaning assigned thereto in the Intercreditor Agreement, and is intended to indicate that portion of the Collateral subject to a prior Lien in favor of the Term Loan Agent and the other secured parties for which it acts.

“Term SOFR” means, for any tenor comparable to the applicable Interest Period, the Term SOFR Reference Rate on the day (such day, the “Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to (a) in the case of SOFR Borrowings, the first day of such applicable Interest Period, or (b) with respect to Base Rate, such day of determination of the Base Rate, in each case as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Term SOFR Determination Day the Term SOFR Reference Rate

for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to ~~the~~ Term SOFR has not occurred, then the Term SOFR Reference Rate for such Term SOFR Determination Day will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than five (5) U.S. Government Securities Business Days prior to such Term SOFR Determination Day.

“Term SOFR Administrator” means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Administrative Agent (in consultation with the Borrower Representative) in its reasonable discretion).

“Term SOFR Determination Day” has the meaning specified in the “Term SOFR” definition.

“Term SOFR Reference Rate” means the forward-looking term rate based on SOFR.

“Test Period” means, for and as of any date of determination under this Agreement, the most recent four Fiscal Quarter period for which financial statements have been delivered (or were required to be delivered) pursuant to Section 5.01.

“Third Amendment” ~~shall mean~~ means the Third Amendment to Credit Agreement, dated as ~~at~~ of the Third Amendment Effective Date, among the Borrowers, Holdings, the other Loan Parties party thereto, the Administrative Agent, the Issuing Bank, the Swingline Lender and the Lenders party thereto.

“Third Amendment Effective Date” ~~shall mean~~ means March 11, 2022.

“Total Net Indebtedness” means, at any date, the aggregate principal amount of all Indebtedness of ~~Holdings and its Subsidiaries~~ the Restricted Group at such date, determined on a consolidated basis in accordance with GAAP, but ~~(x) excluding (i) the face amount of any issued and undrawn letters of credit and (ii) obligations under any Guarantee by Holdings’ Subsidiaries of the mortgage dated as of April 26, 2012, between Dairyland HP, as mortgagor, and Commercial Lending II LLC, as mortgagee with respect to the Dairyland HP Facility and (y) net of unrestricted and unencumbered~~ (other than Liens granted under the Term Loan Documents and Liens permitted under Section 6.02(a) or Section 6.02(m)) cash and ~~Permitted Investments of the Loan Parties of up to \$25,000,000~~ cash equivalents of the Restricted Group. For purposes of determining Total Net Indebtedness, the Indebtedness of any Loan Party or any Subsidiary in respect of any Swap Agreement on any date of determination shall be the maximum aggregate amount (giving effect to any netting agreements) that such Loan Party or such Subsidiary would be required to pay if such Swap Agreement were terminated at such time.

“Total Leverage Ratio” means, on any date, the ratio of (a) Total Net Indebtedness on such date to (b) EBITDA for the ~~period of four (4) consecutive Fiscal Quarters ended on such date (or, if such date is not the last day of a Fiscal Quarter, ended on the last day of the Fiscal Quarter most recently ended prior to such date)~~ most recent Test Period.

“Transactions” means the execution, delivery and performance by the Loan Parties of this Agreement, the ~~Third~~ Fourth Amendment and the other Loan Documents, the borrowing of Loans and other credit extensions, the use of the proceeds thereof, the issuance of Letters of Credit hereunder and the repayment of the Indebtedness required hereunder.

“Type”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to ~~the~~ Adjusted Term SOFR ~~Rate~~ or the Base Rate.

“UCC” means the Uniform Commercial Code as in effect from time to time in the State of New York or any other state the laws of which are required to be applied in connection with the attachment, perfection or priority of, or remedies with respect to, the Administrative Agent’s or any Lender’s Lien on any Collateral.

“UK Financial Institutions” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“Unfinanced Capital Expenditures” means, for any period, Capital Expenditures made during such period which are not financed from the proceeds of any Indebtedness (other than the Revolving Loans; it being understood and agreed that, to the extent any Capital Expenditures are financed with Revolving Loans, such Capital Expenditures shall be deemed Unfinanced Capital Expenditures).

“Unliquidated Obligations” means, at any time, any Secured Obligations (or portion thereof) that are contingent in nature or unliquidated, including any Secured Obligation that is: (i) an obligation to reimburse a bank for drawings not yet made under a letter of credit issued by it; (ii) any other obligation (including any guarantee) that is contingent in nature; (iii) an obligation to provide collateral to secure any of the foregoing types of obligations; or (iv) an indemnity.

“Unrestricted Subsidiary” means any Subsidiary of the Borrowers designated by the Borrower Representative as an “Unrestricted Subsidiary” pursuant to and in accordance with Section 5.16, so long as such Subsidiary has not been re-designated by the Borrower Representative as a “Restricted Subsidiary” pursuant to and in accordance with Section 5.16. For the avoidance of doubt, there are no Unrestricted Subsidiaries as of the Fourth Amendment Effective Date.

“U.S.” means the United States of America.

“U.S. Government Securities Business Day” means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“U.S. Person” means a “United States person” within the meaning of Section 7701(a)(30) of the Code.

“U.S. Special Resolution Regimes” has the meaning set forth in Section 9.22.

“U.S. Tax Compliance Certificate” has the meaning assigned to such term in Section 2.17(f)(ii)(B)(3).

“USA PATRIOT Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001.

“Withdrawal Liability” means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

“Withholding Agent” means each of the Borrower Representative and the Administrative Agent.

“Write-Down and Conversion Powers” means (a), with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers

are described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

Section 1.02 Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a “Revolving Loan”) or by Type (e.g., a “SOFR Loan”) or by Class and Type (e.g., a “SOFR Revolving Loan”). Borrowings also may be classified and referred to by Class (e.g., a “Revolving Borrowing”) or by Type (e.g., a “SOFR Borrowing”) or by Class and Type (e.g., a “SOFR Revolving Borrowing”).

Section 1.03 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. The word “law” shall be construed as referring to all statutes, rules, regulations, codes and other laws (including official rulings and interpretations thereunder having the force of law or with which affected Persons customarily comply), and all judgments, orders and decrees, of all Governmental Authorities. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, amended and restated, supplemented or otherwise modified (subject to any restrictions on such amendments, restatements, amendments and restatements, supplements or modifications set forth herein), (b) any definition of or reference to any statute, rule or regulation shall be construed as referring thereto as from time to time amended, restated, amended and restated, supplemented or otherwise modified (including by succession of comparable successor laws), (c) any reference herein to any Person shall be construed to include such Person’s successors and assigns (subject to any restrictions on assignment set forth herein) and, in the case of any Governmental Authority, any other Governmental Authority that shall have succeeded to any or all functions thereof, (d) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (e) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (f) any reference in any definition to the phrase “at any time” or “for any period” shall refer to the same time or period for all calculations or determinations within such definition and (g) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

Section 1.04 Accounting Terms; GAAP; LCA Election—(a) Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that, if after the Effective Date there occurs any change in GAAP or in the application thereof on the operation of any provision hereof and the Borrower Representative notifies the Administrative Agent that the Borrowers request an amendment to any provision hereof to eliminate the effect of such change in GAAP or in the application thereof (or if the Administrative Agent notifies the Borrower Representative that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. Notwithstanding any other provision contained herein, (i) all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made (a) without giving effect to any election under Accounting Standards Codification 825-10-25 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of Holdings or any Subsidiary at “fair value”, as defined therein and (b) without giving effect to any treatment of Indebtedness in respect of convertible debt instruments under Accounting Standards Codification 470-20 (or any other Accounting Standards

Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof and (ii) any obligations relating to a lease that was accounted for by such Person as an operating lease as of ~~the Effective Date~~ December 31, 2015 and any similar lease entered into ~~after the Effective Date~~ hereafter by such Person (or any Subsidiary or Affiliate of such Person) shall continue to be accounted for by such Person as an operating lease and not as Capital Lease Obligations, regardless of any change in GAAP following December 31, 2015 that would otherwise require such obligations to be recharacterized (on a prospective or retroactive basis or otherwise) as Capital Lease Obligations.

(a) Notwithstanding anything in this Agreement or any Loan Document to the contrary, in connection with any action being taken solely in connection with a Limited Condition Acquisition, for purposes of:

(i) determining compliance with any provision of this Agreement which requires the calculation of the First Lien Leverage Ratio, the Total Leverage Ratio, the Secured Leverage Ratio, the Fixed Charge Coverage Ratio or EBITDA or the Payment Conditions (other than actual (and not pro forma) compliance with Section 6.12) or in the case of any determination under Section 4.02 with respect to obligations of any Lender to make a Revolving Loan or Swingline Loan or of any Issuing Bank to issue, amend or extend any Letter of Credit;

(ii) determining compliance with representations, warranties, defaults or Events of Default upon consummation of such Limited Condition Acquisition (other than for any determination under Section 4.02 with respect to the obligation of any Revolving Lender to make a Revolving Loan or Swingline Loan or of any Issuing Bank to issue, amend or extend any Letter of Credit); and

(iii) testing availability under baskets set forth in this Agreement;

in each case, at the option of the Borrower Representative (the Borrower Representative's election to exercise such option in connection with any Limited Condition Acquisition, an "LCA Election"), the date of determination of whether any such action is permitted hereunder shall be deemed to be the date the definitive agreements for such Limited Condition Acquisition are entered into (the "LCA Test Date"). If, on a pro forma basis after giving effect to such Limited Condition Acquisition and the other transactions to be entered into in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) with such ratios and other provisions being calculated as if such Limited Condition Acquisition and other transactions had occurred at the beginning of the most recent Test Period ending prior to the LCA Test Date, the Borrowers could have taken such action on the relevant LCA Test Date in compliance with such ratio, default, Events of Default or basket, such ratio, default, Event of Default or basket shall be deemed to have been complied with for purposes of such Limited Condition Acquisition. For the avoidance of doubt, if the Borrower Representative has made an LCA Election and any of the ratios or baskets for which compliance was determined or tested as of the LCA Test Date are exceeded as a result of fluctuations in any such ratio or basket, including due to fluctuations in EBITDA of the Borrowers or the Person subject to such Limited Condition Acquisition, at or prior to the consummation of the relevant transaction or action, such baskets or ratios will not be deemed to have been exceeded as a result of such fluctuations, and such ratios and compliance with such conditions shall not be tested at the time of consummation of such Limited Condition Acquisition or related transactions. If the Borrower Representative has made an LCA Election for any Limited Condition Acquisition, then in connection with any subsequent calculation of any ratios, representations, warranties, defaults, Events of Default or basket availability with respect to the incurrence of Indebtedness or Liens, or the making of Restricted Payments, mergers, the conveyance, lease or other transfer of all or substantially all of the assets of the Borrowers and their Restricted Subsidiaries, the making of asset sales or dispositions, or the prepayment, redemption, purchase, defeasance or other satisfaction of Indebtedness on or following the relevant LCA Test Date and prior to the earlier of the date on which such Limited Condition Acquisition is consummated or the date that the definitive agreement for such Limited Condition Acquisition is terminated or expires without consummation of such Limited Condition Acquisition, any such ratios, representations, warranties, defaults, Events of Default or baskets shall be calculated on a pro forma basis assuming such Limited Condition Acquisition and other transactions in connection therewith (including

any incurrence of Indebtedness and the use of proceeds thereof) have not been consummated until such time as the applicable Limited Condition Acquisition has actually closed (it being further understood that any Net Income and/or EBITDA therefrom shall not be included in determining Net Income or EBITDA, as applicable, in any such subsequent calculation until such Limited Condition Acquisition has actually closed).

~~Section 1.01 Pro Forma Calculations: Certain Calculations~~~~[SECTION 1.05. Pro Forma Adjustments for Acquisitions and Dispositions]. All pro forma computations required to be made hereunder giving effect to any acquisition or disposition, or issuance, incurrence or assumption of Indebtedness, or other transaction shall in each case be calculated giving pro forma effect thereto (and, in the case of any pro forma computation made hereunder to determine whether such acquisition or disposition, or issuance, incurrence or assumption of Indebtedness, or other transaction is permitted to be consummated hereunder, to any other such transaction consummated since the first day of the period covered by any component of such pro forma computation and on or prior to the date of such computation) as if such transaction had occurred on the first day of the period of four consecutive Fiscal Quarters ending with the most recent Fiscal Quarter for which financial statements shall have been delivered pursuant to Section 5.01(a) or 5.01(b) (or, prior to the delivery of any such financial statements, ending with the last Fiscal Quarter included in the financial statements referred to in Section 3.04(a)), and, to the extent applicable, to the historical earnings and cash flows associated with the assets acquired or disposed of (but without giving effect to any synergies or cost savings, unless otherwise permitted pursuant to the definition of "EBITDA") and any related incurrence or reduction of Indebtedness, all in accordance with Article 11 of Regulation S-X under the Securities Act (or as otherwise permitted pursuant to the definition of "EBITDA"). If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date of determination had been the applicable rate for the entire period (taking into account any Swap Agreement applicable to such Indebtedness).~~

[SECTION 1.05. Certain Calculations].

(a) [Reserved].

(b) Notwithstanding anything to the contrary herein but subject to Sections 1.04(b) and 1.05(e), any financial ratios and tests (including, without limitation, any First Lien Leverage Ratio, Total Leverage Ratio, Secured Leverage Ratio, Fixed Charge Coverage Ratio and/or EBITDA) contained in this Agreement or any other Loan Documents that are calculated with respect to any Test Period during which any Specified Transaction occurs shall be calculated with respect to such Test Period and such Specified Transaction on a pro forma basis or be given pro forma effect. For all purposes of this paragraph and the calculations subject hereto, at any Borrower's election, the acquisition of any Person, property, business or assets (and any pro forma events to occur in connection therewith, including the assumption or incurrence of any Indebtedness or Liens) shall be deemed to have "occurred" and been "consummated" upon any Borrower or any Subsidiary entering into a binding definitive agreement with respect thereto, and such deemed occurrence shall continue until such transaction is actually consummated or is abandoned or such definitive agreement is otherwise terminated.

(c) [Intentionally omitted].

(d) Notwithstanding anything to the contrary herein, with respect to any amounts incurred or transactions entered into (or consummated) in reliance on a provision of this Agreement that does not require compliance with a financial ratio or test (including, without limitation, any First Lien Leverage Ratio, Total Leverage Ratio, Secured Leverage Ratio and/or Fixed Charge Coverage Ratio) (any such amounts, including such amounts that are based off EBITDA, the "Fixed Amounts") substantially concurrently with any amounts incurred or transactions entered into (or consummated) under the same covenant in reliance on a provision in such covenant that requires compliance with a financial ratio or test (including, without limitation, any First Lien Leverage Ratio, Total Leverage Ratio, Secured Leverage Ratio and/or Fixed Charge Coverage Ratio) (any such amounts, the "Incurrence-Based Amounts"), it is understood and agreed that the Fixed Amounts shall be disregarded in the calculation of the financial ratio or test applicable to the Incurrence-Based Amounts.



(e) For purposes of determining the permissibility of any action, change, transaction or event that by the terms of this Agreement or any other Loan Documents makes reference to a percentage of EBITDA or requires a calculation of any financial ratio or test (including, without limitation, any First Lien Leverage Ratio, Total Leverage Ratio, Secured Leverage Ratio and/or Fixed Charge Coverage Ratio), no Default or Event of Default shall be deemed to have occurred solely as a result of a change in such amount of EBITDA or such financial ratio or test occurring after the time such action is taken, such change is made, such transaction is consummated or such event occurs, as the case may be.

(f) For purposes of determining compliance with any of the covenants set forth in Article V or Article VI at any time (whether at the time of incurrence or thereafter), if any Indebtedness (other than the initial Loans), Liens (other than Liens in respect of the initial Loans), investment, asset sale or other disposition, Restricted Payment, restricted debt payment or Affiliate transaction meets the criteria of one, or more than one, of the categories permitted pursuant to Article V or Article VI, the Borrower Representative may in its sole discretion determine under which category such Indebtedness, Liens, investment, asset sale or other disposition, Restricted Payment, restricted debt payment or Affiliate transaction (or, in each case, any portion thereof) is permitted and will only be required to include the amount and type of such transaction (or portion thereof) in any one category.

Section 1.05 Status of Obligations. In the event that any Loan Party shall at any time issue or have outstanding any Subordinated Indebtedness, such Loan Party shall take all such actions as shall be necessary to cause the Secured Obligations to constitute senior indebtedness (however denominated) in respect of such Subordinated Indebtedness and to enable the Administrative Agent and the Lenders to have and exercise any payment blockage or other remedies available or potentially available to holders of senior indebtedness under the terms of such Subordinated Indebtedness. Without limiting the foregoing, the Obligations are hereby designated as “senior indebtedness” and as “designated senior indebtedness” and words of similar import under and in respect of any indenture or other agreement or instrument under which such Subordinated Indebtedness is outstanding and are further given all such other designations as shall be required under the terms of any such Subordinated Indebtedness in order that the Lenders may have and exercise any payment blockage or other remedies available or potentially available to holders of senior indebtedness under the terms of such Subordinated Indebtedness.

Section 1.06 Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction’s laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized ~~and acquired~~ on the first date of its existence by the holders of its Equity Interests at such time.

Section 1.07 Interest Rates. The Administrative Agent does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Benchmark, any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the initial Benchmark or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes (excluding, in each case, in the event of bad faith, gross negligence or willful misconduct on the part of the Administrative Agent (as determined by a court of competent jurisdiction in a final, non-appealable judgment)). The Administrative Agent and its affiliates or other related entities may engage in transactions that affect the calculation of the Benchmark, any alternative, successor or replacement rate (including any Benchmark Replacement) and/or any relevant adjustments thereto, in each case, in a manner adverse to the Borrowers. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain the Benchmark or any other Benchmark, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrowers, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any

error or calculation of any such rate (or component thereof) provided by any such information source or service.

## Article II.

### THE CREDITS

Section 1.08 Commitments. Subject to the terms and conditions set forth herein, each Lender (severally and not jointly) agrees to make Revolving Loans to the Borrowers in Dollars from time to time during the Availability Period in an aggregate principal amount that will not result in (i) such Lender's Revolving Exposure exceeding such Lender's Commitment or (ii) the Aggregate Revolving Exposure exceeding the Line Cap, subject to the Administrative Agent's authority, in its sole discretion, to make Protective Advances and Overadvances pursuant to the terms of Sections 2.04 and 2.05. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrowers may borrow, prepay and reborrow Revolving Loans.

Section 1.09 Loans and Borrowings. (a) Each Revolving Loan (other than a Swingline Loan) shall be made as part of a Borrowing consisting of Revolving Loans of the same Class and Type made by the Lenders ratably in accordance with their respective Commitments. The failure of any Lender to make any Revolving Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided that, the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required. Any Protective Advance, any Overadvance and any Swingline Loan shall be made in accordance with the procedures set forth in Sections 2.04 and 2.05.

(g) Subject to Section 2.14, each Revolving Borrowing shall be comprised entirely of Base Rate Loans or SOFR Loans as the Borrower Representative may request in accordance herewith. Each Swingline Loan shall be a Base Rate Loan. Each Lender at its option may make any SOFR Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan (and in the case of an Affiliate, the provisions of Sections 2.15, 2.16 and 2.17 shall apply to such Affiliate to the same extent as to such Lender); provided that any exercise of such option shall not affect the obligation of the Borrowers to repay such Loan in accordance with the terms of this Agreement.

(h) At the commencement of each Interest Period for any SOFR Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of \$500,000 and not less than \$1,000,000. Base Rate Borrowings may be in any amount. Borrowings of more than one Type and Class may be outstanding at the same time; provided that there shall not at any time be more than a total of five (5) SOFR Borrowings outstanding at any time.

(i) Notwithstanding any other provision of this Agreement, the Borrower Representative shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

Section 1.010 Requests for Revolving Borrowings. To request a Revolving Borrowing, the Borrower Representative shall notify the Administrative Agent of such request either in writing (delivered by hand or facsimile) in a form approved by the Administrative Agent and signed by the Borrower Representative or by telephone or through Electronic System, if arrangements for doing so have been approved by the Administrative Agent, not later than (a) in the case of a SOFR Borrowing, 10:00 a.m., New York City time, three (3) Business Days before the date of the proposed Borrowing or (b) in the case of a Base Rate Borrowing, noon, New York City time, on the date of the proposed Borrowing; provided that any such notice of a Base Rate Revolving Borrowing to finance the reimbursement of an LC Disbursement as contemplated by Section 2.06(e) may be given not later than 9:00 a.m., New York City time, on the date of the proposed Borrowing. Each such Borrowing Request shall be irrevocable and each telephonic Borrowing Request shall be confirmed promptly by hand delivery, facsimile or a communication through Electronic System to the Administrative Agent of a written Borrowing Request in a form approved by the Administrative Agent and signed by the Borrower Representative. Each Borrowing Request shall specify the following information:

- (i) the name of the applicable Borrower(s);

- (ii) the aggregate amount of the requested Borrowing and a breakdown of the separate wires comprising such Borrowing;
- (iii) the date of such Borrowing, which shall be a Business Day;
- (iv) whether such Borrowing is to be a Base Rate Borrowing or a SOFR Borrowing;
- (v) in the case of a SOFR Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period"; and
- (vi) the location and account number of the account to which funds are to be disbursed, which shall comply with the requirements of Section 2.07.

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

Section 1.011 Protective Advances.

(j) Subject to the limitations set forth below, the Administrative Agent is authorized by the Borrowers and the Lenders, from time to time in the Administrative Agent's sole discretion (but shall have absolutely no obligation to), to make Loans to the Borrowers, on behalf of all Lenders, which the Administrative Agent, in its Permitted Discretion, deems necessary or desirable (i) to preserve or protect the Collateral, or any portion thereof, (ii) to enhance the likelihood of, or maximize the amount of, repayment of the Loans and other Obligations, or (iii) to pay any other amount chargeable to or required to be paid by the Borrowers pursuant to the terms of this Agreement, including payments of reimbursable expenses (including costs, fees, and expenses as described in Section 9.03) and other sums payable under the Loan Documents (any of such Loans are herein referred to as "Protective Advances"); provided that, the aggregate amount of Protective Advances outstanding at any time shall not at any time exceed \$7,500,000; provided further that, the Aggregate Revolving Exposure after giving effect to the Protective Advances being made shall not exceed the Aggregate Commitment. Protective Advances may be made even if the conditions precedent set forth in Section 4.02 have not been satisfied. The Protective Advances shall be secured by the Liens in favor of the Administrative Agent in and to the Collateral and shall constitute Obligations hereunder. All Protective Advances shall be Base Rate Borrowings. The Administrative Agent's authorization to make Protective Advances may be revoked at any time by the Required Lenders. Any such revocation must be in writing and shall become effective prospectively upon the Administrative Agent's receipt thereof. At any time that there is sufficient Availability and the conditions precedent set forth in Section 4.02 have been satisfied, the Administrative Agent may request the Lenders to make a Revolving Loan to repay a Protective Advance. At any other time the Administrative Agent may require the Lenders to fund their risk participations described in Section 2.04(b).

(k) Upon the making of a Protective Advance by the Administrative Agent (whether before or after the occurrence of a Default), each Lender shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably purchased from the Administrative Agent, without recourse or warranty, an undivided interest and participation in such Protective Advance in proportion to its Applicable Percentage. From and after the date, if any, on which any Lender is required to fund its participation in any Protective Advance purchased hereunder, the Administrative Agent shall promptly distribute to such Lender, such Lender's Applicable Percentage of all payments of principal and interest and all proceeds of Collateral received by the Administrative Agent in respect of such Protective Advance.

Section 1.012 Swingline Loans and Overadvances. (a) The Administrative Agent, the Swingline Lender and the Lenders agree that in order to facilitate the administration of this Agreement and the other Loan Documents, promptly after the Borrower Representative requests a Base Rate

Borrowing, the Swingline Lender may elect to have the terms of this Section 2.05(a) apply to such Borrowing Request by advancing, on behalf of the Lenders and in the amount requested, same day funds to the Borrowers, on the date of the applicable Borrowing to the Funding Account(s) (each such Loan made solely by the Swingline Lender pursuant to this Section 2.05(a) is referred to in this Agreement as a “Swingline Loan”), with settlement among them as to the Swingline Loans to take place on a periodic basis as set forth in Section 2.05(d). Each Swingline Loan shall be subject to all the terms and conditions applicable to other Base Rate Loans funded by the Lenders, except that all payments thereon shall be payable to the Swingline Lender solely for its own account. The aggregate amount of Swingline Loans outstanding at any time shall not exceed \$25,000,000. The Swingline Lender shall not make any Swingline Loan if the requested Swingline Loan exceeds Availability (before or after giving effect to such Swingline Loan). All Swingline Loans shall be Base Rate Borrowings.

(a) Any provision of this Agreement to the contrary notwithstanding, at the request of the Borrower Representative, the Administrative Agent may in its sole discretion (but with absolutely no obligation), make Revolving Loans to the Borrowers, on behalf of the Lenders, in amounts that exceed Availability (any such excess Revolving Loans are herein referred to collectively as “Overadvances”); provided that, no Overadvance shall result in a Default due to Borrowers’ failure to comply with Section 2.01 for so long as such Overadvance remains outstanding in accordance with the terms of this paragraph, but solely with respect to the amount of such Overadvance. In addition, Overadvances may be made even if the condition precedent set forth in Section 4.02(c) has not been satisfied. All Overadvances shall constitute Base Rate Borrowings. The authority of the Administrative Agent to make Overadvances is limited to an aggregate amount not to exceed \$7,500,000 at any time, no Overadvance may remain outstanding for more than thirty (30) days and no Overadvance shall cause any Lender’s Revolving Exposure to exceed its Commitment; provided that, the Required Lenders may at any time revoke the Administrative Agent’s authorization to make Overadvances. Any such revocation must be in writing and shall become effective prospectively upon the Administrative Agent’s receipt thereof.

(b) Upon the making of a Swingline Loan or an Overadvance (whether before or after the occurrence of a Default and regardless of whether a Settlement has been requested with respect to such Swingline Loan or Overadvance), each Lender shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably purchased from the Swingline Lender or the Administrative Agent, as the case may be, without recourse or warranty, an undivided interest and participation in such Swingline Loan or Overadvance in proportion to its Applicable Percentage of the Commitment. The Swingline Lender or the Administrative Agent may, at any time, require the Lenders to fund their participations. From and after the date, if any, on which any Lender is required to fund its participation in any Swingline Loan or Overadvance purchased hereunder, the Administrative Agent shall promptly distribute to such Lender, such Lender’s Applicable Percentage of all payments of principal and interest and all proceeds of Collateral received by the Administrative Agent in respect of such Swingline Loan or Overadvance.

(c) The Administrative Agent, on behalf of the Swingline Lender, shall request settlement (a “Settlement”) with the Lenders on at least a weekly basis and on any date that the Administrative Agent elects, by notifying the Lenders of such requested Settlement by facsimile, telephone, or e-mail no later than 12:00 noon, New York City time, on the date of such requested Settlement (the “Settlement Date”). Each Lender (other than the Swingline Lender, in the case of the Swingline Loans) shall transfer the amount of such Lender’s Applicable Percentage of the outstanding principal amount of the applicable Loan with respect to which Settlement is requested to the Administrative Agent, to such account of the Administrative Agent as the Administrative Agent may designate, not later than 2:00 p.m., New York City time, on such Settlement Date. Settlements may occur during the existence of a Default and whether or not the applicable conditions precedent set forth in Section 4.02 have then been satisfied. Such amounts transferred to the Administrative Agent shall be applied against the amounts of the Swingline Lender’s Swingline Loans and, together with Swingline Lender’s Applicable Percentage of such Swingline Loan, shall constitute Revolving Loans of such Lenders, respectively. If any such amount is not transferred to the Administrative Agent by any Lender on such Settlement Date, the Swingline Lender shall be entitled to recover from such Lender on demand such amount, together with interest thereon, as specified in Section 2.07.

Section 1.013 Letters of Credit. (a) General. Subject to the terms and conditions set forth herein (including satisfaction of the conditions set forth in Section 4.02), any Borrower may request the issuance of Letters of Credit as the applicant thereof for the support of its or its Subsidiaries' obligations, in a form reasonably acceptable to the Administrative Agent and the Issuing Bank, at any time and from time to time during the Availability Period. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by such Borrower to, or entered into by such Borrower with, the Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control. The letters of credit issued, or deemed to be issued, pursuant to the Existing Credit Agreement (the "Existing Letters of Credit") shall be deemed to be "Letters of Credit" issued on the Effective Date for all purposes of the Loan Documents. Notwithstanding anything herein to the contrary, the Issuing Bank shall have no obligation hereunder to issue, and shall not issue, any Letter of Credit the proceeds of which would be made available to any Person (i) to fund any activity or business of or with any Sanctioned Person, or in any country or territory that, at the time of such funding, is the subject of any Sanctions or (ii) in any manner that would result in a violation of any Sanctions by any party to this Agreement. Each Borrower unconditionally and irrevocably agrees that, in connection with any Letter of Credit issued for the support of any Subsidiary's obligations as provided in the first sentence of this paragraph, such Borrower will be fully responsible for the reimbursement of LC Disbursements in accordance with the terms hereof, the payment of interest thereon and the payment of fees due under Section 2.12(b) to the same extent as if it were the sole account party in respect of such Letter of Credit (the Company hereby irrevocably waiving any defenses that might otherwise be available to it as a guarantor or surety of the obligations of such a Subsidiary that is an account party in respect of any such Letter of Credit). Notwithstanding anything herein to the contrary, the Issuing Bank shall have no obligation hereunder to issue, and shall not issue, any Letter of Credit (i) the proceeds of which would be made available to any Person (A) to fund any activity or business of or with any Sanctioned Person, or in any country or territory that, at the time of such funding, is the subject of any Sanctions or (B) in any manner that would result in a violation of any Sanctions by any party to this Agreement, (ii) if any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the Issuing Bank from issuing such Letter of Credit, or any Requirement of Law relating to the Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Issuing Bank shall prohibit, or request that the Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the Issuing Bank is not otherwise compensated hereunder) not in effect on the Effective Date, or shall impose upon the Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Effective Date and which the Issuing Bank in good faith deems material to it, or (iii) if the issuance of such Letter of Credit would violate one or more policies of the Issuing Bank applicable to letters of credit generally; provided that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements or directives thereunder or issued in connection therewith or in the implementation thereof, and (y) all requests, rules, guidelines, requirements or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed not to be in effect on the Effective Date for purposes of clause (ii) above, regardless of the date enacted, adopted, issued or implemented.

(1) Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions. To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower Representative shall deliver by hand or facsimile (or transmit through Electronic Systems, if arrangements for doing so have been approved by the Issuing Bank) to the Issuing Bank and the Administrative Agent (reasonably in advance of, but in any event no less than three (3) Business Days prior to, the requested date of issuance, amendment, renewal or extension) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) of this Section), the amount of such Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit. If requested by the Issuing Bank, the applicable Borrower also shall submit a letter of credit application on the Issuing Bank's standard form in connection with any request for a Letter of Credit. A Letter of Credit shall be

issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit the Borrowers shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension (i) the aggregate LC Exposure shall not exceed \$30,000,000, (ii) the aggregate Standby LC Exposure shall not exceed \$30,000,000, (iii) no Lender's Revolving Exposure shall exceed its Commitment and (iv) the Aggregate Revolving Exposure shall not exceed the Line Cap. Notwithstanding anything herein to the contrary, prior to requesting the issuance of a Letter of Credit, the Administrative Agent shall have received such letter of credit applications or master agreement as may be required by the Issuing Bank (and reasonably acceptable to Administrative Agent), which applications and/or agreements shall be properly completed and executed. Notwithstanding the foregoing or anything to the contrary contained herein, no Issuing Bank shall be obligated to issue or modify any Letter of Credit if, immediately after giving effect thereto, the outstanding LC Exposure in respect of all Letters of Credit issued by such Person and its Affiliates would exceed such Issuing Bank's Issuing Bank Sublimit. Without limiting the foregoing and without affecting the limitations contained herein, it is understood and agreed that any Borrower may from time to time request that an Issuing Bank issue Letters of Credit in excess of its individual Issuing Bank Sublimit in effect at the time of such request, and each Issuing Bank agrees to consider any such request in good faith. Any Letter of Credit so issued by an Issuing Bank in excess of its individual Issuing Bank Sublimit then in effect shall nonetheless constitute a Letter of Credit for all purposes of the Credit Agreement, and shall not affect the Issuing Bank Sublimit of any other Issuing Bank, subject to the limitations on the aggregate LC Exposure set forth in clause (i) of this Section 2.06(b).

(m) Expiration Date. Each Letter of Credit shall expire (or be subject to termination by notice from the Issuing Bank to the beneficiary thereof) at or prior to the close of business on the earlier of (i) the date one year after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) and (ii) the date that is five (5) Business Days prior to the Maturity Date; provided that any Letter of Credit with a one-year tenor may contain customary automatic renewal provisions agreed upon by the Borrower and the Issuing Bank that provide for the renewal thereof for additional one-year periods (which shall in no event extend beyond the date referenced in clause (ii) above), subject to a right on the part of the Issuing Bank to prevent any such renewal from occurring by giving notice to the beneficiary in advance of any such renewal.

(n) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the Issuing Bank or the Lenders, the Issuing Bank hereby grants to each Lender, and each Lender hereby acquires from the Issuing Bank, a participation in such Letter of Credit equal to such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the Issuing Bank, such Lender's Applicable Percentage of each LC Disbursement made by the Issuing Bank and not reimbursed by the Borrowers on the date due as provided in paragraph (e) of this Section, or of any reimbursement payment required to be refunded to the Borrowers for any reason. Each Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(o) Reimbursement. If the Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, the Borrowers shall reimburse such LC Disbursement by paying to the Administrative Agent an amount equal to such LC Disbursement (i) not later than 11:00 a.m., New York City time, on the date that such LC Disbursement is made, if the Borrower Representative shall have received notice of such LC Disbursement prior to 9:00 a.m., New York City time, on such date, or (ii) if such notice has not been received by the Borrower Representative prior to such time on such date, then not later than 11:00 a.m., New York City time, on the Business Day immediately following the day that the Borrower Representative receives such notice; provided that the Borrowers may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 or Section 2.05 that such payment be financed with a Base Rate Revolving Borrowing or Swingline Loan in an equivalent amount and, to the extent so financed, the Borrowers' obligation to make such payment shall be discharged and replaced by

the resulting Base Rate Revolving Borrowing or Swingline Loan. If the Borrowers fail to make such payment when due, the Administrative Agent shall notify each Lender of the applicable LC Disbursement, the payment then due from the Borrowers in respect thereof and such Lender's Applicable Percentage thereof. Promptly following receipt of such notice, each Lender shall pay to the Administrative Agent its Applicable Percentage of the payment then due from the Borrowers, in the same manner as provided in Section 2.07 with respect to Loans made by such Lender (and Section 2.07 shall apply, *mutatis mutandis*, to the payment obligations of the Lenders), and the Administrative Agent shall promptly pay to the Issuing Bank the amounts so received by it from the Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrowers pursuant to this paragraph, the Administrative Agent shall distribute such payment to the Issuing Bank or, to the extent that Lenders have made payments pursuant to this paragraph to reimburse the Issuing Bank, then to such Lenders and the Issuing Bank as their interests may appear. Any payment made by a Lender pursuant to this paragraph to reimburse the Issuing Bank for any LC Disbursement (other than the funding of Base Rate Revolving Loans or a Swingline Loan as contemplated above) shall not constitute a Loan and shall not relieve the Borrowers of their obligation to reimburse such LC Disbursement.

(p) Obligations Absolute. The Borrowers' joint and several obligation to reimburse LC Disbursements as provided in paragraph (e) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein or herein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrowers' obligations hereunder. Neither the Administrative Agent, the Lenders nor the Issuing Bank, nor any of their Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the Issuing Bank; provided that the foregoing shall not be construed to excuse the Issuing Bank from liability to the Borrowers to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrowers to the extent permitted by applicable law) suffered by any Borrower that are caused by the Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the Issuing Bank (as finally determined by a court of competent jurisdiction), the Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(q) Disbursement Procedures. The Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. The Issuing Bank shall promptly notify the Administrative Agent and the applicable Borrower by telephone (confirmed by facsimile) of such demand for payment and whether the Issuing Bank has made or will make an LC Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the Borrowers of their obligation to reimburse the Issuing Bank and the Lenders with respect to any such LC Disbursement.

(r) Interim Interest. If the Issuing Bank shall make any LC Disbursement, then, unless the Borrowers shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the

unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Borrowers reimburse such LC Disbursement, at the rate per annum then applicable to Base Rate Revolving Loans and such interest shall be payable on the date when such reimbursement is due; provided that, if the Borrowers fail to reimburse such LC Disbursement when due pursuant to paragraph (e) of this Section, then Section 2.13(d) shall apply. Interest accrued pursuant to this paragraph shall be for the account of the Issuing Bank, except that interest accrued on and after the date of payment by any Lender pursuant to paragraph (e) of this Section to reimburse the Issuing Bank shall be for the account of such Lender to the extent of such payment.

(s) Replacement of the Issuing Bank. (A) The Issuing Bank may be replaced at any time by written agreement among the Borrower Representative, the Administrative Agent, the replaced Issuing Bank and the successor Issuing Bank. The Administrative Agent shall notify the Lenders of any such replacement of the Issuing Bank. At the time any such replacement shall become effective, the Borrowers shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.12(b). From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of the Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "Issuing Bank" shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the replacement of an Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit then outstanding and issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(B) Subject to the appointment and acceptance of a successor Issuing Bank in accordance with the terms of this Agreement, the Issuing Bank may resign as the Issuing Bank at any time upon thirty days' prior written notice to the Administrative Agent, the Borrower Representative and the Lenders, in which case, the Issuing Bank shall be replaced in accordance with Section 2.06(i)(A) above.

(t) Cash Collateralization. Subject to the terms of the Intercreditor Agreement, if any Event of Default shall occur and be continuing, on the Business Day that the Borrower Representative receives notice from the Administrative Agent or the Required Lenders (or, if the maturity of the Loans has been accelerated, Required Lenders) demanding the deposit of cash collateral pursuant to this paragraph, the Borrowers shall deposit in an account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Lenders (the "LC Collateral Account"), an amount in cash equal to 103% of the LC Exposure as of such date plus accrued and unpaid interest thereon; provided that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to any Borrower described in clause (h) or (i) of Article VII. Such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the Secured Obligations. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over the LC Collateral Account and the Borrowers hereby grant the Administrative Agent a security interest in the LC Collateral Account and all money or other assets on deposit therein or credited thereto. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the Borrowers' risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in the LC Collateral Account. Subject to the terms of the Intercreditor Agreement, moneys in the LC Collateral Account shall be applied by the Administrative Agent to reimburse the Issuing Bank for LC Disbursements for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrowers for the LC Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of Required Lenders), be applied to satisfy other Secured Obligations. Subject to the terms of the Intercreditor Agreement, if the Borrowers are required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrowers within three (3) Business Days after all such Events of Default have been cured or waived as confirmed in writing by the Administrative Agent.

(u) Issuing Bank Reports to the Administrative Agent. Unless otherwise agreed by the Administrative Agent, each Issuing Bank shall, in addition to its notification obligations set forth



elsewhere in this Section, report in writing to the Administrative Agent (i) periodic activity (for such period or recurrent periods as shall be requested by the Administrative Agent) in respect of Letters of Credit issued by such Issuing Bank, including all issuances, extensions, amendments and renewals, all expirations and cancelations and all disbursements and reimbursements, (ii) reasonably prior to the time that such Issuing Bank issues, amends, renews or extends any Letter of Credit, the date of such issuance, amendment, renewal or extension, and the stated amount of the Letters of Credit issued, amended, renewed or extended by it and outstanding after giving effect to such issuance, amendment, renewal or extension (and whether the amounts thereof shall have changed), (iii) on each Business Day on which such Issuing Bank makes any LC Disbursement, the date and amount of such LC Disbursement, (iv) on any Business Day on which a Borrower fails to reimburse an LC Disbursement required to be reimbursed to such Issuing Bank on such day, the date of such failure and the amount of such LC Disbursement, and (v) on any other Business Day, such other information as the Administrative Agent shall reasonably request as to the Letters of Credit issued by such Issuing Bank.

(v) LC Exposure Determination. For all purposes of this Agreement, the amount of a Letter of Credit that, by its terms or the terms of any document related thereto, provides for one or more automatic increases in the stated amount thereof shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at the time of determination.

Section 1.014 Funding of Borrowings. (a) Each Lender shall make each Loan to be made by such Lender hereunder on the proposed date thereof by wire transfer of immediately available funds by 11:00 a.m., New York City time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders in an amount equal to such Lender's Applicable Percentage of such Loan; provided that Swingline Loans shall be made as provided in Section 2.05. The Administrative Agent will make such Loans available to the Borrower Representative by promptly crediting the amounts so received, in like funds, to an account of the Borrower Representative maintained with the Administrative Agent or as otherwise designated in the Borrowing Request; provided that Base Rate Revolving Loans made to finance the reimbursement of (i) an LC Disbursement as provided in Section 2.06(e) shall be remitted by the Administrative Agent to the Issuing Bank and (ii) a Protective Advance or an Overadvance shall be retained by the Administrative Agent.

(a) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption, make available to the applicable Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrowers severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the applicable Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of the Borrowers, the interest rate applicable to Base Rate Loans. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing.

Section 1.015 Interest Elections. (a) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a SOFR Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower Representative may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a SOFR Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower Representative may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing. This Section shall not apply to Swingline Borrowings, Overadvances or Protective Advances, which may not be converted or continued.

(w) To make an election pursuant to this Section, the Borrower Representative shall notify the Administrative Agent of such election by telephone or through Electronic System, if arrangements for doing so have been approved by the Administrative Agent, by the time that a Borrowing Request would be required under Section 2.03 if the Borrowers were requesting a Revolving Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery or facsimile to the Administrative Agent of a written Interest Election Request in a form approved by the Administrative Agent and signed by the Borrower Representative. Notwithstanding any contrary provision herein, this Section shall not be construed to permit the Borrower Representative to elect an Interest Period for SOFR Loans that does not comply with Section 2.02.

(x) Each telephonic and written Interest Election Request (including requests submitted through Electronic System) shall specify the following information in compliance with Section 2.02:

(i) the name of the applicable Borrower and the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be a Base Rate Borrowing or a SOFR Borrowing; and

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

If any such Interest Election Request requests a SOFR Borrowing but does not specify an Interest Period, then the Borrowers shall be deemed to have selected an Interest Period of one month's duration.

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

(e) If the Borrower Representative fails to deliver a timely Interest Election Request with respect to a SOFR Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to a Base Rate Borrowing. Notwithstanding any contrary provision hereof, if a Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower Representative, then, so long as a Default is continuing (i) no outstanding Borrowing may be converted to or continued as a SOFR Borrowing and (ii) unless repaid, each SOFR Borrowing shall be converted to a Base Rate Borrowing at the end of the Interest Period applicable thereto.

Section 1.016 Termination and Reduction of Commitments; Increase in Commitments.

(y) Unless previously terminated, the Commitments shall terminate on the Maturity Date.

(z) The Borrowers may at any time terminate the Commitments upon (i) the payment in full of all outstanding Loans, together with accrued and unpaid interest thereon and on any Letters of Credit, (ii) the cancellation and return of all outstanding Letters of Credit (or alternatively, with respect to each such Letter of Credit, the furnishing to the Administrative Agent of a cash deposit (or at the discretion of the Administrative Agent a back-up standby letter of credit satisfactory to the Administrative Agent and Issuing Bank) equal to 103% of the LC Exposure as of such date), (iii) the payment in full of the accrued and unpaid fees, and (iv) the payment in full of all reimbursable expenses and other Obligations, together with accrued and unpaid interest thereon.

(aa) The Borrowers may from time to time reduce the Commitments; provided that (i) each reduction of the Commitments shall be in an amount that is an integral multiple of \$5,000,000 and not less than \$5,000,000; (ii) the Borrowers shall not terminate or reduce the Commitments if, after giving effect to any concurrent prepayment of the Revolving Loans in accordance with Section 2.10, the Aggregate Revolving Exposure would exceed the Line Cap; and (iii) any such reduction shall be permanent.

(ab) The Borrower Representative shall notify the Administrative Agent of any election to terminate or reduce the Commitments under the foregoing paragraphs of this Section at least five (5) Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any such notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Borrower Representative pursuant to this Section shall be irrevocable; provided that a notice of termination of the Commitments delivered by the Borrower Representative may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Borrower Representative (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Commitments shall be permanent. Each reduction of the Commitments shall be made ratably among the Lenders in accordance with their respective Commitments.

(ac) The Borrowers shall have the right to increase the Commitments by obtaining additional Commitments, either from one or more of the Lenders or another lending institution provided that (i) any such request for an increase shall be in a minimum amount of \$5,000,000 (or such lesser amount that represents all remaining availability hereunder), (ii) after giving effect thereto, the sum of the total of the additional Commitments does not exceed \$25,000,000, (iii) the Administrative Agent and the Issuing Bank(s) have approved the identity of any such new Lender, such approvals not to be unreasonably withheld, (iv) any such new Lender assumes all of the rights and obligations of a "Lender" hereunder, and (v) the procedure described in Section 2.09(f) have been satisfied. Nothing contained in this Section 2.09 shall constitute, or otherwise be deemed to be, a commitment on the part of any Lender to increase its Commitment hereunder at any time.

(ad) Any amendment hereto for such an increase or addition shall be in form and substance reasonably satisfactory to the Administrative Agent and shall only require the written signatures of the Administrative Agent, the Borrowers and each Lender being added or increasing its Commitment. As a condition precedent to such an increase or addition, the Borrowers shall deliver to the Administrative Agent (i) a certificate of each Loan Party signed by an authorized officer of such Loan Party (A) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase, and (B) in the case of the Borrowers, certifying that, before and after giving effect to such increase or addition, (1) the representations and warranties contained in Article III and the other Loan Documents are true and correct in all material respects (provided that any representation or warranty that is qualified by materiality or Material Adverse Effect is true and correct in all respects), except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in all material respects (provided that any representation or warranty that is qualified by materiality or Material Adverse Effect are true and correct in all respects) as of such earlier date, (2) no Default exists and (3) the Borrowers are in compliance (on a pro forma basis) with the covenant contained in Section 6.12 (calculated assuming an FCCR Test Period is then in effect) and (ii) legal opinions and documents consistent with those delivered on the Effective Date, to the extent reasonably requested by the Administrative Agent.

(ae) On the effective date of any such increase or addition, (i) any Lender increasing (or, in the case of any newly added Lender, extending) its Commitment shall make available to the Administrative Agent such amounts in immediately available funds as the Administrative Agent shall determine, for the benefit of the other Lenders, as being required in order to cause, after giving effect to such increase or addition and the use of such amounts to make payments to such other Lenders, each Lender's portion of the outstanding Revolving Loans of all the Lenders to equal its revised Applicable Percentage of such outstanding Revolving Loans, and the Administrative Agent shall make such other adjustments among the Lenders with respect to the Revolving Loans then outstanding and amounts of principal, interest, commitment fees and other amounts paid or payable with respect thereto as shall be

necessary, in the opinion of the Administrative Agent, in order to effect such reallocation and (ii) the Borrowers shall be deemed to have repaid and reborrowed all outstanding Revolving Loans as of the date of any increase (or addition) in the Commitments (with such reborrowing to consist of the Types of Revolving Loans, with related Interest Periods if applicable, specified in a notice delivered by the Borrower Representative, in accordance with the requirements of Section 2.03). The deemed payments made pursuant to clause (ii) of the immediately preceding sentence shall be accompanied by payment of all accrued interest on the amount prepaid and, in respect of each SOFR Loan, shall be subject to indemnification by the Borrowers pursuant to the provisions of Section 2.16 if the deemed payment occurs other than on the last day of the related Interest Periods. Within a reasonable time after the effective date of any increase or addition, the Administrative Agent shall, and is hereby authorized and directed to, revise the Commitment Schedule to reflect such increase or addition and shall distribute such revised Commitment Schedule to each of the Lenders and the Borrower Representative, whereupon such revised Commitment Schedule shall replace the old Commitment Schedule and become part of this Agreement.

Section 1.10 Repayment of Loans; Evidence of Debt. (a) The Borrowers hereby unconditionally promise to pay (i) to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Revolving Loan on the Maturity Date, (ii) to the Administrative Agent the then unpaid amount of each Protective Advance on the earlier of the Maturity Date and demand by the Administrative Agent and (iii) to the Administrative Agent the then unpaid principal amount of each Overadvance on the earlier of the Maturity Date and demand by the Administrative Agent.

(af) At all times that full cash dominion is in effect pursuant to Section 7.3 of the Security Agreement, on each Business Day, the Administrative Agent shall apply all funds credited to the Collection Account on such Business Day or the immediately preceding Business Day (at the discretion of the Administrative Agent, whether or not immediately available) first to prepay any Protective Advances and Overadvances that may be outstanding, pro rata, and second to prepay the Revolving Loans (including Swingline Loans) and to cash collateralize outstanding LC Exposure.

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

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

(ai) The entries made in the accounts maintained pursuant to paragraphs (c) or (d) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrowers to repay the Loans in accordance with the terms of this Agreement.

(aj) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrowers shall prepare, execute and deliver to such Lender a promissory note payable to such Lender and its registered assigns and in a form approved by the Administrative Agent. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one or more promissory notes in such form.

Section 1.11 Prepayment of Loans. (a) The Borrowers shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to prior notice in accordance with paragraph (c) of this Section and, if applicable, payment of any break funding expenses under Section 2.16.

(ak) Except for Overadvances permitted under Section 2.05, in the event and on such occasion that the Aggregate Revolving Exposure exceeds the Line Cap, the Borrowers shall prepay the Revolving Loans, LC Exposure and/or Swingline Loans or cash collateralize LC Exposure in an account with the Administrative Agent pursuant to Section 2.06(j), as applicable, in an aggregate amount equal to such excess.

(al) The Borrower Representative shall notify the Administrative Agent (and, in the case of prepayment of a Swingline Loan, the Swingline Lender) by telephone (confirmed by facsimile) or through Electronic System, if arrangements for doing so have been approved by the Administrative Agent, of any prepayment hereunder not later than 10:00 a.m., New York City time, (A) in the case of prepayment of a SOFR Borrowing, three (3) Business Days before the date of prepayment or (B) in the case of prepayment of a Base Rate Borrowing, one (1) Business Day before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; provided that if a notice of prepayment is given in connection with a conditional notice of termination of the Commitments as contemplated by Section 2.09, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.09. Promptly following receipt of any such notice relating to a Borrowing, the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Revolving Borrowing shall be in an amount that would be permitted in the case of an advance of a Revolving Borrowing of the same Type as provided in Section 2.02. Each prepayment of a Revolving Borrowing shall be applied ratably to the Revolving Loans included in the prepaid Borrowing. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.13 and amounts due under Section 2.16 (if any).

Section 1.1 Fees. (a) The Borrowers agree to pay to the Administrative Agent for the account of each Lender a commitment fee, which shall accrue at 0.25% per annum on the average daily amount of the Available Commitment of such Lender during the period from and including the Effective Date to but excluding the date on which the Lenders' Commitments terminate. Accrued commitment fees shall be payable in arrears on the first Business Day of each January, April, July and October (commencing on the first such date to occur after the Effective Date) and on the date on which the Commitments terminate. All commitment fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(am) The Borrowers agree to pay (i) to the Administrative Agent for the account of each Lender a participation fee with respect to its participations in Letters of Credit, which shall accrue at the same Applicable Rate used to determine the interest rate applicable to SOFR Loans on the average daily amount of such Lender's LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date on which such Lender's Commitment terminates and the date on which such Lender ceases to have any LC Exposure, and (ii) to the Issuing Bank, for its own account, a fronting fee, which shall accrue at the rate of 0.125% per annum on the average daily amount of the LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date of termination of the Commitments and the date on which there ceases to be any LC Exposure, as well as the Issuing Bank's standard fees and commissions with respect to the issuance, amendment, cancellation, negotiation, transfer, presentment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Participation fees and fronting fees accrued through and including the last day of each Fiscal Quarter shall be payable on the first Business Day of each Fiscal Quarter following such last day, commencing on the first such date to occur after the Effective Date; provided that all such fees shall be payable on the date on which the Commitments terminate and any such fees accruing after the date on which the Commitments terminate shall be payable on demand. Any other fees payable to the Issuing Bank pursuant to this paragraph shall be payable within ten (10) days after demand. All participation fees and fronting fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(an) The Borrowers agree to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon between the Borrowers and the Administrative Agent.

(ao) All fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Administrative Agent (or to the Issuing Bank, in the case of fees payable to it) for distribution, in the case of commitment fees and participation fees, to the Lenders. Fees paid shall not be refundable under any circumstances.

Section 1.12 Interest. (a) The Loans comprising each Base Rate Borrowing (including each Swingline Loan) shall bear interest on the outstanding principal amount thereof at the Base Rate plus the Applicable Rate.

(ap) Subject to the provisions of Section 2.14 below, the Loans comprising each SOFR Borrowing shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to Adjusted Term SOFR for such Interest Period plus the Applicable Rate.

(aq) Each Protective Advance and each Overadvance shall bear interest at the Base Rate plus the Applicable Rate for Revolving Loans plus 2%.

(ar) Notwithstanding the foregoing, during the occurrence and continuance of an Event of Default, the Administrative Agent or the Required Lenders may, at their option, by notice to the Borrower Representative (which notice may be revoked at the option of the Required Lenders notwithstanding any provision of Section 9.02 requiring the consent of “each Lender affected thereby” for reductions in interest rates), declare that (i) all Loans shall bear interest at 2% plus the rate otherwise applicable to such Loans as provided in the preceding paragraphs of this Section or (ii) in the case of any other amount outstanding hereunder, such amount shall accrue at 2% plus the rate applicable to such fee or other obligation as provided hereunder; provided that no notice shall be required and the foregoing rates shall automatically take effect upon the occurrence of an Event of Default under clause (a), (h), (i) or (j) of Article VII.

(as) Accrued interest on each Loan (for Base Rate Loans, accrued through the last day of the prior calendar month) shall be payable in arrears on each Interest Payment Date for such Loan and upon termination of the Commitments; provided that (i) interest accrued pursuant to paragraph (d) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of a Base Rate Revolving Loan prior to the end of the Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any SOFR Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(at) All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to Adjusted Term SOFR) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan or other Obligation not paid when due for the day on which the Loan is made or such Obligation is due and unpaid, and shall not accrue on a Loan, or any portion thereof, or such Obligation for the day on which the Loan, or such portion thereof, or Obligation is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.18(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error. In connection with the use or administration of Term SOFR, the Administrative Agent (in consultation with the Borrower Representative) will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document (other than the Administrative Agent in consultation with the Borrower Representative). The Administrative Agent will promptly notify the Borrower Representative and the Lenders of the effectiveness of any Conforming Changes in connection with the use or administration of Term SOFR.

Section 1.2 Inability to Determine Rates; Effect of Benchmark Transition; Illegality.

Loan: (au) Inability to Determine Rates. Subject to Section 2.14(b), if, on or prior to the first day of any Interest Period for any SOFR

(i) the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that adequate and reasonable means do not exist for ascertaining Term SOFR (including because Term SOFR is not available or published on a current basis) for such Interest Period; or

(ii) the Required Lenders determine that for any reason in connection with any request for a SOFR Loan or a conversion thereto or a continuation thereof that Term SOFR for such Interest Period with respect to a proposed SOFR Loan will not adequately and fairly reflect the cost to such Lenders of funding such Loan, and the Required Lenders have provided notice of such determination to the Administrative Agent;

then the Administrative Agent shall give notice thereof to the Borrower Representative and the Lenders through Electronic System as provided in Section 9.01 as promptly as practicable thereafter. Upon notice thereof by the Administrative Agent to the Borrower Representative, any obligation of the Lenders to make or continue SOFR Loans shall be suspended (to the extent of the affected SOFR Loans and the affected Interest Periods) until the circumstances giving rise to such notice no longer exist and the Administrative Agent promptly notifies the Borrower Representative that such notice is revoked. Upon receipt of such notice, (i) the ~~Borrower~~Borrowers may revoke any pending request for a borrowing of, conversion to or continuation of SOFR Loans (to the extent of the affected SOFR Loans and the affected Interest Periods) or, failing that, the ~~Borrower~~Borrowers will be deemed to have converted any such request into a request for a Borrowing of, or conversion to, Base Rate Loans in the amount specified therein and (ii) any outstanding affected SOFR Loans will be deemed to have been converted into Base Rate Loans at the end of the applicable Interest Period. Upon any such conversion, the ~~Borrower~~Borrowers shall also pay any additional amounts required pursuant to Section 2.16 (if and to the extent applicable).

(f) Effect of Benchmark Transition Event. Notwithstanding anything to the contrary herein or in any other Loan Document:

(iii) Benchmark Replacement. If a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to any setting of the then-current Benchmark, then (A) if a Benchmark Replacement is determined in accordance with clause (a) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (B) if a Benchmark Replacement is determined in accordance with clause (b) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders.

(iv) Benchmark Replacement Conforming Changes. Notwithstanding anything to the contrary herein or in any other Loan Document, in connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Administrative Agent (in consultation with the Borrower Representative) will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document (other than the Administrative Agent in consultation with the Borrower Representative).

(v) Notice; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower Representative and the Lenders of (A) the occurrence of any Benchmark Transition Event, (B) the implementation of any Benchmark Replacement, (C) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement, (D) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (iv) below and (E) the commencement or conclusion of any Benchmark Unavailability Period. The Administrative Agent will promptly notify the Borrower of the removal or reinstatement of any tenor of a Benchmark pursuant to Section 2.14. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.14, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.14.

(vi) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement) (A) if the then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (1) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (2) the administration of such Benchmark or the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks, then the Administrative Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable, non-representative, non-compliant or non-aligned tenor and (B) if a tenor that was removed pursuant to clause (A) above either (1) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (2) ceases to not be representative or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(vii) Benchmark Unavailability Period. Upon the Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any pending request for a SOFR Loan, or conversion to or continuation of SOFR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to Base Rate Loans. During a Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of Base Rate.

(av) Illegality. If any Lender determines that any Requirement of Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable lending office to make, maintain or fund Loans whose interest is determined by reference to Term SOFR, or to determine or charge interest rates based upon Term SOFR, then, on notice thereof by such Lender to the Borrower Representative through the Administrative Agent, (i) any obligation of such Lender to make or continue SOFR Loans or to convert Base Rate Loans to SOFR Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate of which is determined by reference to the Term SOFR component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if and to the extent necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Term SOFR component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower Representative



that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the applicable Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all SOFR Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if and to the extent necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Term SOFR component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such SOFR Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such SOFR Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon Term SOFR, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Term SOFR component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon Term SOFR. Upon any such prepayment or conversion, the applicable Borrower shall also pay or cause to be paid accrued and unpaid interest on the amount so prepaid or converted.

Section 1.13 Increased Costs. (a) If any Change in Law shall:

(viii) impose, modify or deem applicable any reserve, special deposit, liquidity or similar requirement (including any compulsory loan requirement), insurance charge or other assessment) against assets of, deposits with or for the account of, or credit extended by, any Lender or the Issuing Bank;

(ix) impose on any Lender or the Issuing Bank or the ~~London~~applicable interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein; or

(i) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, continuing, converting into or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender, the Issuing Bank or such other Recipient of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender, the Issuing Bank or such other Recipient hereunder (whether of principal, interest or otherwise), then the Borrowers will pay to such Lender, the Issuing Bank or such other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, the Issuing Bank or such other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(g) If any Lender or the Issuing Bank determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or the Issuing Bank's capital or on the capital of such Lender's or the Issuing Bank's holding company, if any, as a consequence of this Agreement, the Commitments of, or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the Issuing Bank, to a level below that which such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the Issuing Bank's policies and the policies of such Lender's or the Issuing Bank's holding company with respect to capital adequacy and liquidity), then from time to time the Borrowers will pay to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company for any such reduction suffered.

(h) A certificate of a Lender or the Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or the Issuing Bank or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower Representative and shall be conclusive absent manifest error. The Borrowers shall pay such Lender or the Issuing Bank, as

the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(i) Failure or delay on the part of any Lender or the Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or the Issuing Bank's right to demand such compensation; provided that the Borrowers shall not be required to compensate a Lender or the Issuing Bank pursuant to this Section for any increased costs or reductions incurred more than 180 days prior to the date that such Lender or the Issuing Bank, as the case may be, notifies the Borrower Representative of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the Issuing Bank's intention to claim compensation therefor; provided, further, that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

Section 1.1 Break Funding Payments. In the event of (a) the payment of any principal of any SOFR Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default or as a result of any prepayment pursuant to Section 2.11), (b) the conversion of any SOFR Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any SOFR Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.09(d) and is revoked in accordance therewith), or (d) the assignment of any SOFR Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower Representative pursuant to Section 2.19 or 9.02(e), then, in any such event, the Borrowers shall compensate each Lender for the loss, cost and expense attributable to such event. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section and a description in reasonable detail of the calculation thereof shall be delivered to the Borrower Representative and shall be conclusive absent manifest error. The Borrowers shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

Section 1.2 Withholding of Taxes; Gross-Up. SECTION 2.17. Withholding of Taxes; Gross-Up.

(aw) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable withholding agent) requires the deduction or withholding of any Tax from any such payment by a withholding agent, then the applicable withholding agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding for Indemnified Taxes has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.17) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

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

(ay) Evidence of Payments. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 2.17, such Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(az) Indemnification by the Loan Parties. The Loan Parties shall jointly and severally indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto,

whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability, including a description of the basis for the indemnification claim to the extent reasonably available, delivered to any Loan Party by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(ba) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 9.04(c) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to such Lender from any other source against any amount due to the Administrative Agent under this paragraph (e).

(bb) Status of Lenders.

(x) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower Representative and the Administrative Agent, at the time or times reasonably requested by the Borrower Representative or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower Representative or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower Representative or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower Representative or the Administrative Agent as will enable the Borrowers or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.17(f)(ii)(A), 2.17(f)(ii)(B) and 2.17(f)(ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(xi) Without limiting the generality of the foregoing, in the event that any Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to the Borrower Representative and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or the Administrative Agent), an executed copy of IRS Form W-9 certifying that such Lender is exempt from U.S. Federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower Representative and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, an executed IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. Federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. Federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(2) in the case of a Foreign Lender claiming that its extension of credit will generate U.S. effectively connected income, an executed IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit G-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of a Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) an executed IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable; or

(4) to the extent a Foreign Lender is not the Beneficial Owner, an executed IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-2 or Exhibit G-3, IRS Form W-9, and/or other certification documents from each Beneficial Owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower Representative and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or the Administrative Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. Federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrowers or the Administrative Agent to determine the withholding or deduction required to be made; and

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

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower Representative and the Administrative Agent in writing of its legal inability to do so.

(bc) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.17 (including by the payment of additional amounts pursuant to this Section 2.17), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.17 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph (g) shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(bd) Survival. Each party's obligations under this Section 2.17 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

(be) Defined Terms. For purposes of this Section 2.17, the term "Lender" includes any Issuing Bank and the term "applicable law" includes FATCA.

Section 1.14 Payments Generally; Allocation of Proceeds; Sharing of Set-offs. (a) The Borrowers shall make each payment required to be made by them hereunder (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.15, 2.16 or 2.17, or otherwise) prior to 4:00 p.m., New York City time, on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices at 111 West Monroe, Chicago, Illinois, or to the account designated by Administrative Agent in writing, except payments to be made directly to the Issuing Bank or Swingline Lender as expressly provided herein and except that payments pursuant to Section 2.15, 2.16, 2.17 and

9.03 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall accrue and be payable for the period of such extension. All payments hereunder shall be made in Dollars.

(bf) Any proceeds of Collateral received by the Administrative Agent (i) not constituting either (A) a specific payment of principal, interest, fees or other sum payable under the Loan Documents (which shall be applied as specified by the Borrowers), (B) a mandatory prepayment (which shall be applied in accordance with Section 2.11) or (C) amounts to be applied from the Collection Account when full cash dominion is in effect (which shall be applied in accordance with Section 2.10(b)) or (ii) after an Event of Default has occurred and is continuing, shall be applied, subject to the terms of the Intercreditor Agreement, ratably first, to pay any fees, indemnities, or expense reimbursements including amounts then due to the Administrative Agent and the Issuing Bank from the Borrowers (other than in connection with Banking Services Obligations or Swap Agreement Obligations), second, to pay any fees or expense reimbursements then due to the Lenders from the Borrowers (other than in connection with Banking Services Obligations or Swap Agreement Obligations), third, to pay interest due in respect of the Overadvances and Protective Advances, fourth, to pay the principal of the Overadvances and Protective Advances, fifth, to pay interest then due and payable on the Loans (other than the Overadvances and Protective Advances) ratably, sixth, to prepay principal on the Loans (other than the Overadvances and Protective Advances) and unreimbursed LC Disbursements and to pay any amounts owing with respect to Swap Agreement Obligations up to and including the amount most recently provided to the Administrative Agent pursuant to Section 2.22, for which Reserves have been established ratably, seventh, to pay an amount to the Administrative Agent equal to one hundred three percent (103%) of the aggregate undrawn face amount of all outstanding Letters of Credit and the aggregate amount of any unpaid LC Disbursements, to be held as cash collateral for such Obligations, eighth, to payment of any amounts owing with respect to Banking Services Obligations and Swap Agreement Obligations up to and including the amount most recently provided to the Administrative Agent pursuant to Section 2.22, and to the extent not paid pursuant to clause sixth above, and ninth, to the payment of any other Secured Obligation due to the Administrative Agent or any Lender by the Borrowers. Notwithstanding the foregoing amounts received from any Loan Party shall not be applied to any Excluded Swap Obligation of such Loan Party. Notwithstanding anything to the contrary contained in this Agreement, unless so directed by the Borrower Representative, or unless a Default is in existence, neither the Administrative Agent nor any Lender shall apply any payment which it receives to any SOFR Loan of a Class, except (a) on the expiration date of the Interest Period applicable thereto or (b) in the event, and only to the extent, that there are no outstanding Base Rate Loans of the same Class and, in any such event, the Borrowers shall pay the break funding payment required in accordance with Section 2.16 (if and to the extent applicable). The Administrative Agent and the Lenders shall have the continuing and exclusive right to apply and reverse and reapply any and all such proceeds and payments to any portion of the Secured Obligations.

(bg) At the election of the Administrative Agent, all payments of principal, interest, LC Disbursements, fees, premiums, reimbursable expenses (including, without limitation, all reimbursement for fees, costs and expenses pursuant to Section 9.03), and other sums payable under the Loan Documents, may be paid from the proceeds of Borrowings made hereunder whether made following a request by the Borrower Representative pursuant to Section 2.03 or a deemed request as provided in this Section or may be deducted from any deposit account of any Borrower maintained with the Administrative Agent. The Borrowers hereby irrevocably authorize (i) the Administrative Agent to make a Borrowing for the purpose of paying each payment of principal, interest and fees as it becomes due hereunder or any other amount due under the Loan Documents and agrees that all such amounts charged shall constitute Loans (including Swingline Loans and Overadvances, but such a Borrowing may only constitute a Protective Advance if it is to reimburse costs, fees and expenses as described in Section 9.03) and that all such Borrowings shall be deemed to have been requested pursuant to Section 2.03, 2.04 or 2.05, as applicable, and (ii) the Administrative Agent to charge any deposit account of any Borrower maintained with the Administrative Agent for each payment of principal, interest and fees as it becomes due hereunder or any other amount due under the Loan Documents.

(bh) If, except as otherwise expressly provided herein, any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or participations in LC Disbursements resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and participations in LC Disbursements and Swingline Loans and accrued interest thereon than the proportion received by any other similarly situated Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans and participations in LC Disbursements and Swingline Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by all such Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and participations in LC Disbursements and Swingline Loans; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by the Borrowers pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements or Swingline Loans to any assignee or participant, other than to the Borrowers or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). Each Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Borrower in the amount of such participation.

(bi) Unless the Administrative Agent shall have received notice from the Borrower Representative prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Bank hereunder that the Borrowers will not make such payment, the Administrative Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Bank, as the case may be, the amount due. With respect to any payment that the Administrative Agent makes to any Lender, the Issuing Bank, the Swingline Lender or any other Secured Party as to which the Administrative Agent determines (in its sole and absolute discretion) that any of the following applies (such payment referred to as the "Rescindable Amount"): (1) the Borrowers have not in fact made the corresponding payment to the Administrative Agent; (2) the Administrative Agent has made a payment in excess of the amount(s) received by it from Borrowers either individually or in the aggregate (whether or not then owed); or (3) the Administrative Agent has for any reason otherwise erroneously made such payment; then each of the Secured Parties severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount so distributed to such Secured Party, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(bj) If any Lender shall fail to make any payment required to be made by it hereunder, then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), (i) apply any amounts thereafter received by the Administrative Agent for the account of such Lender for the benefit of the Administrative Agent, the Swingline Lender or the Issuing Bank to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid and/or (ii) hold any such amounts in a segregated account as cash collateral for, and application to, any future funding obligations of such Lender hereunder. Application of amounts pursuant to (i) and (ii) above shall be made in any order determined by the Administrative Agent in its discretion.

(bk) The Administrative Agent may from time to time provide the Borrowers with account statements or invoices with respect to any of the Secured Obligations (the "Statements"). The Administrative Agent is under no duty or obligation to provide Statements, which, if provided, will be solely for the Borrowers' convenience. Statements may contain estimates of the amounts owed during the relevant billing period, whether of principal, interest, fees or other Secured Obligations. If the Borrowers pay the full amount indicated on a Statement on or before the due date indicated on such Statement, the Borrowers shall not be in default of payment with respect to the billing period indicated on such Statement; provided, that acceptance by the Administrative Agent, on behalf of the Lenders, of any

payment that is less than the total amount actually due at that time (including but not limited to any past due amounts) shall not constitute a waiver of the Administrative Agent's or the Lenders' right to receive payment in full at another time.

Section 1.3 Mitigation Obligations; Replacement of Lenders.

(bl) If any Lender requests compensation under Section 2.15, or if the Borrowers are required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.15 or 2.17, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(bm) If any Lender requests compensation under Section 2.15, or if the Borrowers are required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, or if any Lender becomes a Defaulting Lender, then the Borrowers may, at their sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights (other than its existing rights to payments pursuant to Section 2.15 or 2.17) and obligations under this Agreement and other Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) the Borrowers shall have received the prior written consent of the Administrative Agent (and in circumstances where its consent would be required under Section 9.04, the Issuing Bank and the Swingline Lender), which consent shall not unreasonably be withheld, delayed or conditioned, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and funded participations in LC Disbursements and Swingline Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts) and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.15 or payments required to be made pursuant to Section 2.17, such assignment will result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply.

Section 1.15 Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(bn) fees shall cease to accrue on the unfunded portion of the Commitment of such Defaulting Lender pursuant to Section 2.12(a);

(bo) such Defaulting Lender shall not have the right to vote on any issue on which voting is required (other than to the extent expressly provided in Section 9.02(b)) and the Commitment and Revolving Exposure of such Defaulting Lender shall not be included in determining whether the Required Lenders or the Supermajority Lenders have taken or may take any action hereunder (including any consent to any amendment, waiver or other modification pursuant to Section 9.02) or under any other Loan Document; provided that, except as otherwise provided in Section 9.02, this clause (b) shall not apply to the vote of a Defaulting Lender in the case of an amendment, waiver or other modification requiring the consent of such Lender or each Lender directly affected thereby;

(bp) if any Swingline Exposure or LC Exposure exists at the time such Lender becomes a Defaulting Lender then:



(xii) all or any part of the Swingline Exposure and LC Exposure of such Defaulting Lender shall be reallocated among the non-Defaulting Lenders in accordance with their respective Applicable Percentages but only (x) to the extent that the conditions set forth in Section 4.02 are satisfied at the time of such reallocation (and, unless the Borrower Representative shall have otherwise notified the Administrative Agent at such time, the Borrowers shall be deemed to have represented and warranted that such conditions are satisfied at such time) and (y) to the extent that such reallocation does not, as to any non-Defaulting Lender, cause such non-Defaulting Lender's Revolving Exposure and to exceed its Commitment;

(xiii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, the Borrowers shall within one (1) Business Day following notice by the Administrative Agent (x) first, prepay such Swingline Exposure and (y) second, cash collateralize, for the benefit of the Issuing Bank only, the Borrowers' obligations corresponding to such Defaulting Lender's LC Exposure (after giving effect to any partial reallocation pursuant to clause (i) above) in accordance with the procedures set forth in Section 2.06(j) for so long as such LC Exposure is outstanding;

(xiv) if the Borrowers cash collateralize any portion of such Defaulting Lender's LC Exposure pursuant to clause (ii) above, the Borrowers shall not be required to pay any fees to such Defaulting Lender pursuant to Section 2.12(b), with respect to such Defaulting Lender's LC Exposure during the period such Defaulting Lender's LC Exposure is cash collateralized;

(xv) if the LC Exposure of the non-Defaulting Lenders is reallocated pursuant to clause (i) above, then the fees payable to the Lenders pursuant to Sections 2.12(a) and 2.12(b) shall be adjusted in accordance with such non-Defaulting Lenders' Applicable Percentages; and

(xvi) if all or any portion of such Defaulting Lender's LC Exposure is neither reallocated nor cash collateralized pursuant to clause (i) or (ii) above, then, without prejudice to any rights or remedies of the Issuing Bank or any other Lender hereunder, all letter of credit fees payable under Section 2.12(b) with respect to such Defaulting Lender's LC Exposure shall be payable to the Issuing Bank until and to the extent that such LC Exposure is reallocated and/or cash collateralized; and

(j) so long as such Lender is a Defaulting Lender, the Swingline Lender shall not be required to fund any Swingline Loan and the Issuing Bank shall not be required to issue, amend, renew, extend or increase any Letter of Credit, unless it is satisfied that the related exposure and the Defaulting Lender's then outstanding LC Exposure will be 100% covered by the Commitments of the non-Defaulting Lenders and/or cash collateral will be provided by the Borrowers in accordance with Section 2.20(c), and participating interests in any such newly made Swingline Loan or any newly issued or increased Letter of Credit shall be allocated among non-Defaulting Lenders in a manner consistent with Section 2.20(c)(i) (and such Defaulting Lender shall not participate therein).

If (i) a Bankruptcy Event or a Bail-In Action with respect to a Lender Parent shall occur following the Effective Date and for so long as such event shall continue or (ii) the Swingline Lender or the Issuing Bank has a good faith belief that any Lender has defaulted in fulfilling its obligations under one or more other agreements in which such Lender commits to extend credit, the Swingline Lender shall not be required to fund any Swingline Loan and the Issuing Bank shall not be required to issue, amend or increase any Letter of Credit, unless the Swingline Lender or the Issuing Bank, as the case may be, shall have entered into arrangements with the Borrowers or such Lender, satisfactory to the Swingline Lender or the Issuing Bank, as the case may be, to defease any risk to it in respect of such Lender hereunder.

In the event that each of the Administrative Agent, the Borrowers, the Issuing Bank and the Swingline Lender agrees that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then the Swingline Exposure and LC Exposure of the Lenders shall be readjusted to reflect the inclusion of such Lender's Commitment and on the date of such readjustment such Lender shall purchase at par such of the Loans of the other Lenders (other than Swingline Loans) as the Administrative Agent shall determine may be necessary in order for such Lender to hold such Loans in accordance with its Applicable Percentage.

Section 1.3 Returned Payments. If after receipt of any payment which is applied to the payment of all or any part of the Obligations (including a payment effected through exercise of a right of setoff), the Administrative Agent or any Lender is for any reason compelled to surrender such payment or proceeds to any Person because such payment or application of proceeds is invalidated, declared fraudulent, set aside, determined to be void or voidable as a preference, impermissible setoff, or a diversion of trust funds, or for any other reason (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion), then the Obligations or part thereof intended to be satisfied shall be revived and continued and this Agreement shall continue in full force as if such payment or proceeds had not been received by the Administrative Agent or such Lender. The provisions of this Section 2.21 shall be and remain effective notwithstanding any contrary action which may have been taken by the Administrative Agent or any Lender in reliance upon such payment or application of proceeds. The provisions of this Section 2.21 shall survive the termination of this Agreement.

Section 1.4 Banking Services and Swap Agreements. SECTION 2.22. Banking Services and Swap Agreements Each Lender or Affiliate thereof providing Banking Services for, or having Swap Agreements with, any Loan Party or any Restricted Subsidiary ~~or Affiliate~~ of a Loan Party shall deliver to the Administrative Agent, promptly after entering into such Banking Services or Swap Agreements, written notice setting forth the aggregate amount of all Banking Services Obligations and Swap Agreement Obligations of such Loan Party or such Restricted Subsidiary ~~or Affiliate thereof~~ to such Lender or Affiliate thereof (whether matured or unmatured, absolute or contingent). In addition, each such Lender or Affiliate thereof shall deliver to the Administrative Agent, from time to time after a significant change therein or upon a request therefor, a summary of the amounts due or to become due in respect of such Banking Services Obligations and Swap Agreement Obligations. The most recent information provided to the Administrative Agent shall be used in determining the amounts to be applied in respect of such Banking Services Obligations and/or Swap Agreement Obligations pursuant to Section 2.18(b) and which tier of the waterfall, contained in Section 2.18(b), such Banking Services Obligations and/or Swap Agreement Obligations will be placed.

### Article III.

#### REPRESENTATIONS AND WARRANTIES

Each Loan Party represents and warrants to the Lenders that:

Section 1.02 Organization; Powers. Each Loan Party and its Restricted Subsidiaries is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority to carry on its business as now conducted and, except where the failure to do so, individually or in the aggregate, ~~could~~would not reasonably be expected to result in a Material Adverse Effect, is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required.

Section 1.03 Authorization; Enforceability. The Transactions are within each Loan Party's organizational powers and have been duly authorized by all necessary organizational actions and, if required, actions by equity holders. The Loan Documents to which ~~each~~any Loan Party is a party have been duly executed and delivered by such Loan Party and constitute a legal, valid and binding obligation of such Loan Party, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

Section 1.04 Governmental Approvals; No Conflicts. The Transactions (a) do not require any material consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect and except for filings necessary to perfect Liens created pursuant to the Loan Documents, (b) will not violate any Requirement of Law applicable to any Loan Party or any of its Restricted Subsidiaries, (c) will not violate or result in a default under any indenture, agreement or other instrument binding upon any Loan Party or any of its Restricted Subsidiaries or the assets of any Loan Party or any of its Restricted Subsidiaries, or give rise to a right thereunder to require any payment to be made by any Loan Party or any of its Restricted Subsidiaries, and (d) will not result in the creation or imposition of any Lien on any asset of

any Loan Party or any of its Restricted Subsidiaries, except Liens created pursuant to the Loan Documents or, subject to the Intercreditor Agreement, the Term Loan Documents, except, in each case referred to in clauses (b), (c) and (d), where such violation or Lien would not reasonably be expected to result in a Material Adverse Effect.

Section 1.05 Financial Condition; No Material Adverse Change. (a) Holdings has heretofore furnished to the Administrative Agent and the Lenders ~~its (i) the consolidated balance sheet and statements of income, stockholders equity and cash flows of Holdings and its consolidated Subsidiaries as of and for the Fiscal Year ended December 2924, 20172021,~~ reported on by BDO USA, LLP, independent public accountants, ~~and (ii) as of and for the Fiscal Quarter and the portion of the Fiscal Year ended March 30, 2018, certified by its chief financial officer~~ the unaudited interim consolidated balance sheet of Holdings and its consolidated Subsidiaries dated June 24, 2022 and the related statements of income and cash flows for the six (6) fiscal months then ended. Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of Holdings and its consolidated Subsidiaries as of such date and for such period in accordance with GAAP, subject to year-end audit adjustments and the absence of footnotes in the case of the statements referred to in clause (ii) above.

(bq) Holdings has heretofore furnished to the Administrative Agent and the Lenders projected balance sheets, income statements and statements of cash flows of Holdings and its Subsidiaries for Fiscal Years 2018 through 2023. Such projections were prepared in good faith based upon assumptions believed to be reasonable at the time delivered and, if such projected financial information was delivered prior to the Effective Date, as of the Effective Date, and Holdings is not aware of any facts or information that would lead it to believe that such projections are incorrect or misleading in any material respect.

(br) No event, change or condition has occurred that has had, or could reasonably be expected to have, a Material Adverse Effect, since December ~~2924, 2017~~ 2021.

Section 1.01 Properties. (a) As of the Fourth Amendment Effective Date, Schedule 3.05 sets forth the address of each parcel of real property that is owned or leased by each Loan Party (and indicates whether any such real property constitutes an Excluded Asset). Each of such leases and subleases is valid and enforceable in accordance with its terms and is in full force and effect, and no default by any party to any such lease or sublease exists. Each of the Loan Parties and its Restricted Subsidiaries (other than any Immaterial Subsidiary) has good and indefeasible title to, or valid leasehold interests in, all of its real and personal property, free of all Liens (other than those permitted by Section 6.02). All such property is in good working order and condition, ordinary wear and tear and damage by casualty excepted.

(k) Each Loan Party and its Restricted Subsidiaries owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property necessary to its business as currently conducted, ~~a correct and complete list of which, as of the Effective Date, is set forth on Schedule 3.05,~~ and the use thereof by each Loan Party and its Restricted Subsidiaries does not infringe upon the rights of any other Person, except for such infringements which, individually or in the aggregate, ~~could~~ would not reasonably be expected to have a Material Adverse Effect, and, except as set forth on Schedule 3.05, each Loan Party's rights thereto are not subject to any material licensing agreement or similar arrangement (excluding commercially available software). Schedule 3.05 sets forth a complete and accurate list of all ~~registered~~ applications, registrations and material exclusive licenses of intellectual property owned by each Loan Party as of the Fourth Amendment Effective Date. No slogan or other advertising device, product, process, method, substance, part or other material now employed, ~~or now contemplated to be employed,~~ by any Loan Party infringes upon or conflicts with any rights owned by any other Person, and no claim or litigation regarding any of the foregoing is pending or, to the knowledge of any Loan Party, threatened, except for such infringements and conflicts which ~~could~~ would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 1.02 Litigation and Environmental Matters. (a) Except as set forth on Schedule 3.06, there are no actions, suits or proceedings by or before any arbitrator or Governmental Authority (including, without limitation, the FDA) pending against or, to the knowledge of any Loan Party, threatened against or affecting any Loan Party or any of its Restricted Subsidiaries (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, would reasonably

be expected, individually or in the aggregate, to result in a Material Adverse Effect or (ii) that involve the Loan Documents.

(bs) Except for the matters disclosed on Schedule 3.06, (i) no Loan Party or any Restricted Subsidiary has received notice of any claim with respect to any Environmental Liability that, individually or in the aggregate, ~~could~~would not reasonably be expected to result in liability to the Loan Parties in excess of \$~~10,000,000~~15,000,000 in the aggregate and (ii) except with respect to any other matters that, individually or in the aggregate, ~~could~~would not reasonably be expected to result in liability to the Loan Parties in excess of \$~~10,000,000~~15,000,000 in the aggregate, no Loan Party nor any Restricted Subsidiary (1) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law or (2) has become subject to any Environmental Liability or knows of any basis for any Environmental Liability.

Section 1.03 Compliance with Laws and Agreements. Each Loan Party and its Restricted Subsidiaries is in compliance with all Requirements of Law applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, except where the failure to do so, individually or in the aggregate, ~~could~~would not reasonably be expected to result in a Material Adverse Effect. No Default has occurred and is continuing.

Section 1.04 Investment Company Status; Margin Stock. No Loan Party ~~or any Subsidiary~~ is required to register as an “investment company” ~~as defined in, or subject to regulation under,~~ the Investment Company Act of 1940. No Loan Party or any Restricted Subsidiary is engaged in the business of extending credit for the purpose of, and no proceeds of any Loan or other extensions of credit hereunder will be used for the purpose of, buying or carrying margin stock (within the meaning of Regulation U of the ~~Federal Reserve~~ Board) or extending credit to others for the purpose of purchasing or carrying any such margin stock, in each case in contravention of Regulation T, U or X of the ~~Federal Reserve~~ Board.

Section 1.05 Taxes. Each Loan Party and its Restricted Subsidiaries has timely filed or caused to be filed all Federal, state and other material Tax returns and other material reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it, except Taxes that are being contested in good faith by appropriate proceedings and for which such Loan Party or such Restricted Subsidiary, as applicable, has set aside on its books adequate reserves. No tax liens have been filed and no claims are being asserted with respect to any such taxes, other than Permitted Encumbrances.

Section 1.10 ERISA. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, would reasonably be expected to result in a Material Adverse Effect. All minimum required contributions (within the meaning of Section 430 of the Code) have been timely made with respect to each Plan. Each employee benefit pension plan (within the meaning of Section 3(2) of ERISA) maintained or sponsored by a Loan Party, or under which a Loan Party has any liability, which is intended to be qualified under Section 401(a) of the Code, has received a favorable determination letter from the Internal Revenue Service with respect to such qualification, and, except as ~~could~~would not reasonably be expected to result in a Material Adverse Effect, no event or condition exists which would reasonably be expected to jeopardize such qualified status. Except as ~~could~~would not reasonably be expected to result in a Material Adverse Effect, no Loan Party has any obligation to provide post-retirement health care benefits to any individual other than as required under the Consolidated Omnibus Budget Reconciliation Act of 1985, or other similar state law.

Section 1.11 Disclosure. Each Loan Party has disclosed to the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Restricted Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect. None of the reports, financial statements, certificates or other information furnished by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the negotiation of this Agreement or any other Loan Document (as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading in any material respect; provided that, with respect to projected

financial information, the Loan Parties each represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time delivered and, if such projected financial information was delivered prior to the Effective Date, as of the Effective Date.

Section 1.12 Material Agreements SECTION 3.12. Material Agreements. ~~All material agreements and contracts to which any Loan Party is a party or is bound as of the Third Amendment Effective Date are listed on Schedule 3.12.~~ No Loan Party is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or contract listed on Schedule 3.12.

Section 1.13 Solvency.

(a) Immediately after the consummation of the Transactions to occur on the Effective Date, (i) the fair value of the assets of each Loan Party, at a fair valuation, will exceed its debts and liabilities, subordinated, contingent or otherwise; (ii) the present fair saleable value of the property of each Loan Party will be greater than the amount that will be required to pay the probable liability of its debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (iii) each Loan Party will be able to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (iv) no Loan Party will have unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted after the Effective Date.

(b) No Loan Party intends to, or will permit any Subsidiary to, and no Loan Party believes that it or any Subsidiary will, incur debts beyond its ability to pay such debts as they mature, taking into account the timing of and amounts of cash to be received by it or any such Subsidiary and the timing of the amounts of cash to be payable on or in respect of its Indebtedness or the Indebtedness of any such Subsidiary.

Section 1.14 Insurance. The Borrowers maintain, and have caused each Restricted Subsidiary (other than any Immaterial Subsidiary) to maintain, with financially sound and reputable insurance companies, insurance on all their real and personal property in such amounts, subject to such deductibles and self-insurance retentions and covering such properties and risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations. As of the Effective Date, Schedule 3.14 sets forth a description of all insurance maintained by or on behalf of the Loan Parties and the Restricted Subsidiaries (other than any Immaterial Subsidiaries), and all premiums due and owing in respect of such insurance have been paid.

Section 1.15 Capitalization and Subsidiaries. Schedule 3.15 sets forth, as of the Fourth Amendment Effective Date, (a) a true and complete listing of each class of each Loan Party's (other than Holdings) and Subsidiary's authorized Equity Interests and the holders thereof; ~~provided that with respect to Holdings, Schedule 3.15 only lists those holders owning at least 5% of the Equity Interests of Holdings as of the Third Amendment Effective Date~~, and (b) the type of entity and jurisdiction of organization of Holdings and each of its Subsidiaries. All of the issued and outstanding Equity Interests of each Loan Party and the Subsidiaries have been duly authorized and issued and are fully paid and non-assessable and, except as set forth on Schedule 3.15, as of the Fourth Amendment Effective Date, no holder of such Equity Interest is entitled to any preemptive, first refusal or other similar rights.

Section 1.16 Security Interest in Collateral. The provisions of this Agreement and the other Loan Documents create legal and valid Liens on all the Collateral in favor of the Administrative Agent, for the benefit of the Administrative Agent and the Secured Parties, and such Liens constitute perfected and continuing Liens on the Collateral, securing the Secured Obligations, enforceable against the applicable Loan Party and all third parties, and having priority over all other Liens on the Collateral except in the case of (a) Liens permitted by Section 6.02, to the extent any such Liens (to the extent permitted by Section 6.02) would have priority over the Liens in favor of the Administrative Agent pursuant to any applicable law or agreement (including any Liens securing the Term Loan Obligations in accordance with the Intercreditor Agreement), (b) Liens perfected only by possession (including possession of any certificate of title) to the extent the Administrative Agent has not obtained or does not maintain possession of such Collateral, (c) Liens on intellectual property perfected only by making filings

with the applicable Governmental Authority to the extent such filings have not been made, (d) real estate, (e) assets subject to certificates of title, (f) Excluded Assets, (g) letter-of-credit rights with respect to letters of credit in an amount, ~~in each case,~~ of less than \$~~1,000,000~~5,000,000 in the aggregate and (h) commercial tort claims having a value, ~~in each case,~~ of less than \$~~1,000,000~~5,000,000 in the aggregate.

Section 1.17 Employment Matters. As of the Effective Date, there are no strikes, lockouts or slowdowns against any Loan Party or any Restricted Subsidiary pending or, to the knowledge of the Borrowers, threatened. The hours worked by and payments made to employees of the Loan Parties and the Restricted Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Federal, state, local or foreign law dealing with such matters, except to the extent the failure to so comply with such acts and laws could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. All payments due from any Loan Party or any Restricted Subsidiary, or for which any claim may be made against any Loan Party or any Restricted Subsidiary, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of the Loan Party or such Restricted Subsidiary.

Section 1.18 Nature of Business; Permits and Licenses; Tradenames. (a) No Loan Party or Restricted Subsidiary is engaged in any business other than those engaged in on the Fourth Amendment Effective Date and those reasonably related, complementary or ancillary thereto or a logical extension thereof (including, without limitation, food and beverage service, distribution, wholesale and retail).

(bt) Each Loan Party has, and is in compliance with, all Governmental Permits and all permits, licenses, authorizations, approvals, entitlements and accreditations required for such Person lawfully to own, lease, manage or operate, or to acquire, each business currently owned, leased, managed or operated, or to be acquired, by such Person, except to the extent that the failure to have or be in compliance with all such Governmental Permits, permits, licenses, authorizations, approvals, entitlements and accreditations ~~could~~would not reasonably be expected to result in a Material Adverse Effect. No condition exists or event has occurred which, in itself or with the giving of notice or lapse of time or both, would result in the suspension, revocation, impairment, forfeiture or non-renewal of any such permit, license, authorization, approval, entitlement or accreditation, except that ~~could~~would not reasonably be expected to result in a Material Adverse Effect, and there is no claim that any thereof is not in full force and effect.

(bu) As of the Effective Date, Schedule 3.18 hereto sets forth a complete and accurate list of all trade names, business names or similar appellations used by each Loan Party or Restricted Subsidiary or any of their divisions or other business units during the past five years.

Section 1.4 Location of Bank Accounts. As of the Effective Date, Schedule 3.19 sets forth a complete and accurate list of all deposit, checking and other bank accounts, all securities and other accounts maintained with any broker dealer and all other similar accounts maintained by or for the benefit of each Loan Party and Restricted Subsidiary, in each case with an average balance in excess of \$2,500,000 at any time on an individual account basis, together with a description thereof (i.e., the bank or broker dealer at which such deposit or other account is maintained and the account number and the purpose thereof).

Section 1.5 Notices from Farm Products Sellers. None of the Loan Parties has, within the one year period prior to the Effective Date, received any material written notice pursuant to the applicable provisions of any Farm Products Law, or pursuant to the UCC or any state statutory agricultural or producers' lien laws or any other local laws applicable to the Loan Parties' business from (i) any Farm Products Seller or (ii) any lender to, or any other Person with a security interest in the assets of, any Farm Products Seller or (iii) the Secretary of State (or equivalent official) or other Governmental Authority, from any jurisdiction in which any Farm Products purchased by any Loan Party or any of its Restricted Subsidiaries are produced, in any case, advising or notifying such Loan Party or Subsidiary of the intention of such Farm Products Seller or other Person to preserve the benefits of any trust, lien or other interest applicable to any assets of such Loan Party or such Restricted Subsidiary established in favor of such Farm Products Seller or other Person or claiming a Lien or security interest in and to any Farm Products which have been purchased by such Loan Party or such Restricted Subsidiary or any related or other assets of such Loan Party or such Restricted Subsidiary (all of the foregoing, together with any

such notices as any Loan Party or [any Restricted](#) Subsidiary may at any time hereafter receive, collectively, the “[Farm Products Notices](#)”), except where the aggregate value of such Farm Products subject to Farm Product Notices is less than \$500,000.

Section 1.6 [Customers and Suppliers](#). There exists no actual or, to the knowledge of any Loan Party, threatened termination, cancellation or limitation of, or modification to or change in, the business relationship between (1) any Loan Party, on the one hand, and any customer or any group thereof, on the other hand, whose agreements with any Loan Party are individually or in the aggregate material to the business or operations of such Loan Party, or (2) any Loan Party, on the one hand, and any material supplier thereof, on the other hand, except, under clauses (1) or (2), as ~~could~~would not reasonably be expected to have a Material Adverse Effect; and, to the knowledge of each Loan Party, there exists no present state of facts or circumstances that could give rise to or result in any such termination, cancellation, limitation, modification or change, except, in each case, as ~~could~~would not reasonably be expected to have a Material Adverse Effect.

Section 1.7 [Affiliate Transactions](#). Except as set forth on [Schedule 3.22](#), ~~as of the Effective Date~~, there are no existing or proposed agreements, arrangements, understandings, or transactions between any Loan Party and any of the officers, members, managers, directors, stockholders, parents, other interest holders, employees, or Affiliates (other than [Restricted](#) Subsidiaries) of any Loan Party or any members of their respective immediate families, and none of the foregoing Persons are directly or indirectly indebted to or have any direct or indirect ownership, partnership, or voting interest in any Affiliate of any Loan Party or any Person with which any Loan Party has a business relationship or which competes with any Loan Party (except that any such Persons may own stock in (but not exceeding) 4.0% of the outstanding Equity Interests of) any publicly traded company that may compete with a Loan Party.

Section 1.8 [Common Enterprise](#). The successful operation and condition of each of the Loan Parties is dependent on the continued successful performance of the functions of the group of the Loan Parties as a whole and the successful operation of each of the Loan Parties is dependent on the successful performance and operation of each other Loan Party. Each Loan Party expects to derive benefit (and its board of directors or other governing body has determined that it may reasonably be expected to derive benefit), directly and indirectly, from (i) successful operations of each of the other Loan Parties and (ii) the credit extended by the Lenders to the Borrowers hereunder, both in their separate capacities and as members of the group of companies. Each Loan Party has determined that execution, delivery, and performance of this Agreement and any other Loan Documents to be executed [and delivered](#) by such Loan Party is within its purpose, in furtherance of its direct and/or indirect business interests, will be of direct and/or indirect benefit to such Loan Party, and is in its best interest.

#### Section 1.9 [FDA Matters](#).

(bv) Except as noted in [paragraph \(b\)](#), Borrowers, their [Restricted](#) Subsidiaries and the operation of their respective food facilities in the United States are in compliance with and are not in violation of all applicable Requirements of Law (including the FDC Act), regulations, rules, standards, guidelines, policies, and orders administered or issued by the FDA or any comparable Governmental Authority (including, without limitation, as applicable, the Bioterrorism Act (21 CFR 1.326-1.368), prohibited cattle materials (21 CFR 189.5) and import notification requirements (21 CFR 1.276-1.285)), except for failures to comply or violations that, individually or in the aggregate, ~~could~~would not reasonably be expected to result in a Material Adverse Effect.

(bw) Since December ~~2924~~, ~~2017~~2021, no Governmental Authority has served notice on any Loan Party or its Subsidiaries that the business or the assets of the Loan Parties or their [Restricted](#) Subsidiaries, may be, or are in material violation of any Requirement of Law or the subject of any material investigation, except for violations or investigations that, individually or in the aggregate, ~~could~~would not reasonably be expected to result in a Material Adverse Effect.

(bx) Since December ~~2924~~, ~~2017~~2021, no Loan Party or its [Restricted](#) Subsidiaries has received notice from any Governmental Authority nor does any Loan Party have any knowledge that there are any circumstances currently existing which would be reasonably likely to lead to any loss of or refusal to renew any material governmental licenses, permits, registrations, product registrations,

Governmental Permits, approvals, authorizations related to the business and that the terms of all such licenses, permits, registrations, product registrations, governmental permits, approvals, and authorizations currently in force, except for any notice or circumstance that, individually or in the aggregate, ~~could~~would not reasonably be expected to result in a Material Adverse Effect.

(by) The Loan Parties have no knowledge of any acts with respect to their food business or products that furnish a reasonable basis for a warning letter, untitled letter, Section 305 notice, or other similar communication from FDA or any Governmental Authority, except for any acts that, individually or in the aggregate, ~~could~~would not reasonably be expected to result in a Material Adverse Effect.

(bz) The Loan Parties have no knowledge of any existing obligation of a Loan Party arising under any administrative or regulatory action, FDA inspection, FDA warning letter, FDA notice of violation letter, or other notice, response or commitment made to or with FDA or any Governmental Authority with respect to their food and food product business, except for any acts that, individually or in the aggregate, ~~could~~would not reasonably be expected to result a Material Adverse Effect.

Section 1.19 Anti-Corruption Laws and Sanctions. Each Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance by such Borrower, its Restricted Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and each Borrower, its Restricted Subsidiaries and their respective officers and directors and to the knowledge of such Borrower its employees and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) the Borrowers, any Restricted Subsidiary or to the knowledge of such Borrower or such Restricted Subsidiary any of their respective directors, officers or employees, or (b) to the knowledge of such Borrower, any agent of such Borrower or any Restricted Subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Borrowing or Letter of Credit, use of proceeds or other Transactions will violate any Anti-Corruption Law or applicable Sanctions.

Section 1.20 USA PATRIOT Act and Beneficial Ownership Regulation. The Loan Parties, the Restricted Subsidiaries and, to the knowledge of the Loan Parties, each of their Affiliates are in compliance with (a) the Trading with the Enemy Act, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B Chapter V, as amended) and any other enabling legislation or executive order relating thereto, (b) the USA PATRIOT Act and the Beneficial Ownership Regulation and (c) in all material respects, other federal or state laws relating to “*know your customer*” and anti-money laundering rules and regulations.

Section 1.21 Affected Financial InstitutionsSECTION 3.24. EEA Financial Institutions. No Loan Party is an Affected Financial Institution.

#### Article IV.

#### CONDITIONS

Section 1.06 Effective Date. The obligations of the Lenders to make the initial Loans and of the Issuing Bank to issue the initial Letters of Credit hereunder shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 9.02).

(ca) Credit Agreement and Other Loan Documents. The Administrative Agent (or its counsel) shall have received (i) from each party hereto either (A) a counterpart of this Agreement signed on behalf of such party or (B) written evidence satisfactory to the Administrative Agent (which may include telecopy or electronic transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement and (ii) duly executed copies of the other Loan Documents and such other legal opinions, certificates, documents, instruments and agreements as the Administrative Agent shall reasonably request in connection with the Transactions, all in form and substance satisfactory to the Administrative Agent and its counsel and as further described in the list of closing documents attached as Exhibit D.



(cb) Legal Opinions. The Administrative Agent shall have received a favorable written opinion (addressed to the Administrative Agent and the Lenders and dated the Effective Date) of each of (i) Shearman & Sterling LLP, counsel for the Loan Parties, (ii) Angelo & Banta, P.A., special Florida counsel for the Loan Parties, and (iii) Garvey Schubert Barer, special Washington counsel for the Loan Parties, in each case, in form and substance reasonably acceptable to the Administrative Agent. The Borrowers hereby request such counsels to deliver such opinions.

(cc) Closing Certificates; Certified Certificate of Incorporation; Good Standing Certificates. The Administrative Agent shall have received such documents and certificates as the Administrative Agent or its counsel may reasonably request relating to the organization, existence and good standing of the initial Loan Parties, the authorization of the Transactions and any other legal matters relating to such Loan Parties, the Loan Documents or the Transactions, all in form and substance satisfactory to the Administrative Agent and its counsel and as further described in the list of closing documents attached as Exhibit D.

(cd) No Default Certificate. The Administrative Agent shall have received a certificate, dated the Effective Date and signed by the President, a Vice President or a Financial Officer of the Borrower Representative, certifying (i) that the representations and warranties contained in Article III are true and correct in all material respects (provided that any representation or warranty that is qualified by materiality or Material Adverse Effect shall be true and correct in all respects) as of such date except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in all material respects (or, in the case of any representation or warranty qualified by materiality or Material Adverse Effect, in all respects) as of such earlier date and (ii) that no Default or Event of Default has occurred and is continuing as of such date.

(ce) Pay-Off Letter. The Administrative Agent shall have received pay-off letters in form and substance reasonably satisfactory to the Administrative Agent in respect of the Existing Credit Agreement confirming that all Liens upon any of the property of the Loan Parties constituting Collateral will be terminated concurrently with the payment of existing Indebtedness thereunder from the proceeds of the initial Borrowings (and, if applicable, all letters of credit issued or guaranteed as part of such Indebtedness shall have been cash collateralized, supported by a Letter of Credit or reevidenced hereby as an Existing Letter of Credit).

(cf) Funding Account. The Administrative Agent shall have received a notice setting forth the deposit account of the Borrower Representative (the "Funding Account") to which the Administrative Agent is authorized by the Borrower Representative to transfer the proceeds of any Borrowings requested or authorized pursuant to this Agreement.

(cg) Borrowing Base Certificate. The Administrative Agent shall have received a Borrowing Base Certificate which calculates the Borrowing Base (as if this Agreement is already in effect) as of the end of the Business Day immediately preceding the Effective Date.

(ch) Fees. The Administrative Agent shall have received all fees and other amounts due and payable on or prior to the Effective Date, including, to the extent invoiced at least one (1) Business Day prior to the Effective Date, reimbursement or payment of all out-of-pocket expenses required to be reimbursed or paid by the Borrowers hereunder.

(ci) Financial Statements. The Administrative Agent shall have received (A) the unaudited interim financial statements (income statement, a balance sheet, and a cash flow statement) of Holdings and its consolidated Subsidiaries for the Fiscal Quarter ended March 30, 2018 setting forth in comparative form the figures for the previous fiscal year and (B) projected balance sheets, income statements and statements of cash flows of Holdings and its Subsidiaries for Fiscal Years 2018 through 2022.

(cj) Pro Forma Financial Statements. The Administrative Agent shall have received a pro forma consolidated balance sheet and related pro forma consolidated statement of income of Holdings as of, and for the twelve-month period ending on, the last day of the most recently completed four-Fiscal Quarter period for which financial information pursuant to paragraph (j)(A) above has been delivered, prepared after giving effect to the Transactions as if the Transactions had occurred as of such date (in the

case of such balance sheet) or at the beginning of such period (in the case of such income statements), which need not be prepared in compliance with Regulation S-X of the Securities Act of 1933, as amended, or include adjustments for purchase accounting (including adjustments of the type contemplated by Financial Accounting Standards Board Accounting Standards Codification 805, Business Combinations (formerly SFAS 141R)).

(ck) Examinations. The Administrative Agent or its designee shall have conducted a Field Exam of the Loan Parties' Accounts, Inventory and related working capital matters and of the Borrowers' related data processing and other systems the results of each of which shall be satisfactory to the Administrative Agent in its sole discretion.

(cl) Appraisal(s). The Administrative Agent shall have received an appraisals of the applicable Loan Parties' Inventory from one or more firms reasonably satisfactory to the Administrative Agent, which appraisals shall be reasonably satisfactory to the Administrative Agent in its sole discretion.

(cm) KYC. The Administrative Agent shall have received, at least five (5) days prior to the Effective Date, all documentation and other information regarding the Borrower requested in connection with applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act, to the extent requested in writing of the Borrower at least ten (10) days prior to the Effective Date.

(cn) Joinder to Intercreditor Agreement. The Administrative Agent (or its counsel) shall have received a duly executed copy of a joinder to the Intercreditor Agreement, pursuant to which the Administrative Agent agrees to be bound by the Intercreditor Agreement as the "ABL Representative" thereunder, and the Term Loan Agent and the Loan Parties acknowledge and agree that this Agreement constitutes a "Replacement ABL Agreement" and the "ABL Agreement" thereunder.

The Administrative Agent shall notify the Borrower Representative and the Lenders of the Effective Date, and such notice shall be conclusive and binding.

Section 1.01 Each Credit Event. The obligation of each Lender to make a Loan on the occasion of any Borrowing, and of the Issuing Bank to issue, amend, renew or extend any Letter of Credit, is subject to the satisfaction of the following conditions:

(l) The representations and warranties of the Loan Parties set forth in this Agreement shall be true and correct in all material respects (provided that any representation or warranty that is qualified by materiality or Material Adverse Effect shall be true and correct in all respects) on and as of the date of such Borrowing or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (provided that any representation or warranty that is qualified by materiality or Material Adverse Effect shall be true and correct in all respects) as of such earlier date.

(m) At the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, (i) no Default shall have occurred and be continuing and (ii) no Protective Advance shall be outstanding.

(n) After giving effect to any Borrowing or the issuance of any Letter of Credit, Availability shall not be less than zero.

The request for and acceptance of each Borrowing and each issuance, amendment, renewal or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by the Borrowers on the date thereof as to the matters specified in paragraphs (a), (b) and (c) of this Section.

Article V.

AFFIRMATIVE COVENANTS

Until the Commitments have expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder have been paid in full (other than contingent indemnification obligations for which no claim has been made), and all Letters of Credit have expired, been terminated, cash collateralized or back-stopped, in any case, in a manner acceptable to Administrative Agent and Issuing Bank in their ~~sole~~commercially reasonable discretion, and all LC Disbursements have been reimbursed, each Loan Party executing and delivering this Agreement covenants and agrees, jointly and severally with all of the other Loan Parties, with the Lenders that:

Section 1.01 Financial Statements and Other Information. The Borrowers will furnish to the Administrative Agent and each Lender:

(co) within ninety (90) days after the end of each Fiscal Year of Holdings and its Subsidiaries, ~~its~~ (commencing with the Fiscal Year ending on or about December 31, 2022), the audited consolidated balance sheet and related statements of operations, stockholders' equity and cash flows of Holdings and its Subsidiaries as of the end of and for Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, all reported on by independent public accountants of recognized national standing selected by Holdings and reasonably satisfactory to the Administrative Agent (without a "going concern" or like qualification ~~or exception, exception or explanatory paragraph (other than any such qualification, exception or explanatory paragraph that results solely from a maturity date on Indebtedness occurring within one year of the date of such audit or a breach or anticipated breach of any financial covenants under any Indebtedness)~~ and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of Holdings and its Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, accompanied by any management letter prepared by said accountants; provided, that the foregoing financial statements shall be accompanied by consolidating information that explains in reasonable detail the differences between the information relating to Holdings and its Subsidiaries, on the one hand, and the information relating to Holdings and its Restricted Subsidiaries on a standalone basis, on the other hand;

(cp) within forty-five (45) days after the end of each of the first three Fiscal Quarters of each Fiscal Year, ~~its~~ (commencing with the Fiscal Quarter ending on or about September 30, 2022), the consolidated balance sheet and related statements of operations and consolidated statements of cash flows of Holdings and its Subsidiaries as of the end of and for such Fiscal Quarter and the then elapsed portion of such Fiscal Year, setting forth in comparative form the actual figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous Fiscal Year; provided, that the foregoing financial statements shall be accompanied by consolidating information that explains in reasonable detail the differences between the information relating to Holdings and its Subsidiaries, on the one hand, and the information relating to Holdings and its Restricted Subsidiaries on a standalone basis, on the other hand;

(cq) from and after the date on which Availability is less than the greater of 12.5% of the Line Cap and \$17,500,000 for three (3) consecutive Business Days (or an Event of Default has occurred and is continuing) and until such subsequent date, if any, on which Aggregate Availability is greater than the greater of 12.5% of the Line Cap and \$17,500,000 for a period of thirty (30) consecutive calendar days (and no Event of Default then exists), within twenty (20) days after the end of each of the first two Fiscal Months of each Fiscal Quarter, the Borrowers will furnish Holdings' consolidated balance sheet and related statements of operations and consolidated statements of cash flows in the form prepared by management of Holdings as of the end of and for such Fiscal Month and the then elapsed portion of the Fiscal Year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous Fiscal Year;

(cr) concurrently with any delivery of financial statements under clause (a) or (b) above, (1) a Compliance Certificate (i) certifying, in the case of the financial statements delivered under clause (b), as presenting fairly in all material respects the financial condition and results of operations of Holdings and

its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes, (ii) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (iii) setting forth reasonably detailed calculations of the Fixed Charge Coverage Ratio as of the last day of the most recently ended period of four (4) Fiscal Quarters (provided that the Fixed Charge Coverage Ratio shall only be tested for compliance purposes during an FCCR Test Period), (iv) stating whether any change in GAAP or in the application thereof has occurred since the date of the audited financial statements referred to in Section 3.04 and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate ~~and~~, (v) that is accompanied by updated versions of the Exhibits to the Security Agreement; provided that, if there have been no changes to any such Exhibits since the previous updating thereof, it shall be indicated that there has been “no change” to the applicable Exhibit(s); and (vi) listing each Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary and as a Loan Party or a non-Loan Party as of the date of delivery of such Compliance Certificate, and (2) the related consolidated financial statements reflecting the adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) (which may be in footnote form only) from such consolidated financial statements;

(cs) [Intentionally Omitted];

(ct) as soon as available but in any event no later than thirty (30) days after the commencement of each Fiscal Year of Holdings (commencing with the Fiscal Year ending on or about December 31, 2022), a copy of the plan and forecast (including a projected consolidated balance sheet, income statement and funds flow statement) of ~~Holdings and its Subsidiaries~~ the Restricted Group for each Fiscal Quarter of such Fiscal Year (the “Projections”) in form reasonably satisfactory to the Administrative Agent (including the Fiscal Month end dates for such Fiscal Year);

(cu) (i) as soon as available but in any event within twenty (20) days after the end of each calendar month following the Effective Date (or, from and after the date on which Availability is less than the greater of 12.5% of the Line Cap and 17,500,000 for three (3) consecutive Business Days (or an Event of Default has occurred and is continuing) and until such subsequent date, if any, on which Aggregate Availability is greater than the greater of 12.5% of the Line Cap and \$17,500,000 for a period of thirty (30) consecutive calendar days (and no Event of Default then exists), by the Wednesday immediately following the end of each calendar week) and (ii) at such other times as may be necessary to re-determine Availability or as may be reasonably requested by the Administrative Agent, as of the period then ended, a Borrowing Base Certificate and supporting information in connection therewith (including, in respect of any Borrowing Base Certificate delivered for a period which is also the end of any Fiscal Quarter, a calculation of Average Availability for such Fiscal Quarter then ended and an indication of what the Applicable Rate is as a result of such Average Availability);

(cv) as soon as available but in any event within twenty (20) days after the end of each calendar month following the Effective Date and at such other times as may be requested by the Administrative Agent, as of the period then ended, all delivered electronically in a text formatted file reasonably acceptable to the Administrative Agent:

(i) a detailed aging of the Loan Parties’ Accounts, including all invoices aged by invoice date and due date (with an explanation of the terms offered), prepared in a manner reasonably acceptable to the Administrative Agent, together with a summary specifying the name, address, and balance due for each Account Debtor;

(ii) a schedule detailing the Loan Parties’ Inventory, in form reasonably satisfactory to the Administrative Agent, (1) by location (showing Inventory in transit, any Inventory located with a third party under any consignment, bailee arrangement, or warehouse agreement), by class (raw material, work-in-process and finished goods), by product type, and by volume on hand, which Inventory shall be valued at the lower of cost (determined on a first-in, first-out basis) or market and adjusted for Reserves as the Administrative Agent has previously indicated to the Borrower Representative are deemed by the Administrative Agent in its Permitted Discretion to be appropriate, and (2) including a report of any variances or other results of Inventory counts performed by the

Loan Parties since the last Inventory schedule (including information regarding sales or other reductions, additions, returns, credits issued by Loan Parties and complaints and claims made against the Loan Parties);

(iii) a worksheet of calculations prepared by the Loan Parties to determine Eligible Accounts and Eligible Inventory, such worksheets detailing the Accounts and Inventory excluded from Eligible Accounts and Eligible Inventory and the reason for such exclusion;

(iv) a reconciliation of the Loan Parties' Accounts and Inventory between (A) the amounts shown in the Loan Parties' general ledger and financial statements and the reports delivered pursuant to clauses (i) and (ii) above and (B) the amounts and dates shown in the reports delivered pursuant to clauses (i) and (ii) above and the Borrowing Base Certificate delivered pursuant to clause (g) above as of such date; and

(v) a reconciliation of the loan balance per the Loan Parties' general ledger to the loan balance under this Agreement;

(cw) as soon as available but in any event within twenty (20) days after the end of each calendar month following the Effective Date and at such other times as may be requested by the Administrative Agent, as of the month then ended, a schedule and aging of the Loan Parties' accounts payable, delivered electronically in a text formatted file reasonably acceptable to the Administrative Agent;

(cx) within twenty (20) days of each March 31 and September 30 following the Effective Date, an updated customer list for each Borrower and its Subsidiaries, which list shall state the customer's name, mailing address and phone number, delivered electronically in a text formatted file reasonably acceptable to the Administrative Agent;

(cy) promptly upon the Administrative Agent's reasonable request:

(i) copies of invoices issued by the Loan Parties in connection with any Accounts, credit memos, shipping and delivery documents, and other information related thereto;

(ii) copies of purchase orders, invoices, and shipping and delivery documents in connection with any Inventory purchased by any Loan Party;

(i) a schedule detailing the balance of all intercompany accounts of the Loan Parties;

(ii) a listing of Farm Products Sellers and amounts owed to each such Person;

(iii) the Borrowers' sales journal, cash receipts journal (identifying trade and non-trade cash receipts) and debit memo/credit memo journal; and

(iv) copies of all tax returns filed by any Loan Party with the U.S. Internal Revenue Service;

(cz) within five (5) Business Days after receipt thereof, written notice of any material Farm Products Notice or any material notice from Farm Products Sellers;

(da) concurrently with the delivery of Holdings' audited annual financial statements pursuant to Section 5.01(a) (or, if applicable, concurrently with the filing of its Annual Report on Form 10-K with the SEC for the most recently completed Fiscal Year), a certificate of good standing or the substantive equivalent available in the jurisdiction of incorporation, formation or organization for each Loan Party from the appropriate governmental officer in such jurisdiction;

(db) (i) promptly after the same become publicly available (but in no event later than one (1) Business Day after filing any quarterly reports), notice that any periodic and other reports, proxy statements and other materials have been filed by any Loan Party or any Restricted Subsidiary with the SEC, or any Governmental Authority succeeding to any or all of the functions of the SEC, or with any national securities exchange, or copies of any materials otherwise distributed by any Loan Party to its shareholders generally, as the case may be and (ii) promptly after the sending thereof, a copy of each financial statement, report, notice or proxy statement sent by any Loan Party or any Restricted Subsidiary to the Term Loan Agent under the Term Loan Documents;

(dc) promptly after submission to any Governmental Authority, all documents and information furnished to such Governmental Authority in connection with any investigation of any Loan Party other than routine inquiries by such Governmental Authority, except to the extent any such documents or information are subject to attorney-client privilege or attorney work-product privilege; provided, however, for the sake of clarity, it is the intent of the Loan Parties that the disclosure of such documents or information to the Administrative Agent or any Lender shall not, to the fullest extent permitted by law, be deemed to waive any attorney-client privilege, attorney work-product or other applicable legal privilege or immunity that could otherwise be asserted against any third parties that are not parties to this Agreement;

(dd) promptly upon receipt thereof, copies of all financial reports (including, without limitation, management letters), if any, submitted to any Loan Party by its auditors in connection with any annual or interim audit of the books thereof;

(de) promptly following any reasonable request therefor, such other information regarding the operations, business affairs and financial condition of the Loan Parties or any Restricted Subsidiary, or compliance with the terms of this Agreement, as the Administrative Agent or any Lender may reasonably request; and

(df) promptly following any request therefor, information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable "know your customer" requirements under the USA PATRIOT Act, the Beneficial Ownership Regulation or other applicable anti-money laundering laws.

Documents required to be delivered pursuant to clauses (a), (b) and (n) of this Section 5.01 may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which such documents are filed for public availability on the SEC's Electronic Data Gathering and Retrieval System; ~~provided that, the Borrower Representative shall notify (which may be by facsimile or electronic mail) the Administrative Agent of the filing of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Notwithstanding anything contained herein, in every instance the Borrower Representative shall be required to provide paper copies of the Compliance Certificates required by clause (d) of this Section 5.01 to the Administrative Agent.~~

Section 1.01 Notices of Material Events. The Loan Parties will furnish to the Administrative Agent and each Lender prompt (but in any event within any time period that may be specified below) written notice of the following:

(a) within ~~three~~five (35) Business Days after any Authorized Officer of a Loan Party knows of the occurrence of a Default, the occurrence of ~~any such~~ Default if and to the extent then continuing;

(b) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting any Loan Party or any Affiliate thereof in which the amount involved (not covered by an unaffiliated insurance carrier that has not denied coverage) is greater than ~~\$5,000,000~~10,000,000 and that, if adversely determined, would reasonably be expected to result in a Material Adverse Effect;

(c) any loss, damage, or destruction to the Collateral in the amount of ~~\$1,000,000~~5,000,000 or more, which is not covered by insurance;

(d) within five (5) Business Days of receipt thereof, any and all default notices received under or with respect to any leased location or public warehouse where Collateral is located having an aggregate value exceeding ~~\$1,000,000~~ \$5,000,000;

(e) all amendments to the Term Loan Agreement, together with a copy of each such amendment;

(f) within two (2) Business Days after the occurrence thereof, any Loan Party entering into a Swap Agreement or an amendment thereto, together with copies of all agreements evidencing such Swap Agreement or amendment;

(g) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, would reasonably be expected to result in a Material Adverse Effect; and

~~(h) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in liability of the Loan Parties and their Subsidiaries in an aggregate amount exceeding \$1,000,000;~~

~~(dg) (i)-~~within ten (10) days after receipt thereof, copies of any Form FDA-483 and all responses to Form FDA-483 observations; and

~~(j) any other development that results in, or would reasonably be expected to result in, a Material Adverse Effect.~~

Each notice delivered under this Section shall be accompanied by a statement of a Financial Officer or other executive officer of the Borrower Representative setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

Section 1.02 Existence; Conduct of Business. Each Loan Party will, and will cause each Restricted Subsidiary to, (a) do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, qualifications, licenses, permits, franchises, governmental authorizations, intellectual property rights, licenses and permits, in each case, material to the conduct of its business, and maintain all requisite authority to conduct its business in each jurisdiction in which its business is conducted, in each case, except where the failure to do so would not reasonably be expected to result in a Material Adverse Effect; provided that the foregoing shall not prohibit any ~~merger, consolidation, liquidation or dissolution~~ transaction permitted under Section 6.03, and (b) carry on and conduct its business in substantially the same manner and in substantially the same fields of enterprise (including, without limitation, food and beverage service, distribution, wholesale or retail) as it is on the Effective Date and those reasonably related, complementary or ancillary thereto or a logical extension thereof (including, without limitation, food and beverage service, distribution, wholesale and retail).

Section 1.03 Payment of Obligations Material Taxes. Each Loan Party will, and will cause each Restricted Subsidiary to, pay or discharge all ~~Material Indebtedness and all other~~ material liabilities and obligations, including Taxes, before the same shall become delinquent or in default, except (a) where (i) the validity or amount thereof is being contested in good faith by appropriate proceedings, (ii) such Loan Party or such Restricted Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (iii) the failure to make payment pending such contest ~~could~~ would not reasonably be expected to result in a Material Adverse Effect or (b) with respect to Restricted Payments.

Section 1.04 Maintenance of Properties. Each Loan Party will, and will cause each Restricted Subsidiary to, keep and maintain all tangible property material to the conduct of its business in good working order and condition, ordinary wear and tear and casualty excepted, except where failure to do so would not reasonably be expected to result in a Material Adverse Effect.

Section 1.05 Books and Records; Inspection Rights. Each Loan Party will, and will cause each Restricted Subsidiary to, (a) keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities and (b) permit any representatives designated by the Administrative Agent or ~~any Lender~~ the Required Lenders

(including employees of the Administrative Agent, any Lender or any consultants, accountants, lawyers, ~~agents~~ and appraisers retained by the Administrative Agent), upon reasonable prior notice and without unreasonable disruption to the business of the Loan Parties, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and ~~as often as reasonably requested~~ no more than one time per Fiscal Year; provided that, (i) notwithstanding anything herein to the contrary, ~~unless the inspection rights set forth herein may be exercised at any time, without any limitation on the number or frequency of inspections, while~~ an Event of Default has occurred and is continuing; and (ii) the Loan Parties shall ~~not be required~~ be obligated to reimburse the ~~Administrative Agent for more than two (2)~~ reasonable and documented out-of-pocket expenses incurred in connection with all such visits and inspections ~~per calendar year~~ permitted hereunder. In addition to the foregoing, the Administrative Agent may from time to time conduct at such Loan Party's premises Field Exams of such Loan Party's assets, liabilities, books and records, including examining and making extracts from its books and records. The Loan Parties shall be responsible for the costs of expenses of one (1) Field Exam during any 12-month period; provided, however, that notwithstanding the foregoing limitation, at any time on or after the date on which Availability has been less than the greater of 12.5% of the Line Cap and \$17,500,000 for three (3) consecutive Business Days, the Administrative Agent may carry out, at the Loan Parties' expense, two (2) Field Exams during the following twelve (12) consecutive months. Additionally, there shall be no limitation on the number or frequency of Field Exams if an Event of Default has occurred and is continuing, and the Loan Parties shall be responsible for the costs and expenses of any Field Exams conducted while an Event of Default has occurred and is continuing. Each Loan Party acknowledges that the Administrative Agent, after exercising its rights of inspection, may prepare and distribute to the Lenders certain Reports pertaining to each Loan Party's assets for internal use by the Administrative Agent and the Lenders.

Section 1.06 Compliance with Laws and Material Contractual Obligations. SECTION 5.07. Compliance with Laws and Material Contractual Obligations. Each Loan Party will, and will cause each Restricted Subsidiary to, (i) comply with each Requirement of Law applicable to it or its property (including without limitation Environmental Laws) and (ii) perform in all material respects its obligations under material agreements to which it is a party, except, in each case, where the failure to do so, individually or in the aggregate, ~~could~~ would not reasonably be expected to result in a Material Adverse Effect. Each Loan Party will maintain in effect and enforce policies and procedures designed to ensure compliance by such Loan Party, its Restricted Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

Section 1.07 Use of Proceeds. The proceeds of the Loans will be used only to repay existing Indebtedness, pay transaction costs, fees and expenses associated with this Agreement and the Transactions, to pay for Capital Expenditures, Permitted Acquisitions and Restricted Payments permitted by Section 6.08 and to fund the working capital needs, and for general corporate purposes, of ~~the Borrowers and their Holdings and its~~ Subsidiaries in the ordinary course of business, in all instances as permitted by this Agreement. No part of the proceeds of any Loan and no Letter of Credit will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations T, U and X. The Borrowers will not request any Borrowing or Letter of Credit, and ~~no Borrower Holdings~~ shall not use, and shall procure that its Restricted Subsidiaries and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Borrowing or Letter of Credit (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, to the extent such activities, business or transaction would be prohibited by Sanctions if conducted by a corporation incorporated in the United States or in a European Union member state or (iii) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

Section 1.08 [Intentionally Omitted]. SECTION 5.09. ~~Accuracy of Information~~ Intentionally Omitted.

Section 1.10 Insurance. Each Loan Party will, and will cause each Restricted Subsidiary (other than any Immaterial Subsidiary) to, maintain with financially sound and reputable third-party



carriers having a financial strength rating of at least A- by A.M. Best Company (a) insurance in such amounts and against such risks (including loss or damage by fire and loss in transit; theft, burglary, pilferage, larceny, embezzlement, and other criminal activities; business interruption; and general liability) and such other hazards, in each case, after giving effect to any self-insurance programs, as is customarily maintained by companies of established repute engaged in the same or similar businesses operating in the same or similar locations and (b) all insurance required pursuant to the Collateral Documents; provided that Holdings, the Borrowers and their Restricted Subsidiaries may self-insure to the extent consistent with prudent business practice. The Borrowers will furnish to the Lenders, upon written request of ~~either~~ the Administrative Agent, information in reasonable detail as to the insurance so maintained.

Section 1.11 Casualty and Condemnation SECTION 5.11. Casualty and Condemnation. The Borrowers will (a) furnish to the Administrative Agent and the Lenders prompt written notice of any casualty or other insured damage to any material portion of the Collateral or the commencement of any action or proceeding for the taking of any material portion of the Collateral or interest therein under power of eminent domain or by condemnation or similar proceeding and (b) ensure that the net proceeds of any such event (whether in the form of insurance proceeds, condemnation awards or otherwise) are collected and applied in accordance with the applicable provisions of this Agreement and the Collateral Documents.

Section 1.12 Appraisals SECTION 5.12. Appraisals. At any time that the Administrative Agent requests, each Loan Party will provide the Administrative Agent with appraisals or updates thereof of its Inventory from an appraiser selected and engaged by the Administrative Agent, and prepared on a basis satisfactory to the Administrative Agent, such appraisals and updates to include, without limitation, information required by any applicable Requirement of Law. The Administrative Agent shall request one (1) Inventory appraisal during each 12-month period and the Administrative Agent may, in its Permitted Discretion, request one (1) additional appraisal (for a total of two (2) such Inventory appraisals during each 12-month period) following the occurrence of the triggering event described in the proviso of the next sentence. The Loan Parties shall be responsible for the costs of expenses of one (1) Inventory appraisal during any 12-month period; provided, however, that notwithstanding the foregoing limitation, at any time on or after the date on which Availability has been less than the greater of 12.5% of the Line Cap and \$17,500,000 for three (3) consecutive Business Days, the Administrative Agent may request and carry out, at the Loan Parties' expense, two (2) Inventory appraisals during the following twelve (12) consecutive months. Additionally, there shall be no limitation on the number or frequency of Inventory appraisals if an Event of Default has occurred and is continuing, and the Loan Parties shall be responsible for the costs and expenses of any such appraisals conducted while an Event of Default has occurred and is continuing.

Section 1.13 Depository Banks. The Loan Parties and their Restricted Subsidiaries will maintain the Administrative Agent or any Lender as their principal depository bank.

Section 1.14 Additional Collateral; Further Assurances. (a) Each ~~Borrower and each Subsidiary that is a~~ Loan Party will cause each of its Domestic Subsidiaries (other than any Immaterial Subsidiary) that is not a FSHCO formed or acquired after the Effective Date and any Excluded Subsidiary at such time ~~that~~ as it no longer constitutes an Excluded Subsidiary to become a Loan Party by executing and delivering a Joinder Agreement within ~~thirty~~ sixty (30/60) days (or such later date as may from time to time be approved by the Administrative Agent in its ~~reasonable~~ sole discretion, but in no event later than the date such Domestic Subsidiary becomes an issuer or guarantor ~~under or~~ in respect of the Term Loan Agreement) of such formation, acquisition or disqualification as an Excluded Subsidiary (to the extent such Domestic Subsidiary remains in existence as of such ~~thirtieth~~ sixtieth day), such Joinder Agreement to be accompanied by appropriate corporate resolutions, other corporate organizational and authorization documentation and legal opinions in form and substance reasonably satisfactory to the Administrative Agent; provided, that notwithstanding the foregoing, the requirements and timeframes specified in this Section 5.14 shall not apply to Restricted Subsidiaries formed after the Fourth Amendment Effective Date in anticipation of a Permitted Acquisition until such Permitted Acquisition is actually consummated so long as such Restricted Subsidiary (x) is not required to be joined as an obligor to the Term Loan Agreement and (y) at no time holds any assets or liabilities other than any merger or acquisition consideration contributed to it contemporaneously with the closing of such Permitted Acquisition. Upon

execution and delivery thereof, each such Person (i) shall automatically become a Loan Guarantor hereunder and thereupon shall have all of the rights, benefits, duties, and obligations in such capacity under the Loan Documents and (ii) will grant Liens to the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, in any property of such Loan Party which constitutes Collateral, including any real property owned by any Loan Party (other than Excluded Assets). Nothing in this Section 5.14 shall be construed as a consent to form or acquire any Subsidiary after the Effective Date that is not otherwise expressly permitted herein. Notwithstanding anything herein to the contrary, no Foreign Subsidiary of any Loan Party and no FSHCO shall be required to become a Loan Party.

(dh) Without limiting the generality of the foregoing, each Borrower and each ~~Subsidiary that is a~~ other Loan Party will cause (i) 100% of the issued and outstanding non-voting Equity Interests and (ii) the Applicable Pledge Percentage of the issued and outstanding voting Equity Interests of each Pledge Subsidiary to be subject at all times to a first priority, perfected Lien in favor of the Administrative Agent for the benefit of the Secured Parties, to secure the Secured Obligations in accordance with the terms and conditions of the Collateral Documents or such other security documents as the Administrative Agent shall reasonably request. Notwithstanding the foregoing, no such pledge agreement in respect of the Equity Interests of a Foreign Subsidiary shall be required hereunder to the extent the Administrative Agent or its counsel determines that such pledge would not provide material credit support for the benefit of the Secured Parties pursuant to legally valid, binding and enforceable pledge agreements.

(di) Without limiting the foregoing, each Loan Party will, and will cause each Restricted Subsidiary to, execute and deliver, or cause to be executed and delivered, to the Administrative Agent such documents, agreements and instruments, and will take or cause to be taken such further actions (including the filing and recording of financing statements and other documents and such other actions or deliveries of the type required by Section 4.01, as applicable), which may be required by any Requirement of Law or which the Administrative Agent may, from time to time, reasonably request to ~~carry out the terms and conditions of this Agreement and the other Loan Documents and to~~ ensure perfection and priority of the Liens created or intended to be created by the Collateral Documents, all in form and substance reasonably satisfactory to the Administrative Agent and all at the expense of the Loan Parties.

(dj) If any material assets are acquired by any Loan Party after the Effective Date (other than Excluded Assets or assets constituting Collateral under the Security Agreement that become subject to the Lien under the Security Agreement upon the acquisition thereof), the Borrower Representative will take, and cause each Subsidiary that is a Loan Party to take within sixty (60) days (or such later date as may from time to time be approved by the Administrative Agent in its reasonable discretion but in no event later than the date such assets constitute Collateral securing the Term Loan Obligations), such actions as shall be necessary or reasonably requested by the Administrative Agent to grant and perfect such Liens, including actions described in paragraph (c) of this Section, all at the expense of the Loan Parties.

(dk) If, at any time after the Fourth Amendment Effective Date, any Restricted Subsidiary of Holdings that is not a Loan Party shall become party to a guaranty of, or grant a Lien on any assets (other than Excluded Assets) to secure, ~~(x) the Term Loan Obligations; or (y) any Subordinated Indebtedness or any other Material, Permitted Ratio Debt or Indebtedness of Holdings or a Domestic Subsidiary; incurred under Section 6.01(o), each, in an aggregate principal amount exceeding \$25,000,000,~~ the Borrower Representative shall promptly notify the Administrative Agent thereof and, within ten (10) days thereof (or such later date as may be agreed upon by the Administrative Agent) cause such Restricted Subsidiary to comply with Section 5.14(a) and (b) ~~(but without giving effect to the 30-day grace periods provided therein).~~

(dl) Notwithstanding anything to the contrary in this Agreement or any other Loan Document, (x) the Administrative Agent may grant extensions of time for, or waive the requirements to obtain, the creation or perfection of security interests in, or the obtaining of title insurance and surveys with respect to, particular assets (including extensions beyond the Effective Date for the perfection of security interests in the assets of the Loan Parties on such date) where it reasonably determines, in consultation with the Borrowers, that the cost, burden or consequence (including adverse Tax consequences) thereof is excessive in relation to the practical benefit afforded to the Secured Parties thereby; and (y) Liens required to be granted from time to time pursuant to the Collateral Documents shall be subject to

exceptions and limitations set forth in the Collateral Documents and, to the extent appropriate in the applicable jurisdictions, as otherwise agreed between the Administrative Agent and the Borrowers.

(dm) Within thirty (30) days following the Effective Date (or such later date as the Administrative Agent agrees to in its sole discretion), the Loan Parties shall deliver to the Administrative Agent certificates of insurance listing the Administrative Agent as (x) lender loss payee for the property casualty insurance policies of the Loan Parties, together with long-form lender loss payable endorsements, as appropriate and (y) additional insured with respect to the liability insurance of the Loan Parties, together with additional insured endorsements. Notwithstanding anything to the contrary herein or in any Loan Documents, such certificates of insurance and endorsements shall not be required to be delivered until the date that is thirty (30) days following the Effective Date (or such later date as the Administrative Agent agrees to in its sole discretion).

Section 1.10 Farm Products. Each Loan Party shall:

(dn) Pay, on or prior to the date required for payment with respect thereto, the amount of any outstanding invoices for the purchase of Farm Products unless (i) such Loan Party has obtained from the applicable Farm Products Seller a waiver of its rights under the applicable Farm Products Law, in form and substance reasonably acceptable to the Administrative Agent, (ii) such Loan Party is contesting, after providing written notice thereof to the Administrative Agent, the amount or payment of such invoice in good faith by appropriate proceedings or (iii) the amount of such invoice, together with the unpaid amount of all other invoices from Farm Products Sellers, is less than \$1,500,000; provided, however, that in the event that any such invoice requires payment upon delivery, payment shall be made on such date of delivery.

(do) Take all other commercially reasonable actions as may be reasonably required, if any, to ensure that any Farm Product (in any form) is purchased free and clear of any Lien, trust or other claim in favor of any Farm Products Seller or any secured party with respect to the assets of any Farm Products Seller, including, without limitation, registration with all states which have established central filing systems as contemplated under the Food Security Act.

(dp) Provide to the Administrative Agent, within five (5) Business Days of receipt by any Loan Party, a copy of (i) any Farm Products Notice or amendment to a previous Farm Products Notice, including, without limitation, any notice from any Farm Products Seller of the intention of such Farm Products Seller to preserve the benefits of any trust applicable to any assets of such Loan Party established in favor of such Farm Products Seller or other Person under the provisions of the applicable Farm Products Laws, and (ii) any master lists of effective financing statements delivered to any Loan Party or any Subsidiary pursuant to the Food Security Act unless (1) such Person has obtained from the applicable Farm Products Seller a waiver of its rights under the applicable Farm Products Laws, in form and substance reasonably satisfactory to the Administrative Agent, or (2) the amount of such invoice, together with the unpaid amount of all other invoices from Farm Products Sellers, is less than \$1,500,000.

(dq) Pay, in the event that any Loan Party receives a Farm Products Notice, the related invoice within five (5) Business Days of receipt of such Farm Products Notice; provided, however, that such invoice may remain unpaid if, and only so long as:

(i) such Person has obtained from the applicable Farm Products Seller a waiver of its rights under the applicable Farm Products Laws, in form and substance reasonably satisfactory to the Administrative Agent;

(ii) the amount of such invoice, together with the unpaid amount of all other invoices from Farm Products Sellers, is less than \$1,500,000; or

(iii)(1) such Loan Party is contesting, after providing written notice thereof to the Administrative Agent, the amount or payment of such invoice in good faith by appropriate proceedings, (2) adequate reserves with respect to such contest are maintained on the books of such Loan Party, in accordance with GAAP, (3) the ability of the vendor to pursue any claims or enforce any Liens or trusts provided under the applicable Farm Products Laws, as applicable, has been stayed or

otherwise legally prohibited during the pendency of such action, (4) such Loan Party shall promptly pay or discharge such contested invoice and all additional charges, interest, penalties and expenses, if any, and shall deliver to the Administrative Agent evidence reasonably acceptable to the Administrative Agent of such payment, if such contest is terminated or discontinued adversely to such Loan Party, and (5) nonpayment thereof could not reasonably be expected to have a Material Adverse Effect.

Each Loan Party shall at all times otherwise comply with all existing and future Farm Products Notices during their periods of effectiveness under the applicable Farm Products Laws, as applicable, including, without limitation, directions to make payments to the applicable Farm Products Seller by issuing payment instruments directly to a secured party with respect to any assets of the Farm Products Seller or jointly payable to the Farm Products Seller and any secured party with respect to the assets of such Farm Products Seller, as specified in the Farm Products Notice.

Section 1.15 Designation of Subsidiaries. The Borrower Representative may at any time and from time to time after the Fourth Amendment Effective Date designate any Restricted Subsidiary of the Borrowers (other than a Borrower) as an Unrestricted Subsidiary and re-designate any Unrestricted Subsidiary as a Restricted Subsidiary; provided that (i) immediately before and immediately after giving effect to any such designation or re-designation, no Default or Event of Default shall have occurred and be continuing or would result therefrom (including after giving effect to the reclassification of investments in, Indebtedness of and Liens on the assets of, the applicable Restricted Subsidiary or Unrestricted Subsidiary), (ii) no Subsidiary may be designated as an Unrestricted Subsidiary or continue as an Unrestricted Subsidiary if it is a "Restricted Subsidiary" for the purpose of (x) any Subordinated Indebtedness, Permitted Ratio Debt or Indebtedness incurred under Section 6.01(o), each in an aggregate amount exceeding \$10,000,000, or (y) the Term Loan Agreement, (iii) as of the date of the designation thereof, no Unrestricted Subsidiary owns any Equity Interests in any Restricted Subsidiary of any Borrower or holds any Indebtedness of or any Lien on any property of any Borrower or any Restricted Subsidiary (unless such Borrower or such Restricted Subsidiary is permitted to incur such Indebtedness or grant such Lien in favor of such Unrestricted Subsidiary pursuant to Sections 6.01 and 6.02 and the relevant transaction with such Person is permitted pursuant to Section 6.09), (iv) no Unrestricted Subsidiary may own (or be licensee of) any material intellectual property or other material assets, or own the Equity Interests of any Subsidiary that owns (or is the licensee of) material intellectual property or other material assets, at any time, (v) upon any such designation that results (on a pro forma basis) in a reduction of the Borrowing Base (since the delivery of the most recent Borrowing Base Certificate to the Administrative Agent) by greater than 5% of the Borrowing Base (based on the most recent Borrowing Base Certificate delivered to the Administrative Agent), the Borrower Representative shall be required to deliver an updated Borrowing Base Certificate, and (vi) the Payment Condition must be satisfied in respect of such designation. The designation of any Subsidiary as an Unrestricted Subsidiary on any date after the Fourth Amendment Effective Date shall constitute an investment by the Borrowers therein on the date of designation in an amount equal to the fair market value of the aggregate investment therein of the Borrowers and their Restricted Subsidiaries (as applicable) on such date. The re-designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute (i) the incurrence at the time of re-designation of any investment, Indebtedness or Liens of such Subsidiary existing at such time and (ii) a return on any investment by the Borrowers in Unrestricted Subsidiaries pursuant to the preceding sentence in an amount equal to the lesser of (x) the fair market value at the date of such re-designation of the Borrowers or their Restricted Subsidiaries' (as applicable) Investment in such Subsidiary and (y) the amount of the investment originally made in respect of the designation of such Subsidiary as an Unrestricted Subsidiary.

Section 1.5 Compliance with Certain Laws. Each Loan Party shall, and each Loan Party shall cause each of its Restricted Subsidiaries to, comply with the laws, regulations and executive orders referred to in Section 3.25 and 3.26.

Article VI.

NEGATIVE COVENANTS

Until the Commitments have expired or terminated and the principal of and interest on each Loan and all fees, expenses and other amounts payable under any Loan Document have been paid in full (other than contingent indemnification obligations for which no claim has been made), and all Letters of Credit have expired, been terminated, cash collateralized or back-stopped, in any case, in a manner acceptable to Administrative Agent and Issuing Bank in their ~~sole~~commercially reasonable discretion, and all LC Disbursements have been reimbursed, each Loan Party executing and delivering this Agreement covenants and agrees, jointly and severally with all of the other Loan Parties, with the Lenders that:

Section 1.07 Indebtedness. No Loan Party will, nor will it permit any Restricted Subsidiary to, create, incur, assume or suffer to exist any Indebtedness, except:

(dr) (i) the Secured Obligations and (ii) the Term Loan Obligations subject to the Intercreditor Agreement;

(ds) Indebtedness existing on the ~~Third~~Fourth Amendment Effective Date and set forth in Schedule 6.01 and extensions, renewals and replacements of any such Indebtedness in accordance with clause (f) hereof;

(dt) Indebtedness of any Loan Party owing to any Restricted Subsidiary and of any Restricted Subsidiary owing to any Loan Party; provided that, (i) if such Indebtedness is owing by any Restricted Subsidiary to any Loan Party and the principal amount of such Indebtedness exceeds \$5,000,000, such Indebtedness shall be evidenced by promissory notes or other instruments and such promissory notes or other instruments shall be pledged to the Administrative Agent, for the benefit of the Secured Parties, and have subordination terms satisfactory to the Administrative Agent and (ii) Indebtedness owing by any Restricted Subsidiary that is not a Loan Party to any Loan Party shall be subject to the limitations set forth in Section 6.04(d);

(du) Guarantees by any Loan Party (other than Holdings) of Indebtedness of any other Loan Party (other than Holdings); provided that (i) the Indebtedness so Guaranteed is permitted by this Section 6.01, and (ii) Guarantees permitted under this clause (d) shall be subordinated to the Secured Obligations on the same terms as, and to the extent that, the Indebtedness so Guaranteed is subordinated to the Secured Obligations;

(dv) Indebtedness of any Borrower or any Restricted Subsidiary incurred to finance the acquisition, construction or improvement of any fixed or capital assets (whether or not constituting purchase money Indebtedness), including Capital Lease Obligations and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, and extensions, renewals and replacements of any such Indebtedness in accordance with clause (f) hereof; ~~provided that (i) such Indebtedness is incurred prior to or within ninety (90) days after such acquisition or the completion of such construction or improvement and (ii) the aggregate principal amount of Indebtedness permitted by this clause (e) shall not at any time outstanding exceed \$10,000,000;~~

(dw) Indebtedness which represents an extension, refinancing or renewal (such Indebtedness being referred to herein as the "Refinancing Indebtedness") of any of the Indebtedness described in clauses (b), (e) and (j), (o) and (p) hereof (such Indebtedness being so extended, refinanced or renewed being referred to herein as the "Refinanced Indebtedness"); provided that (i) such Refinancing Indebtedness does not increase the principal amount or interest rate of the Refinanced Indebtedness, (ii) any Liens securing such Refinanced Indebtedness are not extended to any additional property of any Loan Party, (iii) no Loan Party that is not obligated with respect to repayment of such Refinanced Indebtedness is required to become obligated with respect to such Refinancing Indebtedness, (iv) such Refinancing Indebtedness does not result in a shortening of the average weighted maturity of such Refinanced Indebtedness, (v) the maturity date of such Refinancing Indebtedness is no earlier than the maturity date of such Refinanced Indebtedness, (vi) the terms of such Refinancing Indebtedness are not

less favorable to the obligor thereunder than the original terms of such Refinanced Indebtedness and (vii) if such Refinanced Indebtedness was subordinated in right of payment to the Secured Obligations, then the terms and conditions of such Refinancing Indebtedness must include subordination terms and conditions that are at least as favorable to the Administrative Agent and the Lenders as those that were applicable to such Refinanced Indebtedness;

(dx) Indebtedness (i) owed to any Person providing workers' compensation, health, disability or other employee benefits or property, casualty or liability insurance, pursuant to reimbursement or indemnification obligations to such Person, and (ii) consisting of the financing of insurance premiums, in each case, incurred in the ordinary course of business;

(dy) Indebtedness of any Borrower or any Restricted Subsidiary in respect of performance bonds, bid bonds, statutory bonds, appeal bonds, surety bonds and similar obligations, in each case provided in the ordinary course of business;

(dz) Indebtedness of any Borrower or any Restricted Subsidiary in respect of netting services, overdraft protections and otherwise in connection with deposit accounts, so long as such Indebtedness is incurred in the ordinary course of business ~~and is not outstanding for more than three (3) Business Days;~~

(ea) ~~(i) unsecured Subordinated Indebtedness under any Permitted Convertible Seller Notes in an aggregate principal amount not to exceed \$36,750,000 at any time outstanding and (ii) other unsecured or Subordinated Indebtedness of the Borrowers or Holdings in an aggregate principal amount not exceeding at any time outstanding the sum of (A) \$30,000,000 plus (B) an unlimited amount so long as, in the case of this clause (B), (x) the Total Leverage Ratio, after giving effect (including pro forma effect) to the incurrence of such Indebtedness (and any application of the proceeds of any such Indebtedness) shall not exceed 5.10:1.00 at the time of such incurrence and (y) such Indebtedness shall satisfy each of the following requirements: (1) both immediately prior to and after giving effect (including pro forma effect) thereto, no Default or Event of Default shall exist or result therefrom, (2) such Indebtedness matures after, and does not require any scheduled amortization or other scheduled payments of principal prior to the date that is 91 days after the Maturity Date (it being understood that neither (x) any provision requiring an offer to purchase such Indebtedness as a result of change of control or asset sale or other fundamental change nor (y) any early conversion of any Permitted Convertible Notes in accordance with the terms thereof shall violate the foregoing restriction), (3) such Indebtedness is not guaranteed by any Subsidiary of Holdings other than the Loan Guarantors (which guarantees, if such Indebtedness is subordinated, shall be expressly subordinated to the Secured Obligations on terms not less favorable to the Lenders than the subordination terms of such Subordinated Indebtedness), (4) to the extent any such Indebtedness constitutes Subordinated Indebtedness, such Indebtedness shall be subject to the terms of a customary subordination agreement (and, if such Indebtedness is secured, an intercreditor agreement) in form and substance reasonably acceptable to the Administrative Agent, (5) to the extent any such Subordinated Indebtedness is secured by the Collateral, the Liens securing such Subordinated Indebtedness shall rank junior to the Liens securing the Secured Obligations and (6) the covenants applicable to such Indebtedness (excluding covenants applicable only to periods after the Maturity Date) are not more onerous or more restrictive in any material respect (taken as a whole) than the applicable covenants set forth in this Agreement, as determined in good faith by the board of directors of Holdings; provided further that, for the avoidance of doubt, the amount available to the Borrowers or Holdings pursuant to clause (A) above shall be available at all times and shall not be subject to the ratio test described in clause (B) above and the Borrowers or Holdings may incur such Indebtedness under either clause (A) or (B) above in such order as they may elect in their sole discretion;~~the amount outstanding thereunder on the Fourth Amendment Effective Date;

(eb) Guarantees entered into in the ordinary course of business of a Loan Party and not in respect of Indebtedness for borrowed money;

(ec) [Intentionally Omitted];

(ed) Indebtedness representing deferred compensation to employees, directors or consultants incurred in the ordinary course of business;

(ee) unsecured Indebtedness or Subordinated Indebtedness, in each case, under Permitted Convertible Notes (~~other than Permitted Convertible Seller Notes~~) in an aggregate principal amount not exceeding ~~\$150,000,000~~ 200,000,000 at any time outstanding;

(ef) Indebtedness incurred to finance Permitted Acquisitions after the Fourth Amendment Effective Date to the extent such Indebtedness is incurred ~~on~~in reliance on Section 6.01(n) of the Term Loan Agreement (as in effect on the Fourth Amendment Effective Date) and at the time of such incurrence, is permitted to be incurred in reliance on such basket; provided that (i) no Event of Default exists (or would result therefrom), (ii) if such Indebtedness is borrowed or issued by any Loan Party, it shall not be guaranteed by any Person that is not a Loan Party or secured by any assets other than the Collateral, (iii) such Indebtedness shall not have a maturity date earlier than the date that is 91 days after the Latest Maturity Date, (iv) such Indebtedness shall rank *pari passu* in right of payment with the Secured Obligations, (v) in the case of such Indebtedness of the Loan Parties that is secured on a *pari passu* basis with or junior basis to the Secured Obligations, such Indebtedness shall be subject to an intercreditor agreement reasonably acceptable to the Administrative Agent; provided, further, that in the case of any such Indebtedness of the Loan Parties that is secured on a junior basis to the Secured Obligations, (i) such Indebtedness shall not have a maturity date prior to the date that is 91 days after the Latest Maturity Date and (ii) such Indebtedness shall not be guaranteed by any Person that is not a Loan Party and shall not be secured by any assets other than the Collateral unless, in each case, such Indebtedness was incurred in order to finance the acquisition of (x) a target that becomes a Subsidiary but not a Loan Party hereunder (in which case such target may guarantee such Indebtedness but not the Secured Obligations) or (y) assets that are “Excluded Assets” (in which case such assets may secure such Indebtedness but not the Secured Obligations); provided, further, that if such Indebtedness is unsecured, such Indebtedness shall not mature or require any scheduled amortization or scheduled payments of principal or be subject to any mandatory redemption, repurchase, repayment or sinking fund obligation (other than (x) payments as part of an “applicable high yield discount obligation” catch up payment, (y) customary offers to repurchase in connection with any change of control, asset disposition or casualty event and (z) customary acceleration rights after an event of default), in each case, prior to the date that is 91 days after the Latest Maturity Date (for the avoidance of doubt, in the case of such Indebtedness that is unsecured, (x) scheduled payments of interest and (y) conversion into common Equity Interests shall be permitted);

(eg) Indebtedness of any Person that becomes a Restricted Subsidiary, or is merged into or consolidated with a Restricted Subsidiary or Indebtedness assumed in connection with a Permitted Acquisition after the Fourth Amendment Effective Date, but only to the extent that (A) such Indebtedness existed at the time such Person became a Restricted Subsidiary or the assets subject to such Indebtedness were acquired, (B) such Indebtedness was not incurred in contemplation thereof and (C)(i) no Event of Default exists or would result from the consummation of such acquisition and (ii) (x) (1) if such Indebtedness ranks *pari passu* in right of security on the Collateral with the Obligations (other than any Obligations in respect of Incremental Term Loans (as defined in the Term Loan Agreement) secured on a junior lien basis to the Obligations), the First Lien Leverage Ratio does not exceed 2.75:1.00, (2) if such Indebtedness ranks junior in right of security on the Collateral to the Obligations, the Secured Leverage Ratio does not exceed 3.25:1.00, and (3) if such Indebtedness is unsecured the Total Leverage Ratio ~~would~~does not exceed ~~4.925~~5.00:1.00, in each case in this clause (ii)(x), calculated on a pro forma basis (as if such acquisition and related incurrence of Indebtedness had occurred on the first day of the relevant period and being deemed to be amortized over the applicable testing period in accordance with its terms) as of the last day of the most recent ~~Fiscal Quarter for which financial statements shall have been delivered pursuant to Section 5.01(a) or 5.01(b) (or, prior to the delivery of any such financial statements, as of the last Fiscal Quarter included in the financial statements referred to in Section 3.04(a))~~ Test Period and (y) with respect to any Permitted Acquisition for which the Acquisition Consideration is at least \$25,000,000, the Borrower Representative shall have delivered to the Administrative Agent a certificate of a Financial Officer of Holdings, setting forth reasonably detailed calculations demonstrating the satisfaction of the ~~condition~~applicable leverage ratio appearing in clause (x) above;

(eh) ~~other Indebtedness in an aggregate principal amount not exceeding \$20,000,000 at any time outstanding~~ [Reserved]; and

(ei) to the extent constituting Indebtedness, Indebtedness of any Loan Party or any Restricted Subsidiary in respect of any Swap Agreements permitted under Section 6.07;

(o) Permitted Ratio Debt of a Loan Party so long as (i) no Event of Default shall have occurred and be continuing at the time of the incurrence of such Indebtedness or would result therefrom, (ii) immediately after giving effect to the incurrence of such Permitted Ratio Debt, on a pro forma basis (including the application of the proceeds of any Permitted Ratio Debt) as of the last day of the most recent Test Period, (A) if such Permitted Ratio Debt ranks *pari passu* in right of security on the Collateral with the Obligations (other than any Obligations in respect of other Incremental Term Loans (as defined in the Term Loan Agreement) secured on a junior lien basis to the Obligations), the First Lien Leverage Ratio does not exceed 2.75:1.00, (B) if such Permitted Ratio Debt ranks junior in right of security on the Collateral to the Obligations, the Secured Leverage Ratio does not exceed 3.25:1.00, and (C) if such Permitted Ratio Debt is unsecured, the Total Leverage Ratio does not exceed 5.00:1.00, in each case calculated on a pro forma basis and (iii) the Borrower Representative shall have delivered to the Administrative Agent a certificate of a Financial Officer of the Borrower Representative, setting forth reasonably detailed calculations demonstrating the satisfaction of any applicable First Lien Leverage Ratio, Secured Leverage Ratio or Total Leverage Ratio test applicable to such incurrence of the Permitted Ratio Debt;

(p) Indebtedness incurred in reliance on Section 6.01(t) of the Term Loan Agreement (as in effect on the Fourth Amendment Effective Date);

(q) Indebtedness consisting of the financing of insurance premiums or take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(r) Indebtedness consisting of obligations of the Borrowers or any of their Restricted Subsidiaries under deferred compensation or other similar arrangements (including earn-outs, indemnifications, incentive non-competes and other contingent obligations and agreements consisting of the adjustment of purchase price or similar adjustments) incurred by such Person in connection with Permitted Acquisitions, permitted dispositions, or any investment expressly permitted hereunder;

(s) Indebtedness incurred by the Borrowers or any of their Restricted Subsidiaries in respect of bank guarantees, warehouse receipts, bankers' acceptances or similar instruments (other than letters of credit) issued or created in the ordinary course of business;

(t) Indebtedness consisting of obligations of the Borrowers or any of their Restricted Subsidiaries arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds in the ordinary course of business;

(u) Indebtedness incurred by the Borrowers or any of their Restricted Subsidiaries in respect of commercial letters of credit issued or created in the ordinary course of business;

(v) Indebtedness in an amount not to exceed the greater of \$5,000,000 and 4% of EBITDA on a pro forma basis for the most recent Test Period consisting of unsecured promissory notes issued by any Loan Party to current or former officers, managers, consultants, directors and employees, their respective estates, heirs, family members, spouses or former spouses to finance the purchase or redemption of Equity Interests of any Loan Party;

(w) Indebtedness incurred by Restricted Subsidiaries that are not Loan Parties in an aggregate principal amount not exceeding, at any time outstanding, the greater of \$30,000,000 and 25% of EBITDA on a pro forma basis for the most recent Test Period; and

(x) other Indebtedness in an aggregate principal amount not exceeding, at any time outstanding, the greater of \$40,000,000 and 35% of EBITDA on a pro forma basis for the most recent Test Period.

For purposes of determining compliance with Section 6.01, in the event that an item of Indebtedness (or any portion thereof) at any time meets the criteria of more than one of the categories of



permitted Indebtedness described in this Section 6.01, the Borrowers, in their sole discretion, may classify, and may from time to time subsequently reclassify, such item of Indebtedness (or any portion thereof) in any one or more of the types of Indebtedness described in this Section 6.01 (in the case of reclassification, so long as such Indebtedness is permitted at the time of reclassification to be incurred pursuant to the applicable provision). Notwithstanding the foregoing or anything to the contrary contained in this Agreement, Indebtedness incurred under the Loan Documents shall only be classified as incurred under Section 6.01(a).

Section 1.01 Liens. No Loan Party will, nor will it permit any Restricted Subsidiary to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, except:

(ej) (i) Liens created pursuant to any Loan Document and (ii) Liens securing Indebtedness under Section 6.01(a)(ii) created pursuant to any Term Loan Document; provided that, in the case of this clause (ii), (x) such Liens are subject to an Intercreditor Agreement providing that, other than with respect to the Term Loan Priority Collateral, such Liens are subordinated to the Liens securing the Secured Obligations in accordance with the terms of such Intercreditor Agreement and (y) any grantor of such Liens is a Loan Party;

(ek) Permitted Encumbrances;

(el) any Lien on any property or asset of any Borrower or any Restricted Subsidiary existing on the ThirdFourth Amendment Effective Date and set forth in Schedule 6.02 (including any extensions of any such Liens to the extent the Indebtedness is extended in accordance with Section 6.01); provided that (i) such Lien shall not apply to any other property or asset of such Borrower or Restricted Subsidiary and (ii) such Lien shall secure only those obligations which it secures on the ThirdFourth Amendment Effective Date;

(em) Liens on fixed or capital assets acquired, constructed or improved by any Borrower or any Restricted Subsidiary; provided that (i) such security interests secure Indebtedness permitted by Section 6.01(e), (ii) ~~such security interests and the Indebtedness secured thereby are incurred prior to or within ninety (90) days after such acquisition or the completion of such construction or improvement,~~ (iii) the Indebtedness secured thereby does not exceed 100% of the cost of acquiring, constructing or improving such fixed or capital assets and ~~(iv)~~ (iii) such security interests shall not apply to any other property or assets of such Borrower or Restricted Subsidiary or any other Borrower or Restricted Subsidiary;

(en) any Lien existing on any property or asset ~~(other than Accounts and Inventory)~~ prior to the acquisition thereof by any Borrower or any Restricted Subsidiary or existing on any property or asset ~~(other than Accounts and Inventory)~~ of any Person that becomes a Loan Party after the Effective Date prior to the time such Person becomes a Loan Party; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Loan Party, as the case may be, (ii) such Lien shall not apply to any other property or assets of the Loan Party and (iii) the obligation secured by such Lien is permitted by Section 6.01 and such Lien shall secure only those obligations which it secures on the date of such acquisition (including any extensions or modifications of any such obligations permitted by Section 6.01) or the date such Person becomes a Loan Party, as the case may be;

(eo) Liens of a collecting bank arising in the ordinary course of business under Section 4-208 of the Uniform Commercial Code in effect in the relevant jurisdiction covering only the items being collected upon;

(ep) Liens arising out of Sale and Leaseback Transactions permitted by Section 6.06;

(eq) Liens granted by a Restricted Subsidiary that is not a Loan Party in favor of any Borrower or another Loan Party in respect of Indebtedness owed by such Restricted Subsidiary;

- (er) precautionary UCC financing statements filed in connection with operating leases or consignments;
- (es) non-exclusive licenses and sublicenses of intellectual property or leases or subleases of real property, in each case, (i) granted to third parties in the ordinary course of business or (ii) not interfering with or adversely affecting in any material respect the business of the Loan Parties or their Restricted Subsidiaries taken as a whole;
- (et) Liens attaching solely to cash earnest money deposits in connection with any letter of intent or purchase agreement in connection with a Permitted Investment or Permitted Acquisition;
- (eu) Liens in favor of customs and revenue authorities which secure payments of customs duties in connection with the importation of goods;
- (ev) Liens (including the right of set-off) in favor of a bank or other depository institution arising as a matter of law encumbering deposits;
- (ew) Liens incurred in the ordinary course of business on property ~~with an aggregate value not exceeding \$5,000,000~~ that is subject to conditional sale, title retention, consignment or similar arrangements;
- ~~(o) [Intentionally omitted];~~
- ~~(h) (p) other Liens securing obligations in an aggregate principal amount at any time outstanding not to exceed \$5,000,000; provided that, in each case, if such Liens secure Indebtedness for borrowed money that are to be secured by the Collateral on a pari passu basis with, or junior basis to, the Liens that secure the Secured Obligations, the agent or other representative for the lenders or holders of any Indebtedness secured under this clause shall have become a party to the Intercreditor Agreement and/or another intercreditor agreement reasonably acceptable to the Administrative Agent, on the Dairyland HP Facility and any other assets of Dairyland HP that secure the Dairyland HP Indebtedness and related obligations under the New Markets Tax Credit Financing;~~
- (i) [Intentionally omitted];
- (ex) Liens representing any interest of a sublessee arising by virtue of being granted a sublease permitted by Section 6.05(h);
- (ey) Liens securing Indebtedness permitted by Section 6.01(o) or any Indebtedness incurred in connection with a permitted refinancing thereof, in each case so long as such Liens do not have priority to the corresponding Liens that secure the Secured Obligations; ~~and~~
- (y) Liens on the Collateral securing Permitted Ratio Debt incurred pursuant to Section 6.01(s); provided that such Liens shall be subject to an intercreditor agreement reasonably acceptable to the Administrative Agent and shall provide that, other than with respect to the Term Loan Priority Collateral, such Liens are subordinated to the Liens securing the Secured Obligations in accordance with the terms of such intercreditor agreement, it being understood and agreed that any intercreditor agreement with terms and conditions substantially similar to the terms and conditions of the Intercreditor Agreement shall be deemed to be acceptable to the Administrative Agent;
- (z) Liens on the Collateral securing Indebtedness under Section 6.01(t); provided that such Liens shall be subject to an intercreditor agreement reasonably acceptable to the Administrative Agent and shall provide that, other than with respect to the Term Loan Priority Collateral, such Liens are subordinated to the Liens securing the Secured Obligations in accordance with the terms of such intercreditor agreement, it being understood and agreed that any intercreditor agreement with terms and conditions substantially similar to the terms and conditions of the Intercreditor Agreement shall be deemed to be acceptable to the Administrative Agent;

(aa) Liens for taxes, assessments or governmental charges that are not overdue for a period of more than 30 days and are not otherwise delinquent or that are being diligently contested in good faith and by appropriate actions, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(ab) Liens on property of any Restricted Subsidiary that is not a Loan Party securing Indebtedness of such Restricted Subsidiary permitted under Section 6.01;

(ac) Liens on specific items of inventory or other goods and proceeds thereof of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or such other goods;

(ad) Liens (i) of a collection bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection, (ii) attaching to commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business, and (iii) in favor of a banking or other financial institution arising as a matter of law or under customary general terms and conditions encumbering deposits or other funds maintained with a financial institution (including the right of set-off) and that are within the general parameters customary in the banking industry;

(ae) Liens that are customary contractual rights of set-off (i) relating to the establishment of depository relations with banks or other financial institutions and not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of Holdings or any of the Restricted Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of Holdings or any of the Restricted Subsidiaries or (iii) relating to purchase orders and other agreements entered into with customers of Holdings or any of the Restricted Subsidiaries in the ordinary course of business;

(af) Liens on cash and cash equivalents in an aggregate amount not to exceed the greater of \$15,000,000 and 12.5% of EBITDA on a pro forma basis for the most recent Test Period to secure obligations of the Loan Parties or any Restricted Subsidiaries in respect of ordinary course cash management arrangements and under Swap Agreements that do not constitute Obligations;

(ag) Liens on the Equity Interests of any joint venture securing the obligations of such joint venture, it being understood that such Liens shall include, for the avoidance of doubt, transfer restrictions, purchase options, call or similar rights of a third-party joint venture partner;

(ah) ~~(s)~~ Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto; and

(ai) other Liens securing obligations in an aggregate principal amount at any time outstanding not to exceed the greater of \$10,000,000 and 7.5% of EBITDA on a pro forma basis for the most recent Test Period.

For purposes of determining compliance with this Section 6.02, in the event that any Lien (or any portion thereof) at any time meets the criteria of more than one of the categories of permitted Liens described herein, the Borrowers, in their sole discretion, may classify, and may from time to time subsequently reclassify, such Lien (or any portion thereof) among one or more of such categories or clauses in any manner (in the case of reclassification, so long as such Lien is permitted at the time of reclassification to be incurred pursuant to the applicable provision). Notwithstanding the foregoing or anything to the contrary contained in this Agreement, Liens incurred under the Loan Documents shall only be classified as incurred under Section 6.02(a).

Notwithstanding the foregoing, none of the Liens permitted pursuant to this Section 6.02 may at any time attach to any Loan Party's (1) Accounts, other than those permitted under clause (a) of the definition of Permitted Encumbrances and ~~clause~~ clauses (a) and (e) above, and (2) Inventory, other than those permitted under clauses (a) and (b) of the definition of Permitted Encumbrances and clauses (a), (e), (i), (l) and (n) above.

Section 1.02 Fundamental Changes. (a) No Loan Party will, nor will it permit any Restricted Subsidiary to, merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or liquidate or dissolve, except that, if at the time thereof and immediately after giving effect thereto no Event of Default shall have occurred or be continuing, (i) any Loan Party (other than Holdings) or any Restricted Subsidiary ~~thereof~~ may merge into or consolidate with a Loan Party (other than Holdings) (so long as, in the case of a merger or consolidation involving a Loan Party, a Loan Party shall be the surviving entity of such merger or consolidation); (ii) any Loan Party (other than Holdings or any Borrower) or any Restricted Subsidiary ~~of the Borrowers~~ may liquidate or dissolve into a Loan Party; (iii) any Restricted Subsidiary ~~of a Loan Party~~ may merge into or consolidate with a Person that is not a Loan Party (so long as in the case of a merger or consolidation involving a Loan Party, a Loan Party shall be the surviving entity of such merger or consolidation); and (iv) any Restricted Subsidiary that is not a Loan Party may liquidate or dissolve if the Loan Party which owns such Restricted Subsidiary determines in good faith that such liquidation or dissolution is in the best interest of the Loan Party and is not materially disadvantageous to the Lenders; provided, that (x) any such merger or consolidation hereunder involving a Person that is not a wholly owned Restricted Subsidiary immediately prior to such merger or consolidation shall not be permitted unless also permitted by Section 6.04, (y) any such merger or consolidation hereunder involving a Borrower in respect of which such Borrower is not the surviving entity shall not be permitted unless (1) the surviving entity is another Borrower or (2) the surviving entity shall have (A) executed and delivered to the Administrative Agent its assumption of the due and punctual performance and observance of each covenant and condition of this Agreement and each other Loan Document to which any Borrower not surviving such transaction was a party and (B) caused to be delivered to the Administrative Agent an opinion of nationally recognized independent counsel, or other independent counsel reasonably satisfactory to the Administrative Agent, to the effect that all agreements or instruments effecting such assumption are enforceable in accordance with their terms and comply with the terms hereof, and (z) immediately after giving effect to any such merger, consolidation or other transaction hereunder, at least one (1) Borrower shall continue to remain in existence.

(ez) No Loan Party will, nor will it permit any Restricted Subsidiary to, engage in any business other than businesses of the type conducted by the ~~Borrowers~~ Loan Parties and their Restricted Subsidiaries on the ~~Effective~~ Eighth Amendment Date and ~~businesses~~ those reasonably related, complementary or ancillary thereto ~~and/or a~~ logical ~~extensions~~ extension thereof ~~(including, without limitation, food and beverage service, distribution, wholesale and retail)~~.

(fa) The Loan Parties will not change the method of determining the Fiscal Year of Holdings and its Restricted Subsidiaries, unless the Borrower Representative shall have given the Administrative Agent at least ~~+80~~ 90 days' prior notice thereof and the parties hereto shall have made appropriate changes to this Agreement (it being acknowledged and agreed that the date of the Fiscal Year end may change by up to ten (10) days from year to year).

(fb) Holdings shall not engage in any business activities or own any property other than (i) ownership of the Equity Interests of the Borrowers, (ii) activities and contractual rights incidental to maintenance of its corporate or organizational existence and status as a public company, (iii) undertaking any activities, exercising any of its contractual rights and performing any of its contractual obligations in connection with the incurrence by Holdings of Indebtedness that is permitted under this Agreement, ~~and~~ (iv) activities relating to the performance of its obligations under the Loan Documents and Term Loan Documents to which it is a party; ~~and~~ (v) entering into any agreements or arrangements with any Persons (including, without limitation, any agreements or arrangements with vendors, suppliers, group purchase organizations and/or other customers) for the purpose of facilitating group purchases for or on behalf of the Borrowers or any of their Subsidiaries and engaging in other administrative activities in connection thereto.

Section 1.03 Investments, Loans, Advances, Guarantees and Acquisitions. No Loan Party will form any subsidiary after the Effective Date, or purchase, hold or acquire (including pursuant to any merger with any Person that was not a Loan Party and a wholly owned Subsidiary prior to such merger) any evidences of indebtedness or Equity Interest of, make or permit to exist any loans or advances to, Guarantee any obligations of, or make or permit to exist any investment or any other interest in, any other

Person, or purchase or otherwise acquire (in one transaction or a series of transactions) any assets of any other Person constituting a business unit (whether through purchase of assets, merger or otherwise), or permit any Restricted Subsidiary to do any of the foregoing, except:

(a) Permitted Investments, subject, to the extent required by the Security Agreement, to control agreements in favor of the Administrative Agent or otherwise subject to a perfected security interest in favor of the Administrative Agent for the benefit of the Lenders and the other Secured Parties (subject to any grace periods in the Security Agreement for delivering such control agreements or otherwise perfecting such security interest);

(b) ~~investments in existence on the Third Amendment Effective Date and described in Schedule 6.04~~[reserved];

(c) investments by Holdings in the Borrowers and investments by the Borrowers and the Restricted Subsidiaries in Equity Interests in their respective Subsidiaries that are Loan Parties; provided that any such Equity Interests shall be pledged in accordance with the Security Agreement (subject to any grace periods therein for perfecting such security interest);

(d) loans or advances made by any Loan Party to any Restricted Subsidiary and made by any Restricted Subsidiary to any Loan Party; provided that, ~~not more than an aggregate~~ principal ~~amount of \$6,000,000 in~~ amounts of loans and advances by Loan Parties to Restricted Subsidiaries which are not Loan Parties may not be made and remain outstanding, at any time, in an aggregate principal amount that exceeds an amount equal to (i) the greater of \$50,000,000 and 40% of EBITDA on a pro forma basis for the most recent Test Period minus (ii) the amount of all investments made by Loan Parties to in Restricted Subsidiaries which that are not Loan Parties in reliance on Section 6.04(ee);

(e) Guarantees constituting Indebtedness permitted by Section 6.01;

(f) loans or advances ~~made by a Loan Party to its employees on an arms-length basis in the ordinary course of business consistent with past practices for travel and entertainment expenses, relocation costs and similar purposes~~ up to a maximum of \$2,500,000 in the aggregate at any one time outstanding made by a Loan Party to its officers, directors, consultants, and employees on an arms-length basis to finance such Person's purchase of equity interest in Holdings;

(g) subject to Sections 4.2(a) and 4.4 of the Security Agreement, notes payable, or stock or other securities issued by Account Debtors to a Loan Party pursuant to negotiated agreements with respect to settlement of such Account Debtor's Accounts in the ordinary course of business, consistent with past practices;

(h) investments in the form of Swap Agreements permitted by Section 6.07;

(i) investments of any Person existing at the time such Person becomes a Restricted Subsidiary of a Borrower or consolidates or merges with a Borrower or any of the Restricted Subsidiaries, in either case, in accordance with the terms hereof (including in connection with a Permitted Acquisition) so long as such investments were not made in contemplation of such Person becoming a Restricted Subsidiary or of such merger;

(j) investments received in connection with the dispositions of assets permitted by Section 6.05;

(k) investments constituting deposits described in clauses (c) and (d) of the definition of the term "Permitted Encumbrances";

(l) Permitted Acquisitions;

(m) Indebtedness permitted pursuant to Section 6.01 or any Restricted Payment permitted pursuant to Section 6.08, in each case, to the extent such Indebtedness or Restricted Payment constitutes an investment;

(n) any investments received in compromise or resolution of (x) obligations of trade creditors or customers incurred in the ordinary course of business of the Borrowers, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer or (y) litigation, arbitration or other disputes with persons who are not Affiliates; provided, that any such investments shall be pledged in accordance with the Security Agreement (subject to any grace periods therein for perfecting such security interest);

(o) receivables owing to the Borrowers or any of their respective Restricted Subsidiaries created in the ordinary course of business and payable or in accordance with customary trade terms;

(p) to the extent the same constitute investments, inventory of non-Loan Parties held by the Borrowers for sale subject to consignment or similar arrangements;

(q) investments in wholly-owned Domestic Subsidiaries that become Loan Parties in accordance with Section 5.14;

(r) (i) any investment in fixed income or other assets by any Restricted Subsidiary (other than any Immaterial Subsidiary) that is a so-called “captive” insurance company (each, an “Insurance Subsidiary”) in connection with its provision of insurance to Holdings, the Borrowers or any of their Restricted Subsidiaries, which investment is made in the ordinary course of business or consistent with industry practice of such Insurance Subsidiary or by reason of applicable law, rule, regulation or order, or that is required or approved by any regulatory authority having jurisdiction over such Insurance Subsidiary or its business, as applicable (including, without limitation, any such investments held by a trust established by such Insurance Subsidiary as grantor pursuant to applicable insurance regulations), (ii) to the extent the same constitutes investments, insurance arrangements provided by any Insurance Subsidiary (including any trust established by any such Insurance Subsidiary as grantor pursuant to applicable insurance regulations) to Holdings or any of its Subsidiaries and (iii) investments by any Insurance Subsidiary in any trust established by such Insurance Subsidiary as grantor pursuant to applicable insurance regulations;

(fc) (i) investments in Insurance Subsidiaries in an aggregate amount not to exceed the greater of \$15,000,000 and 12.5% of EBITDA on a pro forma basis for the most recent Test Period (as valued at cost at the time each such investment is made) and (ii) additional investments in Insurance Subsidiaries to the extent (x) reasonably necessary (as determined in good faith by the Borrower Representative) in connection with the Insurance Subsidiaries’ providing self-insurance to the Borrowers and their Subsidiaries or (y) required by Requirements of Law in connection with the provision of such insurance; provided that the aggregate amount of any investments described in clause (ii) of this Section 6.04(s) that shall have been made in any applicable fiscal period shall be disclosed in the Compliance Certificate delivered pursuant to Section 5.01(d) in respect of such fiscal period;

(fd) investments in Unrestricted Subsidiaries and joint ventures in an aggregate amount not to exceed the greater of \$25,000,000 and 20% of EBITDA on a pro forma basis for the most recent Test Period at any time outstanding;

(fe) investments consisting of extensions of trade credit in the ordinary course of business and investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors in the ordinary course of business;

(ff) to the extent constituting investments, transactions expressly permitted under Section 6.03 and Section 6.08(b);

(fg) investments (i) existing on, or contemplated by a legally binding written commitment existing on, the Fourth Amendment Effective Date and set forth on Schedule 6.04 and any modification, replacement, renewal, refinancing, reinvestment or extension thereof; provided that the amount of any

such investment may not be increased except as otherwise permitted by this Section 6.04 (and in such case made in reliance on another paragraph of this Section 6.04 so permitting such modification, replacement, renewal or extension thereof);

(fh) investments in the form of promissory notes and other non-cash consideration received in connection with the dispositions of assets permitted by Section 6.05;

(fi) investments (including debt obligations and Equity Interests) received in connection with the bankruptcy or reorganization of suppliers and customers or in settlement of delinquent obligations of, or other disputes with, customers and suppliers arising in the ordinary course of business or upon the foreclosure with respect to any secured investment or other transfer of title with respect to any secured investment;

(fj) investments to the extent that payment for such investments is made solely with Equity Interests of Holdings;

(fk) advances of payroll payments to employees or other advances of salaries or compensation to employees in the ordinary course of business;

(fl) investments consisting of the licensing or contribution of intellectual property (other than exclusive licenses and exclusive sublicenses of material intellectual property) pursuant to joint marketing, collaborations or other similar arrangements with other Persons, in each case in the ordinary course of business;

(fm) to the extent the same constitute investments, purchases and acquisitions of inventory, supplies, materials or equipment or purchases, acquisitions, licenses for Holdings and the Restricted Subsidiaries to use (or other grants to or rights of Holdings and the Restricted Subsidiaries to use or exploit) or leases for Holdings and the Restricted Subsidiaries to use other assets, intellectual property or other rights, in each case in the ordinary course of business;

(fn) investments made by any Restricted Subsidiary that is not a Loan Party in any other Restricted Subsidiary that is not a Loan Party; and

(fo) ~~(s)~~ investments in Insurance made by Loan Parties in Restricted Subsidiaries; provided that, the that are not Loan Parties in an aggregate amount of all such not to exceed an amount equal to (i) the greater of \$50,000,000 and 40% of EBITDA on a pro forma basis for the most recent Test Period minus (ii) the amount of all investments made pursuant to this clause (s) shall not exceed \$11,750,000 (as valued at cost at the time each such investment is made) by Loan Parties in Restricted Subsidiaries that are not Loan Parties in reliance of Section 6.04(d);

(fp) ~~(t)~~ any other investments (other than Permitted Acquisitions); provided that, both immediately before and immediately after giving pro forma effect to any such investment pursuant to this clause (tf), no Event of Default shall have occurred and be continuing and (x) solely in the case of an investment in an Insurance Subsidiary, Availability is greater than the greater of 10% of the Line Cap and \$14,000,000 or (y) in the case of any other investment, the Payment Condition shall be satisfied with respect to such Investment; and

(fq) ~~(u)~~ any other investments and other acquisitions; provided that, at the time any such investment or other acquisition is made, the aggregate outstanding amount of all investments made in reliance on this clause (gg) together with the aggregate amount of all such investments made pursuant to this clause (u) shall not exceed \$20,000,000 (as valued at cost at the time each such investment is made); consideration paid in connection with all other acquisitions made in reliance on this clause (gg) (including the aggregate principal amount of all Indebtedness assumed in connection with any such other acquisition), shall not the greater of \$40,000,000 and 35% of EBITDA on a pro forma basis for the most recent Test Period.

For purposes of determining compliance with Section 6.04, in the event that any investment (or any portion thereof) at any time meets the criteria of more than one of the categories of permitted investments

described in this Section 6.04, the Borrowers, in their sole discretion, may classify, and may from time to time subsequently reclassify, such investment (or any portion thereof) in any one or more of the types of investment described in this Section 6.04 (other than Section 6.04(ff)) (in the case of reclassification, so long as such investment is permitted at the time of reclassification to be incurred pursuant to the applicable provision).

Section 1.04 Asset Sales. No Loan Party will, nor will it permit any Restricted Subsidiary to, sell, transfer, lease or otherwise dispose of any asset ~~(including any sale, transfer, lease or other disposition effected pursuant to a division)~~, including any Equity Interest owned by it or income or revenues (including accounts receivable) or rights in respect of any thereof, nor will any Borrower or any Restricted Subsidiary issue any additional Equity Interest (other than to another Borrower or another Restricted Subsidiary in compliance with Section 6.04), except:

(aj) sales, transfers and dispositions of (i) inventory in the ordinary course of business (including inventory held for sale pursuant to Section 6.04(p)), (ii) used, obsolete, worn out or surplus equipment or property in the ordinary course of business, (iii) securities of trade creditors or customers received pursuant to any dispute settlement, plan of reorganization or similar arrangement following the bankruptcy or insolvency of such trade creditor or customer and (iv) intellectual property that is no longer material to the conduct of the business of the Loan Parties;

(ak) sales, transfers and dispositions of assets to any Borrower or any other Loan Party;

(al) sales, transfers and dispositions of accounts receivable in connection with the compromise, settlement or collection thereof;

(am) sales, transfers and dispositions of Permitted Investments and other investments permitted by clauses (i) and (k) of Section 6.04;

(an) Sale and Leaseback Transactions permitted by Section 6.06;

(ao) dispositions resulting from any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of any Borrower or any Subsidiary;

(ap) licenses and sublicenses of intellectual property granted in the ordinary course of business;

(aq) subleases entered into in the ordinary course of business, to the extent that they do not materially interfere with the business of Holdings and its Subsidiaries taken as a whole; ~~and~~

(fr) dispositions of property not otherwise permitted under this Section 6.05; provided that (i) at the time of such disposition, no Default or Event of Default shall exist or would result from such disposition and the Payment Condition shall be satisfied, (ii) if the dispositions since the delivery of the most recent Borrowing Base Certificate results (on a pro forma basis) in a reduction of the Borrowing Base (based on the most recent Borrowing Base Certificate delivered to the Administrative Agent) by greater than 5% of the Borrowing Base (based on the most recent Borrowing Base Certificate delivered to the Administrative Agent), the Borrower Representative shall be required to deliver an updated Borrowing Base Certificate to the Administrative Agent and the Borrowers shall comply with their obligations under Section 2.11(b), to the extent applicable, concurrently with such Disposition, and (iii) with respect to any disposition, the Loan Parties and their Restricted Subsidiaries shall receive not less than 75% of the consideration therefor in the form of cash; provided, however, that solely for the purposes of this Section 6.05(i), the following shall be deemed to be "cash": (A) the assumption, cancellation, extinguishment or termination of Indebtedness or other liabilities (as reflected on the Restricted Group's most recent consolidated balance sheet or in the footnotes thereto, or if incurred or accrued subsequent to the date of such balance sheet, such liabilities that would have been reflected on the Restricted Group's consolidated balance sheet or in the footnotes thereto if such incurrence or accrual had taken place on or prior to the date of such balance sheet, as determined in good faith by the Borrower Representative) contingent or otherwise, in each case of the Restricted Group and, in the case of any such



assumption of Indebtedness, the release of the Restricted Group from all liability on such Indebtedness or other liability in connection with such disposition, (B) securities, notes or other obligations received by the Restricted Group from the transferee that are converted by the Restricted Group into cash or cash equivalents within 180 days following the closing of such disposition, (C) Indebtedness of any Restricted Subsidiary that is no longer a Restricted Subsidiary as a result of such disposition, to the extent that the Restricted Group is released from any Guarantee of payment of such Indebtedness in connection with such disposition, and (D) any Designated Non-Cash Consideration received by the Restricted Group in such disposition or dispositions having an aggregate fair market value (with the fair market value of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value), taken together with all other Designated Non-Cash Consideration received pursuant to this clause (D) that is at that time outstanding, not to exceed the greater of \$15,000,000 and 12.5% of EBITDA on a pro forma basis for the most recent Test Period;

(fs) dispositions by the Borrowers and their Restricted Subsidiaries of property acquired after the Fourth Amendment Effective Date pursuant to a Permitted Acquisition, (i) so long as such property is identified by the Borrowers in reasonable detail in writing to the Administrative Agent within 180 days following the closing of such Permitted Acquisition and (ii) the fair market value of the assets to be so disposed of following the consummation of any Permitted Acquisition does not exceed the greater of \$10,000,000 and 7.5% of EBITDA on a pro forma basis for the most recent Test Period in the aggregate;

(ft) dispositions of investments (including Equity Interests) in joint ventures to the extent required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

(fu) the unwinding of any Swap Agreement in accordance with its terms;

(fv) dispositions of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such disposition are promptly applied to the purchase price of such replacement property;

(fw) dispositions of investment securities and cash equivalents in the ordinary course of business;

(fx) ~~(f)~~ other sales, transfers and dispositions of assets; provided that, both immediately before and immediately after giving pro forma effect to such sales, transfers or dispositions, no Event of Default shall have occurred and be continuing and the Payment Condition shall be satisfied;

(fy) sales, transfers and other dispositions of assets (other than Equity Interests in a Restricted Subsidiary unless all Equity Interests in such Restricted Subsidiary are sold) that are not permitted by any other paragraph of this Section in an aggregate amount not to exceed the greater of \$15,000,000 and 10% of EBITDA on a pro forma basis for the most recent Test Period;

provided that all sales, transfers, leases and other dispositions permitted hereby (other than those permitted by paragraphs (b) and (f) above and abandonment of intellectual property no longer material to the business of the Loan Parties) shall be made for fair value ~~and for all cash consideration.~~

Section 1.05 Sale and Leaseback Transactions. No Loan Party will, nor will it permit any Restricted Subsidiary to, enter into any arrangement, directly or indirectly, whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property sold or transferred (a "Sale and Leaseback Transaction"), ~~except for any such sale of any fixed or capital assets by the Borrowers or any Subsidiary that is approved by the Required Lenders, made for cash consideration in an amount not less than the fair value of such fixed or capital asset and consummated within ninety (90) days after the Borrowers or such Subsidiary acquire or complete the construction of such fixed or capital asset.~~ unless (i) after giving effect to such Sale and Leaseback Transaction, the aggregate fair value of all assets disposed of pursuant to Sale and Leaseback Transactions permitted hereunder does not exceed the greater of \$30,000,000 and 22.5% of EBITDA on a pro forma basis for the most recent Test Period, (ii) the disposition of assets in connection with such Sale

and Leaseback Transaction is otherwise permitted by Section 6.05 and the proceeds thereof will be subject to Section 2.11(c), (iii) the incurrence of indebtedness in connection with such Sale and Leaseback Transaction is otherwise permitted by Section 6.01, and (iv) after giving pro forma effect to such Sale and Leaseback Transaction, the Total Leverage Ratio shall not exceed 4.00:1.00.

Section 1.06 Swap Agreements. No Loan Party will, nor will it permit any Restricted Subsidiary to, enter into any Swap Agreement, except (a) Swap Agreements entered into to hedge or mitigate risks to which any Borrower or any Restricted Subsidiary has actual exposure (other than those in respect of Equity Interests of any Borrower or any of its Restricted Subsidiaries), (b) Swap Agreements entered into in order to effectively cap, collar or exchange interest rates (from floating to fixed rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of any Borrower or any Restricted Subsidiary and (c) Permitted Call Spread Swap Agreements.

Section 1.07 Restricted Payments; Certain Payments of Indebtedness. (a) No Loan Party will, nor will it permit any Restricted Subsidiary to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except, ~~(x) any Loan Party may make a Permitted Holdings Dividend and~~

(i) ~~.[reserved]~~

(ii) ~~(y)~~ so long as no Event of Default shall have occurred and be continuing or would result therefrom (including after giving effect thereto on a pro forma basis),

(A) ~~(i)~~ each of Holdings and the Borrowers may declare and pay dividends with respect to its common stock payable solely in additional shares of its common stock, and, with respect to its preferred stock, payable solely in additional shares of such preferred stock or in shares of its common stock,

(B) ~~(ii)~~ Restricted Subsidiaries may declare and pay dividends to the Borrowers,

(C) ~~(iii)~~ the Loan Parties and their Restricted Subsidiaries may make Restricted Payments payable solely in the form of their Equity Interests pursuant to and in accordance with employment agreements, bonus plans, stock option plans, or other benefit plans for existing, new and former management, directors, employees and consultants of the Loan Parties and their Restricted Subsidiaries,

(D) ~~(iv) Holdings and its~~ the Loan Parties and their Restricted Subsidiaries may make any other Restricted Payment so long as the aggregate amount of all such Restricted Payments made ~~in reliance on~~ pursuant to this clause ~~(iv)~~ (D) during the term of this Agreement shall not exceed the greater of \$5,000,000, 20,000,000 and 15% of EBITDA on a pro forma basis for the most recent Test Period,

(E) ~~(v)~~ Holdings and its Restricted Subsidiaries may make any other Restricted Payment so long as both immediately before and after giving pro forma effect to such Restricted Payment, the Payment Condition shall be satisfied with respect to such Restricted Payment ~~and~~,

(E) ~~(vi)~~ Holdings may enter into, exercise its rights and perform its obligations under, Permitted Call Spread Swap Agreements,

(G) the Restricted Group may make Restricted Payments in an amount not to exceed the greater of \$15,000,000 and 10% of EBITDA on a pro forma basis for the most recent Test Period pursuant to and in accordance with any employee or director equity plan, employee or director stock option plan or any other employee or director benefit plan or any agreement (including any stock subscription or shareholder agreement) with

any employee, director, officer or consultant of any member of the Restricted Group, in each case as adopted or implemented in the ordinary course of business,

(H) the Borrowers may make non-cash repurchases of Equity Interests of Holdings deemed to occur upon the non-cash exercise of stock options or warrants or the settlement or vesting of other equity awards, or in connection with the withholding of a portion of the Equity Interests granted or awarded to a director or an employee to pay for the taxes payable by such director or employee upon such grant or award shall be permitted,

(I) the Restricted Group may pay cash in lieu of fractional shares in connection with any dividend, split or combination thereof or any Permitted Acquisition, or honor any conversion request by a holder of convertible Indebtedness and make cash payments in lieu of fractional shares in connection with any such conversion,

(J) the Restricted Group may make payments or distributions of a Restricted Payment within thirty (30) days after the date of declaration thereof if at the date of declaration such Restricted Payment would have been permitted hereunder,

(K) the Restricted Group may make Restricted Payments to Holdings (1) to pay Holdings' operating expenses incurred in the ordinary course of business and other corporate overhead costs and expenses (including administrative, legal, filing, accounting and similar expenses provided by third parties), which are reasonable and customary and incurred in the ordinary course of business and directly attributable to the ownership or operations of the Restricted Group, (2) the proceeds of which are used by Holdings to pay franchise taxes and other fees, taxes and expenses required to maintain its corporate or other organizational existence, in each instance which are reasonable and customary and incurred in the ordinary course of business and directly attributable to the ownership or operations of the Restricted Group, (3) in connection with any Permitted Investments and other investments expressly permitted to be made by Holdings under this Agreement so long as Holdings owns no Equity Interests other than Equity Interests of the Borrowers, (4) the proceeds of which shall be used to pay customary salary, bonus and other benefits payable to officers and employees of Holdings to the extent such salaries, bonuses and other benefits are directly attributable to the ownership or operation of the Restricted Group, (5) in amounts necessary to enable (i) Holdings to repurchase or redeem its Equity Interests or (ii) Holdings or the holders of Holdings' Equity Interests to pay withholding taxes due as a result of its ownership of Equity Interests of Holdings or any other Loan Party; provided, that (x) the aggregate amount of such dividends shall not exceed \$2,500,000 in any period of twelve consecutive months and (y) such dividend shall be actually used for a purpose set forth above substantially concurrently with the making of such dividend, (6) to the extent necessary to permit, and actually used substantially concurrently by, Holdings to discharge the consolidated Tax liabilities of the Loan Parties and (7) to the extent used substantially concurrently by Holdings to make payments in respect of Indebtedness permitted to be incurred by Holdings hereunder, which payments are permitted under Section 6.08(b), and

(L) the Restricted Group may make Restricted Payments, in an aggregate amount which, when taken together with all other Restricted Payments made pursuant to this clause (L), will not exceed the cumulative amount of the cash proceeds received by Holdings from the sale of Equity Interests of Holdings after the Fourth Amendment Effective Date and on or prior to such time (including upon exercise of warrants or options) which proceeds have been contributed to the Borrowers.

(fz) No Loan Party will, nor will it permit any Restricted Subsidiary to, make or agree to pay or make, directly or indirectly, any payment or other distribution (whether in cash, securities or other property) of or in respect of principal of or interest on any Indebtedness, or any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposit,

on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Indebtedness, except:

- (i) payment of Indebtedness created under the Loan Documents;
- (ii) payment of regularly scheduled interest and principal payments as and when due in respect of any Indebtedness permitted under this Agreement, other than payments in respect of the Subordinated Indebtedness prohibited by the subordination provisions thereof;
- (iii) payment of intercompany Indebtedness incurred in accordance with Section 6.01;
- (iv) refinancings of Indebtedness to the extent permitted by Section 6.01;
- (v) payment of secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness so long as the proceeds of such sale are sufficient to repay such Indebtedness in full;
- (vi) mandatory prepayments and voluntary repayments of Indebtedness under the Term Loan Agreement to the extent not prohibited by the Intercreditor Agreement;
- (vii) issuance of Equity Interests, or making cash payments ~~(other than in connection with Permitted Convertible Seller Notes)~~, in connection with or as part of the conversion, redemption, retirement, prepayment or cancellation of any Permitted Convertible Notes;
- (viii) payment of regularly scheduled interest payments in respect of Permitted Convertible ~~Seller~~ Notes permitted pursuant to ~~clause (i) of Section 6.01(j) or Section 6.01(n)~~ hereof, so long as no Default or Event of Default has occurred and is continuing or would be caused by such payment; ~~and~~
- (ix) any other payments, so long as (i) no Default or Event of Default has occurred and is continuing or would be caused by such payment and (ii) the Loan Parties shall have satisfied the Payment Condition with respect to such payment; and

(i) any other payments in respect of Subordinated Indebtedness, so long as (i) the aggregate amount of all payments made pursuant to this clause (x) does not exceed the greater of \$10,000,000 and 7.5% of EBITDA on a pro forma basis for the most recent Test Period,

provided, however, that no such payment or distribution shall be made in respect of the Term Loan Obligations in violation of the Intercreditor Agreement or in respect of any Subordinated Indebtedness in violation of the subordination provisions applicable thereto.

~~(e) No Loan Party will, nor will it permit any Subsidiary to, make, directly or indirectly, any Specified Earn-Out Payment, unless no Default or Event of Default has occurred and is continuing or would be caused by such Specified Earn-Out Payment.~~

Section 1.08 Transactions with Affiliates. No Loan Party will, nor will it permit any Restricted Subsidiary to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates; (other than any such transactions having an aggregate value (whether in the form of disposition of assets, payments or otherwise) that do not exceed the greater of \$10,000,000 and 7.5% of EBITDA on a pro forma basis for the most recent Test Period) except (a) transactions that ~~(i) are in the ordinary course of business and (ii)~~ are at prices and on terms and conditions not less favorable to such Loan Party or such Restricted Subsidiary than could be obtained on an arm's-length basis from unrelated third parties, (b) transactions between or among any Borrower and any Subsidiary that is a Loan Party, or between or among any Restricted Subsidiaries that are not Loan Parties, in each instance not involving any other Affiliate, (c) (i) transactions involving Insurance Subsidiaries and/or trusts established by Insurance Subsidiaries, including, without limitation, investments in Insurance Subsidiaries and/or trusts

established by Insurance Subsidiaries, that are not prohibited by the terms of this Agreement and the other Loan Documents and (ii) other transactions that are expressly permitted by the terms of this Agreement and the other Loan Documents, (d) transactions set forth on Schedule 3.22 or any amendment thereto to the extent such an amendment is not adverse to the Lenders in any material respect; provided that any renewal or extension of the leases set forth on such schedule shall be, in the Borrower Representative's reasonable discretion, on terms no less favorable to the Loan Parties than could be obtained on an arm's-length basis from unrelated parties ~~and~~ (e) the Master Operating Sublease, dated on April 26, 2012, between Dairyland and Dairyland HP, relating to the Dairyland HP Facility, as the same may be amended from time to time; ~~(f) the payment of customary fees and compensation (including equity compensation) to and insurance provided on behalf of, the payment and reimbursement of out-of-pocket expenses to or on behalf of, and the payment of customary indemnities provided on behalf of current and former, directors, officers, consultants or employees of Holdings, the Borrower or any Restricted Subsidiary, (g) customary employment, consulting, retention and severance arrangements between the Restricted Group and their respective current, former and future officers and employees in the ordinary course of business and transactions pursuant to stock option plans and employee benefit plans and similar arrangements in the ordinary course of business, (h) Restricted Payments permitted by Section 6.08, and (i) any transactions permitted by Section 6.04, and (j) transactions between or among Loan Parties and Restricted Subsidiaries who are not Loan Parties, so long as any such transaction (i) does not adversely impact the Liens on the Collateral securing the Obligations or the Guarantees of the Obligations, (ii) does not impair the rights of, or benefits or remedies available to, the secured parties under any Loan Document, (iii) does not result in (and could not be reasonably expected to result in) a Material Adverse Effect, and (iv) is entered into in the ordinary course of business.~~

Section 1.10 Restrictive Agreements. No Loan Party will, nor will it permit any Restricted Subsidiary (other than any Immaterial Subsidiary) to, directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of such Loan Party or Restricted Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets, or (b) the ability of any Restricted Subsidiary to pay dividends or other distributions with respect to any Equity Interests or to make or repay loans or advances to any other Loan Party or Restricted Subsidiary or to Guarantee Indebtedness of any other Loan Party or Restricted Subsidiary; provided that (i) the foregoing shall not apply to restrictions and conditions imposed by law, by any Loan Document or any Term Loan Document, (ii) the foregoing shall not apply to restrictions and conditions existing on the ~~Third~~Fourth Amendment Effective Date identified on Schedule 6.10 (but shall apply to any extension or renewal of, or any amendment or modification expanding the scope of, any such restriction or condition), (iii) the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale of a Restricted Subsidiary pending such sale, provided such restrictions and conditions apply only to the Restricted Subsidiary that is to be sold and such sale is permitted hereunder, (iv) clause (a) of the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness as permitted by this Agreement, (v) clause (a) of the foregoing shall not apply to Excluded Assets and customary provisions in leases or licenses restricting the assignment thereof or the grant of a security interest therein, in each case, to the extent such provisions are required by the parties thereto and not bargained for by any Loan Party or Restricted Subsidiary, and (vi) the foregoing shall not apply to restrictions and conditions contained in agreements relating to Permitted Convertible Notes (excluding Permitted Convertible Seller Notes).

Section 1.11 Amendment of Material Documents. No Loan Party will, nor will it permit any Restricted Subsidiary to, amend, modify or waive any of its rights under (a) any agreement relating to any Subordinated Indebtedness or any Term Loan Obligation, in each case, except as not prohibited by the intercreditor or subordination agreement between the Administrative Agent and the holders of such Indebtedness or (b) its charter, articles or certificate of incorporation or organization, by-laws, operating, management or partnership agreement or other organizational or governing documents, in each case, to the extent any such amendment, modification or waiver would be materially adverse to the Lenders.

Section 1.12 Fixed Charge Coverage Ratio. During any FCCR Test Period, the Borrowers will not permit the Fixed Charge Coverage Ratio as of the last day of any period of four fiscal quarters ending during such FCCR Test Period, to be less than 1.00 to 1.00 calculated on a pro forma basis.

Article VII.

EVENTS OF DEFAULT

If any of the following events (collectively, “Events of Default,” and, each, an “Event of Default”) shall occur:

(ga) the Borrowers shall fail to pay any principal of any Loan or any reimbursement obligation in respect of any LC Disbursement when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(gb) the Borrowers shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) of this Article) payable under this Agreement or any other Loan Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three (3) Business Days;

(gc) any representation or warranty made or deemed made by or on behalf of any Loan Party or any Restricted Subsidiary in, or in connection with, this Agreement or any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder, shall prove to have been incorrect in any material respect when made or deemed made;

(gd) (i) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in (x) Section 5.02(a), 5.03 (with respect to a Loan Party’s existence), ~~5.08~~, 5.14 or 5.15, 5.16 or in Article VI or (y) Article VII of the Security Agreement (during the continuation of a Cash Dominion Period but otherwise subject to a three (3) day grace period, to the extent ~~that~~ such failure is capable of being cured), or (ii) the Borrower Representative fails to deliver a Borrowing Base Certificate and, in the case of this clause (ii), such failure shall continue for a period of five (5) Business Days (when required to be delivered monthly) or three (3) Business Days (when required to be delivered weekly);

(ge) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those which constitute a default under another Section of this Article), and such failure shall continue unremedied for a period of (i) five (5) ~~days~~Business Days after the earlier of (x) an Authorized Officer of any Loan Party obtaining actual knowledge of such failure and (y) notice thereof from the Administrative Agent to the Borrower Representative (which notice will be given at the request of any Lender), if such breach relates to terms or provisions of Section 5.01 (other than Section 5.01(a) and 5.01(b)), 5.02 (other than Section 5.02(a)), 5.04, 5.06 (relating to Field Exams), 5.08, 5.10 or 5.11 of this Agreement, (ii) ten (10) ~~days~~Business Days after the earlier of (x) an Authorized Officer of any Loan Party obtaining actual knowledge of such failure and (y) notice thereof from the Administrative Agent to the Borrower Representative (which notice will be given at the request of any Lender), if such breach relates to terms or provisions of Section 5.01(a) or 5.01(b) of this Agreement or (iii) thirty (30) days after the earlier of (x) an Authorized Officer of any Loan Party obtaining actual knowledge of such failure and (y) notice thereof from the Administrative Agent to the Borrower Representative (which notice will be given at the request of any Lender), if such breach relates to terms or provisions of any other Section of this Agreement or any other Loan Document;

(gf) any Loan Party or any Restricted Subsidiary shall fail to make any payment (whether of principal, or interest, fees or any other amount and regardless of amount) in respect of the Term Loan Obligations or any other Material Indebtedness, when and as the same shall become due and payable (after giving effect to any applicable grace periods);

(gg) after giving effect to any applicable grace periods with respect thereto, any event or condition occurs that results in the Term Loan Obligations or any other Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits the holder or holders of the Term Loan Obligations or any Material Indebtedness or any trustee or agent on its or their behalf to cause any of the Term Loan Obligations or any Material Indebtedness, as applicable, to become due, or to require the

prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; provided that this clause (g) shall not apply to (i) secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness in accordance with the terms hereof so long as the proceeds of such sale are sufficient to repay such Indebtedness in full, (ii) mandatory prepayments of the Term Loan Obligations required by the Term Loan Agreement, but subject to terms of the Intercreditor Agreement, (iii) any redemption, repurchase, conversion or settlement with respect to any Permitted Convertible Notes pursuant to their terms unless such redemption, repurchase, conversion or settlement results from a default thereunder or an event of the type that constitutes an Event of Default or (iv) any early payment requirement or unwinding or termination with respect to any Permitted Call Spread Swap Agreement;

(gh) (A) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of a Loan Party or any Restricted Subsidiary (other than any Immaterial Subsidiaries) of any Loan Party or its debts, or of a substantial part of its assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Loan Party or any Restricted Subsidiary (other than any Immaterial Subsidiary) of any Loan Party or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered or (B) the occurrence of the event described in clause (h) of Article VII of the Term Loan Agreement (as in effect on the date hereof);

(gi) (A) any Loan Party or any Restricted Subsidiary (other than any Immaterial Subsidiary) of any Loan Party shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (h) of this Article, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for such Loan Party or Restricted Subsidiary (other than any Immaterial Subsidiary) of any Loan Party or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing or (B) the occurrence of the event described in clause (i) of Article VII of the Term Loan Agreement (as in effect on the date hereof);

(gj) any Loan Party or any Restricted Subsidiary (other than any Immaterial Subsidiary) of any Loan Party shall become unable, admit in writing its inability, or ~~publicly declare its intention not to, or~~ fail generally to pay its debts as they become due;

(gk) (i) one or more judgments for the payment of money in an aggregate amount in excess of ~~\$10,000,000~~ 40,000,000, including, without limitation, any such final order enforcing a binding arbitration decision, shall be rendered against any Loan Party, any Restricted Subsidiary ~~of any Loan Party~~ or any combination thereof and the same shall remain undischarged for a period of ~~forty-fivesixty (4560)~~ consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of any Loan Party or any Restricted Subsidiary ~~of any Loan Party~~ to enforce any such judgment or (ii) any Loan Party or Restricted Subsidiary shall fail within ~~forty-fivesixty (4560)~~ days to discharge one or more non-monetary judgments or orders which, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect, which judgments or orders, in any such case, are not stayed on appeal or otherwise being appropriately contested in good faith by proper proceedings diligently pursued; provided, however, that no Event of Default shall occur under this clause (k) if and for so long as (i) the full amount of such judgment, order or award is covered by a valid and binding policy of insurance and (ii) such insurer has been notified of such judgment, and the amount thereof, and has not disputed or contested the claim made for payment of the full amount of such judgment, order or award under such policy;

(gl) an ERISA Event shall have occurred that when taken together with all other ERISA Events that have occurred, would reasonably be expected to have a Material Adverse Effect;

(gm) a Change in Control shall occur;

(gn) the Loan Guaranty shall fail to remain in full force or effect or any action shall be taken to discontinue or to assert the invalidity or unenforceability of the Loan Guaranty, or any Loan Guarantor shall fail to comply with any of the terms or provisions of the Loan Guaranty to which it is a party, or any Loan Guarantor shall deny that it has any further liability under the Loan Guaranty to which it is a party, or shall give notice to such effect;

(go) except as permitted by the terms of any Collateral Document, the Intercreditor Agreement or this Agreement, (i) any Collateral Document shall for any reason fail to create or keep created a valid security interest in any material portion of the Collateral purported to be covered thereby, or (ii) other than as a result of the failure of the Administrative Agent to take any action within its control to maintain perfection of the Liens created in favor of the Administrative Agent for the benefit of the Secured Parties pursuant to the Loan Documents (excluding any action based on facts or circumstances for which the Administrative Agent has not been notified in accordance with the provisions of the Loan Documents), any Lien securing any material portion of the Secured Obligations shall cease to be a perfected Lien having the priority required by the Loan Documents;

(gp) except as permitted by the terms of any Collateral Document, any action shall be taken [by the Loan Parties](#) to discontinue or to assert the invalidity or unenforceability of any Collateral Document;

(gq) any Loan Party shall fail to be in substantial compliance with all current applicable statutes, rules, regulations, guides, policies, orders or directives administered or issued by the FDA or a recall notice, in each case, to the extent such failure would reasonably be expected to have a Material Adverse Effect; ~~or~~

(gr) (i) any material provision of any Loan Document for any reason ceases to be valid, binding and enforceable in accordance with its terms or (ii) any Loan Party shall challenge the enforceability of any Loan Document or shall assert in writing, or engage in any action or inaction based on any such assertion, that any provision of any of the Loan Documents has ceased to be or otherwise is not valid, binding and enforceable in accordance with its terms;

then, and in every such event (other than an event with respect to the Loan Parties described in [clause \(h\)](#) or [\(i\)](#) of this Article), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower Representative, take either or both of the following actions, at the same or different times: (i) terminate the Commitments, whereupon the Commitments shall terminate immediately, and (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrowers accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrowers; and in case of any event with respect to the Loan Parties described in [clause \(h\)](#) or [\(i\)](#) of this Article, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Loan Parties accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Loan Parties. Upon the occurrence and the continuance of an Event of Default, the Administrative Agent may, in accordance with and subject to the terms of the Intercreditor Agreement, and at the request of the Required Lenders shall, exercise any rights and remedies provided to the Administrative Agent under the Loan Documents or at law or equity, including all remedies provided under the UCC.

#### Article VIII.

#### THE ADMINISTRATIVE AGENT

Section 1.08 Appointment. SECTION 8.01. Appointment Each of the Lenders, on behalf of itself and any of its Affiliates that are Secured Parties, and each Issuing Bank hereby irrevocably appoints the Administrative Agent as its agent and authorizes the Administrative Agent to take such actions on its behalf, including execution of the other Loan Documents, and to exercise such powers as are delegated to



the Administrative Agent by the terms of the Loan Documents, together with such actions and powers as are reasonably incidental thereto. In addition, to the extent required under the laws of any jurisdiction other than the U.S., each of the Lenders and the Issuing Bank hereby grants to the Administrative Agent any required powers of attorney to execute any Collateral Document governed by the laws of such jurisdiction on such Lender's or Issuing Bank's behalf. The provisions of this Article are solely for the benefit of the Administrative Agent and the Lenders (including the Swingline Lender and the Issuing Bank), and the Loan Parties shall not have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" as used herein or in any other Loan Documents (or any similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

Section 1.09 Rights as a Lender. SECTION 8.02. Rights as a Lender The bank serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent, and such bank and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with any Loan Party or any Subsidiary or any Affiliate thereof as if it were not the Administrative Agent hereunder.

Section 1.010 Duties and Obligations. SECTION 8.03. Duties and Obligations The Administrative Agent shall not have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) the Administrative Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02), and ~~(c)~~ except as expressly set forth in the Loan Documents, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Loan Party or any Subsidiary that is communicated to or obtained by the bank serving as Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02) or in the absence of its own gross negligence or willful misconduct as determined by a final nonappealable judgment of a court of competent jurisdiction. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until written notice thereof is given to the Administrative Agent by the Borrower Representative or a Lender, and the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or in connection with any Loan Document, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, (v) the creation, perfection or priority of Liens on the Collateral or the existence of the Collateral, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

Section 1.011 Reliance. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrowers), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Section 1.012 Actions through Sub-Agents.SECTION 8.05. Actions through Sub-Agents The Administrative Agent may perform any and all of its duties and exercise its rights and powers by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as the Administrative Agent.

Section 1.013 Resignation.SECTION 8.06. Resignation Subject to the appointment and acceptance of a successor Administrative Agent as provided in this paragraph, the Administrative Agent may resign at any time by notifying the Lenders, the Issuing Bank and the Borrower Representative. Upon any such resignation, the Required Lenders shall have the right, in consultation with the Borrowers, to appoint a successor. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may, on behalf of the Lenders and the Issuing Bank, appoint a successor Administrative Agent which shall be a bank with an office in New York, New York, or an Affiliate of any such bank. Upon the acceptance of its appointment as Administrative Agent hereunder by its successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents. The fees payable by the Borrowers to a successor Administrative Agent shall be the same as those payable to its predecessor, unless otherwise agreed by the Borrowers and such successor. Notwithstanding the foregoing, in the event no successor Administrative Agent shall have been so appointed and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its intent to resign, the retiring Administrative Agent may give notice of the effectiveness of its resignation to the Lenders, the Issuing Banks and the Borrowers, whereupon, on the date of effectiveness of such resignation stated in such notice, (a) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents, provided that, solely for purposes of maintaining any security interest granted to the Administrative Agent under any Collateral Document for the benefit of the Secured Parties, the retiring Administrative Agent shall continue to be vested with such security interest as collateral agent for the benefit of the Secured Parties and, in the case of any Collateral in the possession of the Administrative Agent, shall continue to hold such Collateral, in each case until such time as a successor Administrative Agent is appointed and accepts such appointment in accordance with this paragraph (it being understood and agreed that the retiring Administrative Agent shall have no duty or obligation to take any further action under any Collateral Document, including any action required to maintain the perfection of any such security interest), and (b) the Required Lenders shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, provided that (i) all payments required to be made hereunder or under any other Loan Document to the Administrative Agent for the account of any Person other than the Administrative Agent shall be made directly to such Person and (ii) all notices and other communications required or contemplated to be given or made to the Administrative Agent shall also directly be given or made to each Lender and each Issuing Bank. Following the effectiveness of the Administrative Agent's resignation from its capacity as such, the provisions of this Article, Section 2.17(d) and Section 9.03, as well as any exculpatory, reimbursement and indemnification provisions set forth in any other Loan Document, shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while it was acting as Administrative Agent and in respect of the matters referred to in the proviso under clause (a) above.

Section 1.014 Non-Reliance.SECTION 8.07. Non-Reliance

(gs) Each Lender acknowledges and agrees that the extensions of credit made hereunder are commercial loans and letters of credit and not investments in a business enterprise or securities. Each Lender further represents that it is engaged in making, acquiring or holding commercial loans in the ordinary course of its business and has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement as a Lender, and to make, acquire

or hold Loans hereunder. Each Lender shall, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information (which may contain material, non-public information within the meaning of the United States securities laws concerning the Borrowers and their Affiliates) as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document, any related agreement or any document furnished hereunder or thereunder and in deciding whether or to the extent to which it will continue as a Lender or assign or otherwise transfer its rights, interests and obligations hereunder.

(gt) Each Lender hereby agrees that (i) it has requested a copy of each Report prepared by or on behalf of the Administrative Agent; (ii) the Administrative Agent (A) makes no representation or warranty, express or implied, as to the completeness or accuracy of any Report or any of the information contained therein or any inaccuracy or omission contained in or relating to a Report and (B) shall not be liable for any information contained in any Report; (iii) the Reports are not comprehensive audits or examinations, and that any Person performing any Field Exam will inspect only specific information regarding the Loan Parties and will rely significantly upon the Loan Parties' books and records, as well as on representations of the Loan Parties' personnel and that the Administrative Agent undertakes no obligation to update, correct or supplement the Reports; (iv) it will keep all Reports confidential and strictly for its internal use, not share the Report with any Loan Party or any other Person except as otherwise permitted pursuant to this Agreement; and (v) without limiting the generality of any other indemnification provision contained in this Agreement, (A) it will hold the Administrative Agent and any such other Person preparing a Report harmless from any action the indemnifying Lender may take or conclusion the indemnifying Lender may reach or draw from any Report in connection with any extension of credit that the indemnifying Lender has made or may make to the Borrower, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a Loan or Loans; and (B) it will pay and protect, and indemnify, defend, and hold the Administrative Agent and any such other Person preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including reasonable attorneys' fees) incurred by the Administrative Agent or any such other Person as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

Section 1.01 Other Agency Titles. [SECTION 8.08. Other Agency Titles] The Co-Syndication Agents and the Lead Arrangers shall not have any right, power, obligation, liability, responsibility or duty under this Agreement other than those applicable to all Lenders as such. Without limiting the foregoing, none of such Lenders shall have or be deemed to have a fiduciary relationship with any Lender. Each Lender hereby makes the same acknowledgments with respect to the relevant Lenders in their respective capacities as Co-Syndication Agent or Lead Arranger as it makes with respect to the Administrative Agent in the preceding paragraph.

Section 1.02 Not Partners or Co-Venturers: Administrative Agent as Representative of the Secured Parties. SECTION 8.09. Not Partners or Co-Venturers; Administrative Agent as Representative of the Secured Parties

(ar) The Lenders are not partners or co-venturers, and no Lender shall be liable for the acts or omissions of, or (except as otherwise set forth herein in case of the Administrative Agent) authorized to act for, any other Lender. The Administrative Agent shall have the exclusive right on behalf of the Lenders to enforce the payment of the principal of and interest on any Loan after the date such principal or interest has become due and payable pursuant to the terms of this Agreement.

(as) In its capacity, the Administrative Agent is a "representative" of the Secured Parties within the meaning of the term "secured party" as defined in the New York Uniform Commercial Code. Each Lender authorizes the Administrative Agent to enter into each of the Collateral Documents to which it is a party and to take all action contemplated by such documents. Each Lender agrees that no Secured Party (other than the Administrative Agent) shall have the right individually to seek to realize upon the security granted by any Collateral Document, it being understood and agreed that such rights and remedies may be exercised solely by the Administrative Agent for the benefit of the Secured Parties upon the terms of the Collateral Documents. In the event that any Collateral is hereafter pledged by any Person as collateral security for the Secured Obligations, the Administrative Agent is hereby authorized, and

hereby granted a power of attorney, to execute and deliver on behalf of the Secured Parties any Loan Documents necessary or appropriate to grant and perfect a Lien on such Collateral in favor of the Administrative Agent on behalf of the Secured Parties.

Section 1.10 Flood Laws. SECTION 8.10. Flood Laws BMO has adopted internal policies and procedures that address requirements placed on federally regulated lenders under the National Flood Insurance Reform Act of 1994 and related legislation (the "Flood Laws"). BMO, as administrative agent or collateral agent on a syndicated facility, will post on the applicable electronic platform (or otherwise distribute to each Lender in the syndicate) documents that it receives in connection with the Flood Laws. However, BMO reminds each Lender and Participant in the facility that, pursuant to the Flood Laws, each federally regulated Lender (whether acting as a Lender or Participant in the facility) is responsible for assuring its own compliance with the flood insurance requirements.

Section 1.11 ERISA Related Provisions. SECTION 8.10. Flood Laws

(gu) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrowers or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments or this Agreement,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(at) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrowers or any other Loan Party, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement (including in

connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

Section 1.1 Recovery of Erroneous Payments. SECTION 8.10. Flood Laws Notwithstanding anything to the contrary in this Agreement, if at any time the Administrative Agent determines (in its sole and absolute discretion) that it has made a payment hereunder in error to any Lender, the Issuing Bank, the Swingline Lender or any other Secured Party, whether or not in respect of an Obligation due and owing by any Borrower at such time, where such payment is a Rescindable Amount, then in any such event, each such Person receiving a Rescindable Amount severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount received by such Person in immediately available funds in the currency so received, with interest thereon, for each day from and including the date such Rescindable Amount is received by it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. Each Lender, the Issuing Bank, the Swingline Lender and each other Secured Party irrevocably waives any and all defenses, including any "discharge for value" (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another), "good consideration", "change of position" or similar defenses (whether at law or in equity) to its obligation to return any Rescindable Amount. The Administrative Agent shall inform each Lender, the Issuing Bank, the Swingline Lender and each other Secured Party that received a Rescindable Amount promptly upon determining that any payment made to such Person comprised, in whole or in part, a Rescindable Amount. Each Person's obligations, agreements and waivers under this Section 8.12 shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender, the Issuing Bank or the Swingline Lender, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

#### Article IX.

#### MISCELLANEOUS

Section 1.015 Notices. (a) Except in the case of notices and other communications expressly permitted to be given by telephone or Electronic Systems (and subject, in each case, to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile or email, as follows:

- (i) if to any Loan Party, to the Borrower Representative at:

The Chefs' Warehouse, Inc.  
100 East Ridge Road  
Ridgefield, CT 06877  
Attention: Alexandros Aldous  
Telephone: (203) 894-1345, Ext. 10211  
Facsimile: (203) 894-9108  
E-mail: IR@chefswarehouse.com

With a copy (in the case of an actual or potential Default, Event of Default, noncompliance with this Agreement or any other similar matter but shall not, in any event, constitute notice under this Agreement or any other Loan Document) to:

Shearman & Sterling LLP  
599 Lexington Avenue  
New York, NY 10022  
Attention: Gus Atiyah  
Telephone: (212) 848-5227  
Facsimile: (646) 848-5227

E-mail: Gus.Atiyah@Shearman.com

(ii) Bank N.A. at: if to the Administrative Agent, BMO in its capacity as an Issuing Bank or the Swingline Lender, to BMO Harris

BMO Harris Bank N.A.  
111 West Monroe  
Chicago, Illinois 60603  
Attention: Account Executive – The Chefs’ Warehouse, Inc.  
Facsimile No.: (312) 293-8532

(iii) Questionnaire. if to any other Lender or Issuing Bank, to it at its address or facsimile number set forth in its Administrative

All such notices and other communications (i) sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received, (ii) sent by facsimile shall be deemed to have been given when sent, provided that if not given during normal business hours of the recipient, such notice or communication shall be deemed to have been given at the opening of business on the next Business Day of the recipient, or (iii) delivered through Electronic Systems to the extent provided in paragraph (b) below shall be effective as provided in such paragraph.

(gv) Notices and other communications to the Lenders and the Issuing Bank hereunder may be delivered or furnished by Electronic Systems pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Article II or to compliance and no Default certificates delivered pursuant to Section 5.01(d) unless otherwise agreed by the Administrative Agent and the applicable Lender. Each of the Administrative Agent and the Borrower Representative (on behalf of the Loan Parties) may, in its discretion, agree to accept notices and other communications to it hereunder by Electronic Systems pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise proscribes, all such notices and other communications (i) sent to an e-mail address shall be deemed received upon the sender’s receipt of an acknowledgement from the intended recipient (such as by the “return receipt requested” function, as available, return e-mail or other written acknowledgement), provided that if not given during the normal business hours of the recipient, such notice or communication shall be deemed to have been given at the opening of business on the next Business Day for the recipient, and (ii) posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (i), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii) above, if such notice, e-mail or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day of the recipient.

(gw) Any party hereto may change its address, facsimile number or e-mail address for notices and other communications hereunder by notice to the other parties hereto.

(gx) Electronic Systems.

(iv) Each Loan Party agrees that the Administrative Agent may, but shall not be obligated to, make Communications (as defined below) available to the Issuing Bank and the other Lenders by posting the Communications on Debt Domain, Intralinks, Syndtrak, ClearPar or a substantially similar Electronic System.

(v) Any Electronic System used by the Administrative Agent is provided “as is” and “as available.” The Agent Parties (as defined below) do not warrant the adequacy of such Electronic Systems and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the

Communications or any Electronic System. In no event shall the Administrative Agent or any of its Related Parties (collectively, the “Agent Parties”) have any liability to any Loan Party, any Lender, the Issuing Bank or any other Person or entity for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of any Loan Party’s or the Administrative Agent’s transmission of Communications through an Electronic System. “Communications” means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Loan Party pursuant to any Loan Document or the transactions contemplated therein which is distributed by the Administrative Agent, any Lender or the Issuing Bank by means of electronic communications pursuant to this Section, including through an Electronic System.

Section 1.02 Waivers; Amendments. (a) No failure or delay by the Administrative Agent, the Issuing Bank or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Issuing Bank and the Lenders hereunder and under any other Loan Document are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, any Lender or the Issuing Bank may have had notice or knowledge of such Default at the time.

(gy) Except as provided in the first sentence of Section 2.09(f) (with respect to any commitment increase), and subject to Section 2.14(b), neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrowers and the Required Lenders or by the Borrowers and the Administrative Agent with the consent of the Required Lenders; provided that no such agreement shall (i) increase the Commitment of any Lender without the written consent of such Lender (including any such Lender that is a Defaulting Lender), (ii) reduce or forgive the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon (it being agreed that the waiver of the default interest margin referred to in Section 2.13(d) shall only require the consent of Required Lenders), or reduce or forgive any interest or fees payable hereunder, without the written consent of each Lender (including any such Lender that is a Defaulting Lender) directly affected thereby (except that any amendment or modification of the financial covenants in this Agreement (or defined terms used in the financial covenants in this Agreement) shall not constitute a reduction in the rate of interest or fees for purposes of this clause (ii)), (iii) postpone the scheduled date of payment of the principal amount of any Loan or LC Disbursement, or any date for the payment of any interest, fees or other Obligations payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender (including any such Lender that is a Defaulting Lender) directly affected thereby, (iv) change Section 2.18(b) or (d) in a manner that would alter the manner in which payments are shared, without the written consent of each Lender (other than a Defaulting Lender), (v) change the definition of “Borrowing Base” (or any defined terms used therein) in a manner that makes more credit available, increase the advance rates set forth in the definition of Borrowing Base or add new categories of eligible assets, in each case, without the written consent of the Supermajority Lenders, (vi) change any of the provisions of this Section or the definition of “Required Lenders” or “Supermajority Lenders” or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender (other than a Defaulting Lender) directly affected thereby, (vii) release all or substantially all of the Loan Guarantors from their obligations under the Loan Guaranty (except as otherwise permitted herein) without the written consent of each Lender (other than a Defaulting Lender), or (viii) except as provided in clause (d) of this Section or in any Collateral Document, release all or substantially all of the Collateral, without the written consent of each Lender (other than any Defaulting Lender); provided, further, that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent, the Issuing Bank or the Swingline Lender hereunder without the prior

written consent of the Administrative Agent, the Issuing Bank or the Swingline Lender, as the case may be (it being understood that any amendment to Section 2.20 shall require the consent of the Administrative Agent, the Issuing Bank and the Swingline Lender); provided further that no such agreement shall amend or modify the provisions of Section 2.07 or any letter of credit application and any bilateral agreement between the Borrower Representative and the Issuing Bank regarding the Issuing Bank's Issuing Bank Sublimit or the respective rights and obligations between the Borrower and the Issuing Bank in connection with the issuance of Letters of Credit without the prior written consent of the Administrative Agent and the Issuing Bank, respectively. The Administrative Agent may also amend the Commitment Schedule to reflect assignments entered into pursuant to Section 9.04.

(gz) Notwithstanding the foregoing, this Agreement and any other Loan Document may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent and the Borrowers (x) to add one or more credit facilities to this Agreement and to permit extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Revolving Loans and the accrued interest and fees in respect thereof and (y) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders and Lenders. The Administrative Agent may not enter into any amendments, waivers or modifications of the Intercreditor Agreement without the written consent of the Required Lenders.

(ha) The Lenders and the Issuing Banks hereby irrevocably authorize the Administrative Agent, at its option and in its sole discretion, to release any Liens granted to the Administrative Agent by the Loan Parties on any Collateral (i) upon the termination of all the Commitments, payment and satisfaction in full in cash of all Secured Obligations (other than Unliquidated Obligations), and the cash collateralization of all Unliquidated Obligations in a manner satisfactory to each affected Lender, (ii) constituting property being sold or disposed of if the Loan Party disposing of such property certifies to the Administrative Agent that the sale or disposition is made in compliance with the terms of this Agreement (and the Administrative Agent may rely conclusively on any such certificate, without further inquiry), and to the extent that the property being sold or disposed of constitutes 100% of the Equity Interest of a Subsidiary, the Administrative Agent is authorized to release any Loan Guaranty provided by such Subsidiary, (iii) constituting property leased to a Loan Party under a lease which has expired or been terminated in a transaction permitted under this Agreement, or (iv) as required to effect any sale or other disposition of such Collateral in connection with any exercise of remedies of the Administrative Agent and the Lenders pursuant to Article VII. Except as provided in the preceding sentence and the last sentence of this Section 9.02(d), the Administrative Agent will not release any Liens on Collateral without the prior written authorization of the Required Lenders; provided that the Administrative Agent may in its discretion, release its Liens on Collateral valued in the aggregate not in excess of \$2,000,000 during any calendar year without the prior written authorization of the Required Lenders (it being agreed that the Administrative Agent may rely conclusively on one or more certificates of the Borrower Representative as to the value of any Collateral to be so released, without further inquiry). Any such release shall not in any manner discharge, affect or impair the Obligations or any Liens (other than those expressly being released) upon (or obligations of the Loan Parties in respect of) all interests retained by the Loan Parties, including the proceeds of any sale, all of which shall continue to constitute part of the Collateral. If the Administrative Agent releases any Collateral in accordance with the foregoing, Administrative Agent agrees, at Borrowers' sole expense, to prepare and deliver such documents as Borrower Representative may reasonably request to evidence such release. Any execution and delivery by the Administrative Agent of documents in connection with any such release shall be without recourse to or warranty by the Administrative Agent.

(hb) If, in connection with any proposed amendment, waiver or consent requiring the consent of "each Lender", or "each Lender directly affected thereby," the consent of the Required Lenders is obtained, but the consent of other necessary Lenders is not obtained (any such Lender whose consent is necessary but not obtained being referred to herein as a "Non-Consenting Lender"), then the Borrowers may elect to replace a Non-Consenting Lender as a Lender party to this Agreement; provided that, concurrently with such replacement, (i) another bank or other entity which is reasonably satisfactory to the Borrowers, the Administrative Agent and the Issuing Bank shall agree, as of such date, to purchase for cash the Loans and other Obligations due to the Non-Consenting Lender pursuant to an Assignment and Assumption (or such other documentation reasonably acceptable to the Borrowers and the Administrative



Agent) and to become a Lender for all purposes under this Agreement and to assume all obligations of the Non-Consenting Lender to be terminated as of such date and to comply with the requirements of clause (b) of Section 9.04 (provided that so long as the other requirements of this Section 9.02(e) are satisfied, the failure of any Non-Consenting Lender to execute an Assignment and Assumption (or such other documentation reasonably acceptable to the Borrowers and the Administrative Agent) shall not render such Assignment and Assumption invalid and the assignment effected thereby shall be in full force and effect and shall be recorded in the Register) and (ii) the Borrowers shall pay to such Non-Consenting Lender in same day funds on the day of such replacement (1) all interest, fees and other amounts then accrued but unpaid to such Non-Consenting Lender by the Borrowers hereunder to and including the date of termination, including without limitation payments due to such Non-Consenting Lender under Sections 2.15 and 2.17, and (2) an amount, if any, equal to the payment which would have been due to such Lender on the day of such replacement under Section 2.16 had the Loans of such Non-Consenting Lender been prepaid on such date rather than sold to the replacement Lender.

(hc) Notwithstanding anything to the contrary herein the Administrative Agent may, with the consent of the Borrower Representative only, amend, modify or supplement this Agreement or any of the other Loan Documents to cure any ambiguity, omission, mistake, defect or inconsistency.

Section 1.01 Expenses; Indemnity; Damage Waiver. (a) The Borrowers shall pay (i) all reasonable documented out-of-pocket expenses incurred by the Administrative Agent and its Affiliates, including the reasonable and documented fees, charges and disbursements of one primary counsel and one additional counsel in each applicable jurisdiction for the Administrative Agent, in connection with the syndication and distribution (including, without limitation, via the internet or through an Electronic System) of the credit facility provided for herein, the preparation and administration of the Loan Documents or any amendments, modifications or waivers of the provisions of the Loan Documents (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable documented out-of-pocket expenses incurred by the Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all documented out-of-pocket expenses incurred by the Administrative Agent, the Issuing Bank or any Lender, including the fees, charges and disbursements of (x) one primary counsel and one additional counsel in each applicable jurisdiction for the Administrative Agent, (y) one additional counsel for all Lenders (other than the Administrative Agent) and (z) additional counsel in light of actual or potential conflicts of interest or the availability of different claims or defenses for the Administrative Agent, the Issuing Bank or any Lender, in connection with the enforcement, collection or protection of its rights in connection with the Loan Documents, including its rights under this Section, or in connection with the Loans made or Letters of Credit issued hereunder, including all such documented out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit. Expenses being reimbursed by the Loan Parties under this Section include, without limiting the generality of the foregoing, fees, costs and expenses incurred in connection with:

- (i) appraisals and insurance reviews;
- (ii) Field Exams and the preparation of Reports based on the fees charged by a third party retained by the Administrative Agent or the internally allocated fees for each Person employed by the Administrative Agent with respect to each Field Exam;
- (iii) background checks regarding senior management and/or key investors, as deemed necessary or appropriate in the sole discretion of the Administrative Agent;
- (iv) Taxes, fees and other charges for (A) lien searches and (B) filing financing statements and continuations, and other actions to perfect, protect, and continue the Administrative Agent's Liens;
- (v) sums paid or incurred to take any action required of any Loan Party under the Loan Documents that such Loan Party fails to pay or take; and

(vi) forwarding loan proceeds, collecting checks and other items of payment, and establishing and maintaining the accounts and lock boxes, and costs and expenses of preserving and protecting the Collateral.

All of the foregoing fees, costs and expenses may be charged to the Borrowers as Revolving Loans or to another deposit account, all as described in Section 2.18(c).

(hd) The Borrowers shall, jointly and severally, indemnify the Administrative Agent, the Lead Arrangers, the Co-Syndication Agents, the Issuing Bank and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, penalties, incremental taxes, liabilities and related expenses, including the fees, charges and disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the negotiation, preparation, execution or delivery of the Loan Documents or any agreement or instrument contemplated thereby, the performance by the parties hereto of their respective obligations thereunder or the consummation of the Transactions or any other transactions contemplated hereby, (ii) any Loan or Letter of Credit or the use of the proceeds therefrom (including any refusal by the Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Borrower or any of their Subsidiaries, or any Environmental Liability related in any way to any Borrower or any of its Subsidiaries, (iv) the failure of the Borrowers to deliver to the Administrative Agent the required receipts or other required documentary evidence with respect to a payment made by the Borrowers for Taxes pursuant to Section 2.17, or (v) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not such claim, litigation, investigation or proceeding is brought by any Borrower or any other Loan Party or its or their respective equity holders, Affiliates, creditors or any other third Person and whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, penalties, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee. This Section 9.03(b) shall not apply with respect to Taxes other than any Taxes that represent losses or damages arising from any non-Tax claim.

(he) To the extent that the Borrowers fail to pay any amount required to be paid by it to the Administrative Agent (or any sub-agent thereof), the Issuing Bank or the Swingline Lender (or any Related Party of any of the foregoing) under paragraph (a) or (b) of this Section, each Lender severally agrees to pay to the Administrative Agent, the Issuing Bank or the Swingline Lender (or any Related Party of any of the foregoing), as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount (it being understood that the Borrowers' failure to pay any such amount shall not relieve the Borrowers of any default in the payment thereof); provided that the unreimbursed expense or indemnified loss, claim, damage, penalty, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent, the Issuing Bank or the Swingline Lender in its capacity as such.

(hf) To the extent permitted by applicable law, no Loan Party shall assert, and each hereby waives, any claim against any Indemnitee (i) for any damages arising from the use by others of information or other materials obtained through telecommunications, electronic or other information transmission systems (including the Internet), or (ii) on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof.

(hg) All amounts due under this Section shall be payable not later than fifteen (15) days after the Borrower Representative's receipt of written demand therefor.

Section 1.02 Successors and Assigns. (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit), except that (i) no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by any Loan Party without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Notwithstanding anything herein to the contrary, the parties hereto hereby agree that Merrill Lynch, Pierce, Fenner & Smith Incorporated may, without notice to any Loan Party, assign its rights and obligations under this Agreement to any other registered broker-dealer wholly-owned by Bank of America Corporation to which all or substantially all of Bank of America Corporation's or any of its subsidiaries' investment banking, commercial lending services or related businesses may be transferred following the date of this Agreement. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit), Participants (to the extent provided in paragraph (c) of this Section) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Issuing Bank and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(j) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more Persons (other than an Ineligible Institution) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment, participations in Letters of Credit and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld, conditioned or delayed) of:

(A) the Borrower Representative; provided that (x) the Borrower Representative shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within ten (10) Business Days after having received notice thereof, (y) it shall not be unreasonable for the Borrower Representative to withhold its consent for assignments to any Person that is directly engaged in the primary business of distributing food products to business establishments, such as restaurants, country clubs, hotels, caterers, culinary schools and specialty food stores and (z) no consent of the Borrower Representative shall be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund or, if an Event of Default has occurred and is continuing, any other assignee;

(B) the Administrative Agent;

(C) the Issuing Bank; and

(D) the Swingline Lender.

(i) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans of any Class, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$5,000,000 unless each of the Borrower Representative and the Administrative Agent otherwise consent; provided that no such consent of the Borrower Representative shall be required if an Event of Default has occurred and is continuing;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement; provided that this clause shall not be construed to prohibit the assignment of

a proportionate part of all the assigning Lender's rights and obligations in respect of its Commitment or a Class of Loans;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent (x) an Assignment and Assumption (unless otherwise provided in Section 9.02(e) with respect to the replacement of a Non-Consenting Lender) or (y) to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to a Platform as to which the Administrative Agent and the parties to the Assignment and Assumption are participants, together with a processing and recordation fee of \$3,500, such fee to be paid by either the assigning Lender or the assignee Lender or shared between such Lenders; and

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire in which the assignee designates one or more credit contacts to whom all the syndicate-level information (which may contain material non-public information about Loan Parties and their Related Parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including Federal and state securities laws.

For the purposes of this Section 9.04(b), the terms "Approved Fund" and "Ineligible Institution" have the following meanings:

"Approved Fund" means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Ineligible Institution" means (a) a natural person, (b) a Defaulting Lender or its Lender Parent, (c) the Borrowers, any of their Subsidiaries or any of its Affiliates, or (d) a company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person or relative(s) thereof.

(ii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.15, 2.16, 2.17 and 9.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section.

(iii) The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrowers, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount of (and stated interest on) the Loans and LC Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrowers, the Administrative Agent, the Issuing Bank and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrowers, the Issuing Bank and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(iv) Upon its receipt of (x) a duly completed Assignment and Assumption executed by an assigning Lender and an assignee or (y) to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to a Platform as to which the Administrative Agent and the parties to the Assignment and Assumption are participants, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register; provided that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to Section 2.05, 2.06(d) or Section 2.06(e), 2.07(b), 2.18(d) or 2.03(c), the Administrative Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(hh) Any Lender may, without the consent of the Borrowers, the Administrative Agent, the Issuing Bank or the Swingline Lender, sell participations to one or more banks or other entities (a "Participant"), other than an Ineligible Institution, in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged; (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations; and (C) the Borrowers, the Administrative Agent, the Issuing Bank and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 9.02(b) that affects such Participant. The Borrowers agree that each Participant shall be entitled to the benefits of Section 2.15, 2.16 and 2.17 (subject to the requirements and limitations therein, including the requirements under Section 2.17(f) and (g) (it being understood that the documentation required under Section 2.17(f) shall be delivered to the participating Lender and the information and documentation required under Section 2.17(g) (if any) will be delivered to the Borrowers and the Administrative Agent)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Sections 2.18 and 2.19 as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under Section 2.15 or 2.17, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation.

Each Lender that sells a participation agrees, at the Borrowers' request and expense, to use reasonable efforts to cooperate with the Borrowers to effectuate the provisions of Section 2.19(b) with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender; provided such Participant agrees to be subject to Section 2.18(c) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans, Letters of Credit or its other obligations under any Loan Document) except to the extent that such disclosure is necessary to establish that such Commitment, Loan, Letter of Credit or other obligation is in registered form under United States Treasury Regulations Section 5f.103-1(c) and Proposed Treasury Regulations 1.163-5(b) (or, in each case, any amended or successor version). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of

this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(hi) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

Section 1.03 Survival. All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, the Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement or any other Loan Document is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Section 2.15, 2.16, 2.17 and 9.03 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any other Loan Document or any provision hereof or thereof.

Section 1.04 Counterparts; Integration; Effectiveness; Electronic Execution. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to (i) fees payable to the Administrative Agent and (ii) increases or reductions of the Issuing Bank Sublimit of the Issuing Bank constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by telecopy, e-mailed.pdf or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to any document to be signed in connection with this Agreement and the transactions contemplated hereby shall be deemed to include Electronic Signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that nothing herein shall require the Administrative Agent to accept electronic signatures in any form or format without its prior written consent.

Section 1.05 Severability. Any provision of any Loan Document held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions thereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 1.06 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of the Borrowers or any Loan Guarantor against any of and all the Secured Obligations held by such Lender, irrespective of whether or not such Lender shall have made any demand under the Loan Documents and although such obligations may be unmatured. The applicable Lender shall notify the Borrower Representative and the Administrative Agent of such set-off or application; provided that any failure to give or any delay in giving such notice shall not affect the validity of any such set-off or application under this Section. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

Section 1.07 Governing Law; Jurisdiction; Consent to Service of Process. (a) The Loan Documents (other than those containing a contrary express choice of law provision) shall be governed by and construed in accordance with the internal laws of the State of New York.

(au) Each Loan Party hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the Supreme Court of the State of New York sitting in the Borough of Manhattan and of the United States District Court of the Southern District for New York sitting in the Borough of Manhattan, and any appellate court from any thereof, in any action or proceeding arising out of or relating to any Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document shall affect any right that the Administrative Agent, the Issuing Bank or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Loan Party or its properties in the courts of any jurisdiction.

(av) Each Loan Party hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(aw) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

Section 1.10 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 1.11 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

Section 1.12 Confidentiality. Each of the Administrative Agent, the Issuing Bank and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any Governmental Authority (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by any Requirement of Law or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies under this Agreement or any other Loan Document or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (1) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (2) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Loan Parties and their obligations, (g) on a confidential basis to (1) any rating agency in connection with rating Holdings or any of its Subsidiaries or the credit facility provided for herein or (2) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the credit facility provided for herein, (h) with the consent of the Borrower Representative or (i) to the extent such Information (1) becomes publicly available other than as a result of a breach of this Section or (2) becomes available to the Administrative Agent, the Issuing Bank or any Lender on a non-confidential basis from a source other than the Borrowers. For the purposes of this Section, "Information" means all information received from the Borrowers relating to the Borrowers or their business, other than any such information that is available to the Administrative Agent, the Issuing Bank or any Lender on a non-confidential basis prior to disclosure by the Borrowers and other than information pertaining to this Agreement routinely provided by arrangers to data service providers, including league table providers, that serve the lending industry; provided that, in the case of information received from the Borrowers after the Effective Date, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

EACH LENDER ACKNOWLEDGES THAT INFORMATION (AS DEFINED IN SECTION 9.12) FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING THE LOAN PARTIES, AND THEIR AFFILIATES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS, FURNISHED BY THE BORROWERS OR THE ADMINISTRATIVE AGENT PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT LOAN PARTIES, THE LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES. ACCORDINGLY, EACH LENDER REPRESENTS TO THE BORROWERS AND THE ADMINISTRATIVE AGENT THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CREDIT CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

Section 1.13 Several Obligations; Nonreliance; Violation of Law. The respective obligations of the Lenders hereunder are several and not joint and the failure of any Lender to make any Loan or perform any of its obligations hereunder shall not relieve any other Lender from any of its obligations hereunder. Each Lender hereby represents that it is not relying on or looking to any margin stock (as defined in Regulation U of the Board) for the repayment of the Borrowings provided for herein.



Anything contained in this Agreement to the contrary notwithstanding, neither the Issuing Bank nor any Lender shall be obligated to extend credit to the Borrowers in violation of any Requirement of Law.

Section 1.14 USA PATRIOT Act and Beneficial Ownership Regulation. Each Lender that is subject to the requirements of the USA PATRIOT Act and the Beneficial Ownership Regulation hereby notifies the Borrowers that pursuant to the requirements of the USA PATRIOT Act and the Beneficial Ownership Regulation, it is required to obtain, verify and record information that identifies the Borrowers, which information includes the names and addresses of the Borrowers and other information that will allow such Lender to identify the Borrowers in accordance with the USA PATRIOT Act and the Beneficial Ownership Regulation.

Section 1.15 Disclosure. Each Loan Party and each Lender hereby acknowledges and agrees that the Administrative Agent and/or its Affiliates from time to time may hold investments in, make other loans to or have other relationships with any of the Loan Parties and their respective Affiliates.

Section 1.16 Appointment for Perfection. Each Lender hereby appoints each other Lender as its agent for the purpose of perfecting Liens, for the benefit of the Administrative Agent and the other Secured Parties, in assets which, in accordance with Article 9 of the UCC or any other applicable law can be perfected only by possession or control. Should any Lender (other than the Administrative Agent) obtain possession or control of any such Collateral, such Lender shall notify the Administrative Agent thereof, and, promptly upon the Administrative Agent's request therefor shall deliver such Collateral to the Administrative Agent or otherwise deal with such Collateral in accordance with the Administrative Agent's instructions.

Section 1.17 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively the "Charges"), shall exceed the maximum lawful rate (the "Maximum Rate") which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

Section 1.18 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each Loan Party acknowledges and agrees that: (i) (A) the arranging and other services regarding this Agreement provided by the Lenders are arm's-length commercial transactions between the Loan Parties and their ~~Affiliates~~Subsidiaries, on the one hand, and the Lenders and their Affiliates, on the other hand, (B) the Loan Parties have consulted their own legal, accounting, regulatory and tax advisors to the extent ~~it has~~they have deemed appropriate and (C) the Loan Parties are capable of evaluating, and each understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) each of the Lenders and their Affiliates is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Loan Parties or any of their ~~Affiliates~~Subsidiaries, or any other Person and (B) no Lender or any of its Affiliates has any obligation to the Loan Parties or any of their ~~Affiliates~~Subsidiaries with respect to the transactions contemplated hereby except, in the case of a Lender, those obligations expressly set forth herein and in the other Loan Documents; and (iii) each of the Lenders and their ~~respective~~ Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their ~~Affiliates~~Subsidiaries, and no Lender or any of its Affiliates has any obligation to disclose any of such interests to the Loan Parties or their ~~Affiliates~~Subsidiaries. To the fullest extent permitted by law, each Loan Party hereby waives and releases any claims that it may have against each of the Lenders and their Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 1.19 Marketing Consent. The Borrowers hereby authorize BMO and its affiliates (collectively, the “BMO Parties”), at their respective sole expense, but without any prior approval by any Borrower, to include the Borrowers’ names and logos in advertising slicks posted on their internet sites, in pitchbooks or sent in mailings to prospective customers and to give such other publicity to this Agreement as each may from time to time determine in its sole discretion. Notwithstanding the foregoing, BMO Parties shall not publish the Borrowers’ names in a newspaper or magazine without obtaining the Borrowers’ prior written approval. The foregoing authorization shall remain in effect unless and until the Borrower Representative notifies BMO in writing that such authorization is revoked.

Section 1.20 Intercreditor Agreement. Each of the Lenders hereby acknowledges that it has received and reviewed the Intercreditor Agreement and agrees to be bound by the terms thereof as if such Lender was a signatory thereto. Each Lender (and each Person that becomes a Lender hereunder pursuant to Section 9.04) hereby acknowledges that BMO is acting under the Intercreditor Agreement as the ABL Representative. Each Lender (and each Person that becomes a Lender hereunder pursuant to Section 9.04) hereby authorizes and directs the Administrative Agent to become party to the Intercreditor Agreement on behalf of such Lender as an “ABL Representative” (as defined in the Intercreditor Agreement) and agrees that the Administrative Agent may take such actions on its behalf as is contemplated by the terms of the Intercreditor Agreement. Each Lender (and each Person that becomes a Lender hereunder pursuant to Section 9.04) and each Loan Party hereby acknowledges and agrees that this agreement shall be a “Replacement ABL Agreement” for the purposes of (and as defined in) the Intercreditor Agreement.

Section 1.21 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(hj) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(hk) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

Section 1.13 Acknowledgement Regarding any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Agreements or any other agreement or instrument that is a QFC (such support “QFC Credit Support” and each such QFC a “Supported QFC”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States). In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and

any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

#### Article X.

### LOAN GUARANTY

Section 1.01 Guaranty. Each Loan Guarantor (other than those that have delivered a separate Guaranty) hereby agrees that it is jointly and severally liable for, and, as a primary obligor and not merely as surety, absolutely, unconditionally and irrevocably guarantees to the Secured Parties, the prompt payment when due, whether at stated maturity, upon acceleration or otherwise, and at all times thereafter, of the Secured Obligations and all costs and expenses, including, without limitation, all court costs and attorneys' and paralegals' fees (including allocated costs of in-house counsel and paralegals) and expenses paid or incurred by the Administrative Agent, the Issuing Bank and the Lenders in endeavoring to collect all or any part of the Secured Obligations from, or in prosecuting any action against, any Borrower, any Loan Guarantor or any other guarantor of all or any part of the Secured Obligations (such costs and expenses, together with the Secured Obligations, collectively the "Guaranteed Obligations"; provided, however, that the definition of "Guaranteed Obligations" shall not create any guarantee by any Loan Guarantor of (or grant of security interest by any Loan Guarantor to support, as applicable) any Excluded Swap Obligations of such Loan Guarantor for purposes of determining any obligations of any Loan Guarantor). Each Loan Guarantor further agrees that the Guaranteed Obligations may be extended or renewed in whole or in part without notice to or further assent from it, and that it remains bound upon its guarantee notwithstanding any such extension or renewal. All terms of this Loan Guaranty apply to and may be enforced by or on behalf of any domestic or foreign branch or Affiliate of any Lender that extended any portion of the Guaranteed Obligations.

Section 1.02 Guaranty of Payment. This Loan Guaranty is a guaranty of payment and not of collection. Each Loan Guarantor waives any right to require the Administrative Agent, the Issuing Bank or any Lender to sue any Borrower, any Loan Guarantor, any other guarantor, or any other Person obligated for all or any part of the Guaranteed Obligations (each, an "Obligated Party"), or otherwise to enforce its payment against any collateral securing all or any part of the Guaranteed Obligations.

Section 1.03 No Discharge or Diminishment of Loan Guaranty. (a) Except as otherwise provided for herein, the obligations of each Loan Guarantor hereunder are unconditional and absolute and not subject to any reduction, limitation, impairment or termination for any reason (other than the indefeasible payment in full in cash of the Guaranteed Obligations), including: (i) any claim of waiver, release, extension, renewal, settlement, surrender, alteration or compromise of any of the Guaranteed Obligations, by operation of law or otherwise; (ii) any change in the corporate existence, structure or ownership of any Borrower or any other Obligated Party liable for any of the Guaranteed Obligations; (iii) any insolvency, bankruptcy, reorganization or other similar proceeding affecting any Obligated Party or their assets or any resulting release or discharge of any obligation of any Obligated Party; or (iv) the existence of any claim, setoff or other rights which any Loan Guarantor may have at any time against any Obligated Party, the Administrative Agent, the Issuing Bank, any Lender or any other Person, whether in connection herewith or in any unrelated transactions.

(h) The obligations of each Loan Guarantor hereunder are not subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or

unenforceability of any of the Guaranteed Obligations or otherwise, or any provision of applicable law or regulation purporting to prohibit payment by any Obligated Party, of the Guaranteed Obligations or any part thereof.

(hm) Further, the obligations of any Loan Guarantor hereunder are not discharged or impaired or otherwise affected by: (i) the failure of the Administrative Agent, the Issuing Bank or any Lender to assert any claim or demand or to enforce any remedy with respect to all or any part of the Guaranteed Obligations; (ii) any waiver or modification of or supplement to any provision of any agreement relating to the Guaranteed Obligations; (iii) any release, non-perfection or invalidity of any indirect or direct security for the obligations of any Borrower for all or any part of the Guaranteed Obligations or any obligations of any other Obligated Party liable for any of the Guaranteed Obligations; (iv) any action or failure to act by the Administrative Agent, the Issuing Bank or any Lender with respect to any collateral securing any part of the Guaranteed Obligations; or (v) any default, failure or delay, willful or otherwise, in the payment or performance of any of the Guaranteed Obligations, or any other circumstance, act, omission or delay that might in any manner or to any extent vary the risk of such Loan Guarantor or that would otherwise operate as a discharge of any Loan Guarantor as a matter of law or equity (other than the indefeasible payment in full in cash of the Guaranteed Obligations).

Section 1.01 Defenses Waived. To the fullest extent permitted by applicable law, each Loan Guarantor hereby waives any defense based on or arising out of any defense of any Borrower or any Loan Guarantor or the unenforceability of all or any part of the Guaranteed Obligations from any cause, or the cessation from any cause of the liability of any Borrower or any Loan Guarantor, other than the indefeasible payment in full in cash of the Guaranteed Obligations. Without limiting the generality of the foregoing, each Loan Guarantor irrevocably waives acceptance hereof, presentment, demand, protest and, to the fullest extent permitted by law, any notice not provided for herein, as well as any requirement that at any time any action be taken by any Person against any Obligated Party, or any other Person. Each Loan Guarantor confirms that it is not a surety under any state law and shall not raise any such law as a defense to its obligations hereunder. The Administrative Agent may, at its election, foreclose on any Collateral held by it by one or more judicial or nonjudicial sales, accept an assignment of any such Collateral in lieu of foreclosure or otherwise act or fail to act with respect to any collateral securing all or a part of the Guaranteed Obligations, compromise or adjust any part of the Guaranteed Obligations, make any other accommodation with any Obligated Party or exercise any other right or remedy available to it against any Obligated Party, without affecting or impairing in any way the liability of such Loan Guarantor under this Loan Guaranty except to the extent the Guaranteed Obligations have been fully and indefeasibly paid in cash. To the fullest extent permitted by applicable law, each Loan Guarantor waives any defense arising out of any such election even though that election may operate, pursuant to applicable law, to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Loan Guarantor against any Obligated Party or any security.

Section 1.02 Rights of Subrogation. No Loan Guarantor will assert any right, claim or cause of action, including, without limitation, a claim of subrogation, contribution or indemnification, that it has against any Obligated Party, or any collateral, until the Loan Parties and the Loan Guarantors have fully performed all their obligations to the Administrative Agent, the Issuing Bank and the Lenders.

Section 1.03 Reinstatement; Stay of Acceleration. If at any time any payment of any portion of the Guaranteed Obligations (including a payment effected through exercise of a right of setoff) is rescinded, or must otherwise be restored or returned upon the insolvency, bankruptcy or reorganization of any Borrower or otherwise (including pursuant to any settlement entered into by a Secured Party in its discretion), each Loan Guarantor's obligations under this Loan Guaranty with respect to that payment shall be reinstated at such time as though the payment had not been made and whether or not the Administrative Agent, the Issuing Bank and the Lenders are in possession of this Loan Guaranty. If acceleration of the time for payment of any of the Guaranteed Obligations is stayed upon the insolvency, bankruptcy or reorganization of any Borrower, all such amounts otherwise subject to acceleration under the terms of any agreement relating to the Guaranteed Obligations shall nonetheless be payable by the Loan Guarantors forthwith on demand by the Administrative Agent.

Section 1.04 Information. Each Loan Guarantor assumes all responsibility for being and keeping itself informed of the Borrowers' financial condition and assets, and of all other circumstances

bearing upon the risk of nonpayment of the Guaranteed Obligations and the nature, scope and extent of the risks that each Loan Guarantor assumes and incurs under this Loan Guaranty, and agrees that neither the Administrative Agent, the Issuing Bank nor any Lender shall have any duty to advise any Loan Guarantor of information known to it regarding those circumstances or risks.

Section 1.05 Termination. Each of the Lenders and the Issuing Bank may continue to make loans or extend credit to the Borrowers based on this Loan Guaranty until five (5) days after it receives written notice of termination from any Loan Guarantor. Notwithstanding receipt of any such notice, each Loan Guarantor will continue to be liable to the Lenders for any Guaranteed Obligations created, assumed or committed to prior to the fifth day after receipt of the notice, and all subsequent renewals, extensions, modifications and amendments with respect to, or substitutions for, all or any part of such Guaranteed Obligations. Nothing in this Section 10.08 shall be deemed to constitute a waiver of, or eliminate, limit, reduce or otherwise impair any rights or remedies the Administrative Agent or any Lender may have in respect of, any Default or Event of Default that shall exist under clause (o) of Article VII hereof as a result of any such notice of termination.

Section 1.06 Taxes. Any obligation of any Borrower under Section 2.17 to pay any additional amounts to, or indemnify, the Administrative Agent, any Lender, or any Issuing Bank for any taxes that are required to be withheld or deducted from payments made to the Administrative Agent, any Lender, or any Issuing Bank or to pay for, or indemnify the Administrative Agent, any Lender, or any Issuing Bank for, any stamp and other similar taxes, shall apply mutatis mutandis (and without duplication) to each Loan Guarantor with respect to the Guaranteed Obligations and payments thereunder. Each Loan Guarantor agrees that the provisions of Section 2.17 shall apply with respect to any payments made by any Loan Guarantor.

Section 1.10 Maximum Liability. Notwithstanding any other provision of this Loan Guaranty, the amount guaranteed by each Loan Guarantor hereunder shall be limited to the extent, if any, required so that its obligations hereunder shall not be subject to avoidance under Section 548 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law. In determining the limitations, if any, on the amount of any Loan Guarantor's obligations hereunder pursuant to the preceding sentence, it is the intention of the parties hereto that any rights of subrogation, indemnification or contribution which such Loan Guarantor may have under this Loan Guaranty, any other agreement or applicable law shall be taken into account.

Section 1.11 Contribution .

(hn) To the extent that any Loan Guarantor shall make a payment under this Loan Guaranty (a "Guarantor Payment") which, taking into account all other Guarantor Payments then previously or concurrently made by any other Loan Guarantor, exceeds the amount which otherwise would have been paid by or attributable to such Loan Guarantor if each Loan Guarantor had paid the aggregate Guaranteed Obligations satisfied by such Guarantor Payment in the same proportion as such Loan Guarantor's "Allocable Amount" (as defined below) (as determined immediately prior to such Guarantor Payment) bore to the aggregate Allocable Amounts of each of the Loan Guarantors as determined immediately prior to the making of such Guarantor Payment, then, following indefeasible payment in full in cash of the Guarantor Payment and the Guaranteed Obligations (other than Unliquidated Obligations that have not yet arisen), and all Commitments and Letters of Credit have terminated or expired or, in the case of all Letters of Credit, are fully collateralized on terms reasonably acceptable to the Administrative Agent and the Issuing Bank, and this Agreement, the Swap Agreement Obligations and the Banking Services Obligations have terminated, such Loan Guarantor shall be entitled to receive contribution and indemnification payments from, and be reimbursed by, each other Loan Guarantor for the amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately prior to such Guarantor Payment.

(ho) As of any date of determination, the "Allocable Amount" of any Loan Guarantor shall be equal to the excess of the fair saleable value of the property of such Loan Guarantor over the total liabilities of such Loan Guarantor (including the maximum amount reasonably expected to become due in respect of contingent liabilities, calculated, without duplication, assuming each other Loan Guarantor that is also liable for such contingent liability pays its ratable share thereof), giving effect to all payments

made by other Loan Guarantors as of such date in a manner to maximize the amount of such contributions.

(hp) This Section 10.11 is intended only to define the relative rights of the Loan Guarantors, and nothing set forth in this Section 10.11 is intended to or shall impair the obligations of the Loan Guarantors, jointly and severally, to pay any amounts as and when the same shall become due and payable in accordance with the terms of this Loan Guaranty.

(hq) The parties hereto acknowledge that the rights of contribution and indemnification hereunder shall constitute assets of the Loan Guarantor or Loan Guarantors to which such contribution and indemnification is owing.

(hr) The rights of the indemnifying Loan Guarantors against other Loan Guarantors under this Section 10.11 shall be exercisable upon the full and indefeasible payment of the Guaranteed Obligations in cash (other than Unliquidated Obligations that have not yet arisen) and the termination or expiry (or, in the case of all Letters of Credit, full cash collateralization), on terms reasonably acceptable to the Administrative Agent and the Issuing Bank, of the Commitments and all Letters of Credit issued hereunder and the termination of this Agreement, the Swap Agreement Obligations and the Banking Services Obligations.

Section 1.6 Liability Cumulative. The liability of each Loan Party as a Loan Guarantor under this Article X is in addition to and shall be cumulative with all liabilities of each Loan Party to the Administrative Agent, the Issuing Bank and the Lenders under this Agreement and the other Loan Documents to which such Loan Party is a party or in respect of any obligations or liabilities of the other Loan Parties, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

Section 1.7 Keepwell. Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party to honor all of its obligations under this Guarantee in respect of a Swap Obligation (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section 10.13 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 10.13 or otherwise under this Loan Guaranty voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). Except as otherwise provided herein, the obligations of each Qualified ECP Guarantor under this Section 10.13 shall remain in full force and effect until the termination of all Swap Obligations. Each Qualified ECP Guarantor intends that this Section 10.13 constitute, and this Section 10.13 shall be deemed to constitute, a “keepwell, support, or other agreement” for the benefit of each other Loan Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

#### Article XI.

#### THE BORROWER REPRESENTATIVE

Section 1.04 Appointment; Nature of Relationship. Holdings is hereby appointed by each of the Borrowers as its contractual representative (herein referred to as the “Borrower Representative”) hereunder and under each other Loan Document, and each of the Borrowers irrevocably authorizes the Borrower Representative to act as the contractual representative of such Borrower with the rights and duties expressly set forth herein and in the other Loan Documents. The Borrower Representative agrees to act as such contractual representative upon the express conditions contained in this Article XI. Additionally, the Borrowers hereby appoint the Borrower Representative as their agent to receive all of the proceeds of the Loans in the Funding Account(s), at which time the Borrower Representative shall promptly disburse such Loans to the appropriate Borrower(s), provided that, in the case of a Revolving Loan, such amount shall not exceed Availability. The Administrative Agent and the Lenders, and their respective officers, directors, agents or employees, shall not be liable to the Borrower Representative or any Borrower for any action taken or omitted to be taken by the Borrower Representative or the Borrowers pursuant to this Section 11.01.

Section 1.05 Powers. The Borrower Representative shall have and may exercise such powers under the Loan Documents as are specifically delegated to the Borrower Representative by the terms of each thereof, together with such powers as are reasonably incidental thereto. The Borrower Representative shall have no implied duties to the Borrowers, or any obligation to the Lenders to take any action thereunder except any action specifically provided by the Loan Documents to be taken by the Borrower Representative.

Section 1.06 Employment of Agents. The Borrower Representative may execute any of its duties as the Borrower Representative hereunder and under any other Loan Document by or through authorized officers.

Section 1.07 Notices. Each Borrower shall immediately notify the Borrower Representative of the occurrence of any Default hereunder describing such Default and stating that such notice is a “notice of default”. In the event that the Borrower Representative receives such a notice, the Borrower Representative shall give prompt notice thereof to the Administrative Agent and the Lenders. Any notice provided to the Borrower Representative hereunder shall constitute notice to each Borrower on the date received by the Borrower Representative.

Section 1.08 Successor Borrower Representative. Upon the prior written consent of the Administrative Agent, the Borrower Representative may resign at any time, such resignation to be effective upon the appointment of a successor Borrower Representative. The Administrative Agent shall give prompt written notice of such resignation to the Lenders.

Section 1.09 Execution of Loan Documents; Borrowing Base Certificate. The Borrowers hereby empower and authorize the Borrower Representative, on behalf of the Borrowers, to execute and deliver to the Administrative Agent and the Lenders the Loan Documents and all related agreements, certificates, documents, or instruments as shall be necessary or appropriate to effect the purposes of the Loan Documents, including, without limitation, Borrowing Base Certificates and the Compliance Certificates. Each Borrower agrees that any action taken by the Borrower Representative or the Borrowers in accordance with the terms of this Agreement or the other Loan Documents, and the exercise by the Borrower Representative of its powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Borrowers.

Section 1.010 Reporting. Each Borrower hereby agrees that such Borrower shall furnish promptly after each fiscal month to the Borrower Representative a copy of its Borrowing Base Certificate and any other certificate or report required hereunder or requested by the Borrower Representative on which the Borrower Representative shall rely to prepare the Borrowing Base Certificates and Compliance Certificate required pursuant to the provisions of this Agreement.

[Signature Pages Omitted]

COMMITMENT SCHEDULE

<b>Lender</b>	<b>Commitment</b>
BMO HARRIS BANK N.A.	\$80,000,000
JPMorgan Chase Bank, N.A.	\$70,000,000
Bank of America, N.A.	\$50,000,000
<b>Total</b>	<b>\$200,000,000</b>



**EIGHTH AMENDMENT TO CREDIT AGREEMENT**

This EIGHTH AMENDMENT TO CREDIT AGREEMENT (this “Amendment”), dated as of August 23, 2022, by and among DAIRYLAND USA CORPORATION, a New York corporation (“Dairyland”), CHEFS’ WAREHOUSE PARENT, LLC, a Delaware limited liability company (together with Dairyland, the “Borrowers”), THE CHEFS’ WAREHOUSE, INC., a Delaware corporation (“Holdings”), the other Loan Parties party hereto, the Lenders party hereto and Jefferies Finance LLC (“Jefferies”), as administrative agent for the Lenders (in such capacity, the “Administrative Agent”) and as collateral agent for the Secured Parties (in such capacity, the “Collateral Agent” or, as Administrative Agent and Collateral Agent, the “Agents”).

WITNESSETH:

**WHEREAS**, the Borrowers, Holdings, the other Loan Parties party thereto, certain Lenders party thereto and the Agents, among others, are parties to that certain Credit Agreement, dated as of June 22, 2016 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the date hereof, the “Existing Credit Agreement”);

**WHEREAS**, pursuant to the Existing Credit Agreement, the Lenders (as defined in the Existing Credit Agreement) have extended credit in the form of Term Loans (as defined in the Existing Credit Agreement) (the “Existing Term Loans”) to the Borrowers pursuant to the terms and subject to the conditions set forth in the Existing Credit Agreement;

**WHEREAS**, pursuant to and in accordance with Section 9.02 of the Existing Credit Agreement, the Borrowers have requested that the Lenders amend, and the Lenders (including the Replacement Lenders and the Subsequent Lenders (each as defined below)) party hereto (including pursuant to a Consent (as defined below)) have agreed to so amend, the Existing Credit Agreement in the manner set forth in Section 2 hereof to, among other things, (i) create a new tranche of term loans (such tranche, the “2022 Term Loans”) by (A) converting all or a portion of the Existing Term Loans (such conversion, the “2022 Conversion”) into new term loans (such new term loans, the “2022 Converted Term Loans”; each lender providing a 2022 Converted Term Loan, a “2022 Converted Term Lender”), either by (x) directly converting all or a portion of the Existing Term Loans into 2022 Converted Term Loans by means of a cashless roll (the “Cashless Roll”) or (y) assigning all or a portion of the Existing Term Loans to the Replacement Lenders (Non-Consenting) (as defined below) (the “Non-Consenting Lender Replacement”) and the Replacement Lenders (Consenting/Exiting) (as defined below) (the “Consenting Lender Assignment”), in each instance in accordance with Section 8 below, and then directly converting such Existing Term Loans assigned pursuant to the Non-Consenting Lender Replacement or the Consenting Lender Assignment into 2022 Converted Term Loans, and (B) establishing new term loans (such new term loans, the “2022 New Term Loans”; each lender providing a 2022 New Term Loan, a “2022 New Term Lender” and, together with each 2022 Converted Term Lender, a “2022 Term Lender”) funded by the 2022 New Term Lenders on the Eighth Amendment Date (as defined below) after giving effect to the 2022 Conversion, and (ii) amend certain other provisions of the Existing Credit Agreement;

**WHEREAS**, each Lender that executes and delivers a consent (each such Lender in such capacity, a “Consenting Lender”) in substantially the same form attached as Annex A hereto (or such other form as the Administrative Agent may approve) (a “Required Lender Consent”) will, by the fact of such execution and delivery, be deemed to have consented to the terms, conditions, and provisions of this Amendment and the Amended Credit Agreement (as defined below) and to have (i) if such Consenting Lender elects to participate in the Cashless Roll (each such Consenting Lender participating in the Cashless Roll, a “Rolling Lender”), (A) extended a 2022 Converted Term Loan in an aggregate principal amount equal to all (or, at the election of Jefferies Finance LLC, in its capacity as Arranger, in its sole discretion, a portion) of its Existing Term Loans and (B) at the election of Jefferies Finance LLC, in its capacity as Arranger, in its sole discretion, assigned a portion of its Existing Term Loans to the Replacement Lenders (Consenting/Exiting), or (ii) if such Consenting Lender elects to participate in the Consenting Lender Assignment (each such Consenting Lender participating in the Consenting Lender Assignment, a “Consenting/Exiting Lender”), assigned its Existing Term Loans to the Replacement Lenders (Consenting/Exiting) (it being understood that the Consenting/Exiting Lenders shall not

constitute 2022 Converted Term Lenders), in each instance as further specified on the applicable Required Lender Consent;

**WHEREAS**, each Replacement Lender (as defined below) that executes and delivers a consent in substantially the same form attached as Annex B hereto (or such other form as the Administrative Agent may approve) (a "Replacement Lender Consent") will, by the fact of such execution and delivery, be deemed to have consented to the terms, conditions, and provisions of this Amendment and the Amended Credit Agreement and to have extended a 2022 Converted Term Loan in an amount equal to the aggregate principal amount of the Existing Term Loans assumed by such Replacement Lender as set forth on its Replacement Lender Consent;

**WHEREAS**, each Person that executes and delivers a consent (each such Person in such capacity, a "Subsequent Lender") in substantially the same form attached as Annex C hereto (or such other form as the Administrative Agent may approve) (a "Subsequent Lender Consent") and, together with the Required Lender Consent and the Replacement Lender Consent, each a "Consent" and, collectively, the "Consents") will, by the fact of such execution and delivery, be deemed to have consented to the terms, conditions, and provisions of this Amendment and the Amended Credit Agreement and to have extended a 2022 New Term Loan in the amount set forth on its Subsequent Lender Consent; and

**WHEREAS**, (x) the Consenting Lenders collectively constitute the "Required Lenders" under the Existing Credit Agreement, (y) the Consenting Lenders and the Replacement Lenders collectively constitute all of the Lenders party to the Existing Credit Agreement (after giving effect to the Non-Consenting Lender Replacement), and (z) the Consenting Lenders, the Replacement Lenders (after giving effect to the Non-Consenting Lender Replacement) and the Subsequent Lenders collectively will constitute all of the Lenders party to the Amended Credit Agreement immediately after giving effect to this Amendment, and each of the Consenting Lenders, Replacement Lenders and Subsequent Lenders consents to the Loan Parties entering into, and authorizes, instructs and directs the Administrative Agent and Collateral Agent to enter into, this Amendment, to, among other things, (i) establish the 2022 Term Loans on the Eighth Amendment Date and (ii) amend certain other provisions of the Existing Credit Agreement as set forth herein.

**NOW, THEREFORE**, in consideration of the premises and the mutual agreements herein contained and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Defined Terms. Unless otherwise defined herein, capitalized terms used herein shall have the respective meanings ascribed thereto in the Existing Credit Agreement, as amended hereby (the "Amended Credit Agreement").

2. Amendments. Subject to the satisfaction (or waiver) of the conditions precedent set forth in Section 7 below:

(a) the Existing Credit Agreement is hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the underlined text (indicated textually in the same manner as the following example: underlined text) as set forth in the pages attached hereto as Annex E; and

(b) the Schedules to the Existing Credit Agreement are hereby amended and restated in the form attached hereto as Annex F.

1. Establishment of 2022 Term Loans.

(c) Subject to the satisfaction (or waiver) of the conditions precedent set forth in Section 7 below, there is hereby established under the Amended Credit Agreement a new tranche of 2022 Term Loans consisting of (i) the Existing Term Loans converted into 2022 Converted Term Loans pursuant to the 2022 Conversion and (ii) the 2022 New Term Loans funded on the Eighth Amendment Date, with all such 2022 Term Loans having the terms set forth in this Amendment and the Amended Credit Agreement, and all references in the Amended Credit Agreement to Term Loans shall include,

without limitation, the 2022 Term Loans (including the 2022 Converted Term Loans and the 2022 New Term Loans). Following the 2022 Conversion and the funding of the 2022 New Term Loans, all Existing Term Loans will be replaced by the 2022 Converted Term Loans or the 2022 New Term Loans, as applicable. The 2022 Term Loans shall be denominated in Dollars.

(d) Each 2022 Converted Term Lender (including each Replacement Lender) that executes and delivers to the Administrative Agent a Required Lender Consent or a Replacement Lender Consent, as applicable, on or prior to 5:00 p.m. (New York City time) on August 16, 2022 (the “Consent Deadline”) hereby irrevocably agrees to convert on the Eighth Amendment Date the aggregate principal amount of its Existing Term Loans set forth in the Administrative Agent’s Register as of the Consent Deadline (or, in the case of a Replacement Lender, the aggregate principal amount of Existing Term Loans purchased by such Replacement Lender pursuant to Section 8 below) into an equal principal amount of 2022 Converted Term Loans to effectuate the 2022 Conversion. On the Eighth Amendment Date, each 2022 Converted Term Lender (including each Replacement Lender), by execution and delivery of a Required Lender Consent or a Replacement Lender Consent, as applicable, on or prior to the Consent Deadline, hereby agrees that the aggregate principal amount of its Existing Term Loans set forth in the Administrative Agent’s Register as of the Consent Deadline (or, in the case of a Replacement Lender, the aggregate principal amount of Existing Term Loans purchased by such Replacement Lender pursuant to Section 8 below) shall automatically (and without any further action on the part of any Person party to this Amendment or the Existing Credit Agreement) be converted into and reclassified to become an equal principal amount of 2022 Converted Term Loans. After giving effect to the 2022 Conversion, the aggregate principal amount of all such 2022 Converted Term Loans held by the 2022 Converted Term Lenders (including the Replacement Lenders) shall equal the aggregate principal amount of Existing Term Loans held by such 2022 Converted Term Lenders (including the Replacement Lenders) as set forth in the Administrative Agent’s Register as of the Consent Deadline (or, in the case of a Replacement Lender, the aggregate principal amount of Existing Term Loans purchased by such Replacement Lender pursuant to Section 8 below) immediately prior to the 2022 Conversion. For the avoidance of doubt, the 2022 Conversion shall be effected immediately prior to the funding of the 2022 New Term Loans. On the Eighth Amendment Date, immediately after giving effect to this Amendment and the 2022 Conversion but immediately prior to the funding of the 2022 New Term Loans, the Consenting/Exiting Lender Replacement (as defined below) and the Non-Consenting Lender Replacement, the aggregate principal amount of 2022 Converted Term Loans and the aggregate principal amount of Existing Term Loans that are not 2022 Converted Term Loans shall be as set forth on Schedule 1 hereto.

(e) On the Eighth Amendment Date, each Consenting/Exiting Lender, by execution and delivery of a Required Lender Consent on or prior to the Consent Deadline, hereby agrees that the aggregate principal amount of its Existing Term Loans set forth in the Administrative Agent’s Register as of the Consent Deadline shall automatically (and without any further action on the part of any Person party to this Amendment or the Existing Credit Agreement) be assigned to the Replacement Lenders (Consenting/Exiting) in accordance with Section 8 below.

(f) On the Eighth Amendment Date, each 2022 New Term Lender, by execution and delivery of a Subsequent Lender Consent on or prior to the Consent Deadline, hereby agrees to fund a 2022 New Term Loan in the original principal amount specified on such 2022 New Term Lender’s Subsequent Lender Consent. On the Eighth Amendment Date, immediately after giving effect to this Amendment, the 2022 Conversion, and the funding of the 2022 New Term Loans, the aggregate principal amount of 2022 Converted Term Loans and the aggregate principal amount of 2022 New Term Loans shall be as set forth on Schedule 2 hereto.

(g) On the Eighth Amendment Date, all accrued and unpaid interest owing by the Borrowers under the Existing Credit Agreement with respect to the outstanding Existing Term Loans that has accrued through but excluding the Eighth Amendment Date shall be paid in full in cash immediately prior to the 2022 Conversion.

(h) From and after the Eighth Amendment Date, interest shall accrue on the 2022 Term Loans at the interest rates provided for in the Amended Credit Agreement.

(i) Notwithstanding anything to the contrary in this Amendment or the Existing Credit Agreement, each Lender party hereto (including pursuant to a Consent) hereby irrevocably waives its right to compensation for any break funding payment owing under Section 2.16 of the Existing Credit Agreement attributable to the 2022 Conversion, and each Lender party hereto (including pursuant to a Consent) hereby agrees that neither the Borrowers nor any other Loan Party shall be liable to pay to the Administrative Agent or any Lender (other than the Non-Consenting Lenders pursuant to Section 8(a) below) any break funding payments required under Section 2.16 of the Existing Credit Agreement attributable to the 2022 Conversion.

2. Fees. On the Eighth Amendment Date, the Borrowers shall pay to the Administrative Agent, for the benefit of (i) each Rolling Lender who has delivered its Required Lender Consent to the Administrative Agent on or prior to the Consent Deadline, a consent fee equal to 3% of the aggregate principal amount of such Consenting Lender's 2022 Converted Term Loans after giving effect to the 2022 Conversion, (ii) each Replacement Lender who has delivered its Replacement Lender Consent to the Administrative Agent on or prior to the Consent Deadline, a consent fee equal to 3% of the aggregate principal amount of the 2022 Converted Term Loans purchased by such Replacement Lender pursuant to Section 8 below, and (iii) each Subsequent Lender who has delivered its Subsequent Lender Consent to the Administrative Agent on or prior to the Consent Deadline, an upfront fee equal to 3% of such Subsequent Lender's 2022 New Term Loans funded pursuant to this Amendment, in each case, which fees shall be non-refundable and fully earned and payable on the Eighth Amendment Date; provided that, the Administrative Agent shall pay over the applicable amounts to each Rolling Lender, Replacement Lender or Subsequent Lender, as applicable, without any withholding or deduction for or on account of taxes, except as required by applicable Law, and if any such withholding or deduction is required to be made, the Borrowers shall provide a gross up in respect of such withholding or deduction to the extent required by Section 2.17 of the Existing Credit Agreement.

3. Representations and Warranties. In order to induce the other parties hereto to enter into this Amendment in the manner provided herein, each Loan Party represents and warrants to the other parties hereto that the following statements are true and correct:

(j) each of the representations and warranties contained in the Loan Documents are true and correct in all material respects (provided that any representation or warranty that is qualified by materiality or Material Adverse Effect shall be true and correct in all respects) on and as of the Eighth Amendment Date except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in all material respects (or, in the case of any representation or warranty qualified by materiality or Material Adverse Effect, in all respects) on and as of such earlier date;

(k) the transactions contemplated by this Amendment are within each Loan Party's organizational powers and have been duly authorized by all necessary organizational actions and, if required, actions by equity holders;

(l) this Amendment has been duly executed and delivered by such Loan Party and constitutes a legal, valid and binding obligation of such Loan Party, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law;

(m) the transactions contemplated by this Amendment (i) do not require any material consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect and except for filings necessary to perfect Liens created pursuant to the Loan Documents, (ii) will not violate any Requirement of Law applicable to any Loan Party or any of its Restricted Subsidiaries (as defined in the Amended Credit Agreement), (iii) will not violate or result in a default under any indenture, agreement or other instrument binding upon any Loan Party or any of its Restricted Subsidiaries or the assets of any Loan Party or any of its Restricted Subsidiaries, or give rise to a right thereunder to require any payment to be made by any Loan Party or any of its Restricted Subsidiaries, and (iv) will not result in the creation or imposition of any Lien on any asset of any Loan Party or any of its Restricted Subsidiaries, except Liens created

pursuant to the Loan Documents, or subject to the Intercreditor Agreement, the ABL Loan Documents, except, in each case referred to in the foregoing clauses (ii), (iii) and (iv), where such violation or Lien would not reasonably be expected to result in a Material Adverse Effect (as defined in the Amended Credit Agreement);

(n) as of the date hereof and immediately after giving effect to this Amendment and the transactions contemplated hereby, no Default or Event of Default has occurred and is continuing; and

(o) as of the Eighth Amendment Date, the information included in the Beneficial Ownership Certification previously delivered by each Borrower to the Administrative Agent is true and correct in all respects.

1. Additional Agreements.

(p) Each Person that executes and delivers a signature page to this Amendment (including by way of an executed Consent) in the capacity of a Consenting Lender, a Replacement Lender or a Subsequent Lender irrevocably consents to the terms of this Amendment and the Amended Credit Agreement.

(q) The Loan Parties will, (x) not later than sixty (60) days after the Eighth Amendment Date (or such longer period as the Collateral Agent shall agree to in its reasonable discretion, which such extension may be granted via electronic communication), deliver to the Collateral Agent Mortgages (or amendments to, or amendments and restatements of, Mortgages in respect of existing Mortgages in favor of the Collateral Agent) and Mortgage Instruments with respect to the real property constituting Collateral and (y) not later than the applicable dates set forth in the "Post-Closing Matters" section of the list of closing documents attached hereto as Annex D (or such longer periods as the Collateral Agent shall agree to in its reasonable discretion, which such extensions may be granted via electronic communication), deliver to the Collateral Agent the items set forth in the "Post-Closing Matters" section of the list of closing documents attached hereto as Annex D, in each case, in form and substance reasonably satisfactory to the Collateral Agent.

4. Conditions to Effectiveness. The effectiveness of this Amendment is subject to the satisfaction (or waiver by the Administrative Agent, the Consenting Lenders, the Replacement Lenders and the 2022 New Term Lenders) of the following conditions (the date on which all such conditions are so satisfied (or waived) is referred to herein as the "Eighth Amendment Date"):

(r) the Administrative Agent shall have received a certificate, dated the Eighth Amendment Date, executed by the President, a Vice President or a Financial Officer of the Borrower Representative, certifying that, as of the Eighth Amendment Date, (i) the representations and warranties contained in this Amendment and the other Loan Documents are true and correct in all material respects (provided that any representation or warranty that is qualified by materiality or Material Adverse Effect shall be true and correct in all respects) on and as of such date except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in all material respects (or, in the case of any representation or warranty qualified by materiality or Material Adverse Effect, in all respects) on and as of such earlier date; (ii) as of the Eighth Amendment Date and immediately after giving effect to this Amendment, no Default or Event of Default has occurred and is continuing; and (iii) this Amendment is effected in accordance with the terms of the Existing Credit Agreement, the ABL Loan Documents and the Intercreditor Agreement;

(s) Holdings and the Borrowers shall have paid to the Administrative Agent all accrued fees and all reasonable and documented costs and expenses due and payable under this Amendment (including under Sections 4 and 12 hereof) and, without duplication of any of the foregoing, under the Amended and Restated Engagement Letter, dated August 18, 2022, among Holdings and the Arrangers (as defined in the Amended Credit Agreement), in each case to the extent invoiced at least one Business Day prior to the Eighth Amendment Date (or such later date as the Borrower Representative may agree);

(t) the Borrowers shall have paid all accrued and unpaid interest on the Existing Term Loans pursuant to Section 3(e) hereof;

(u) the Administrative Agent shall have received (w) Required Lender Consents (which shall serve as counterparts to this Amendment) duly executed by the Consenting Lenders (without giving effect to the Non-Consenting Lender Replacement (as defined below)), (x) Replacement Lender Consents (which shall serve as counterparts to this Amendment) duly executed by the Replacement Lenders, (y) Subsequent Lender Consents (which shall serve as counterparts to this Amendment) duly executed by the Subsequent Lenders, and (z) counterparts of this Amendment duly executed by Holdings, the Borrowers, each other Loan Party, and the Administrative Agent;

(v) the Administrative Agent and each 2022 Term Lender shall have received, at least two Business Days prior to the Eighth Amendment Date, all documentation and other information required by regulatory authorities under applicable “know your customer” and anti-money laundering laws, including, without limitation, the Act and the Beneficial Ownership Regulation, to the extent requested at least four Business Days prior to the Eighth Amendment Date;

(w) the Administrative Agent shall have received a certificate (in form reasonably satisfactory to the Administrative Agent) with respect to each Loan Party signed by the secretary or other Authorized Officer of such Loan Party and attaching and certifying to the accuracy of (i) the articles or certificate of organization or formation (or any comparable charter documents) of such Loan Party, (ii) the bylaws, operating agreements or other governing documents of such Loan Party, (iii) resolutions or consents of the governing bodies of such Loan Party, (iv) incumbencies evidencing the identity, authority and capacity of each Authorized Officer of such Loan Party authorized to act in connection with this Amendment and the other Loan Documents to which such Loan Party is a party or is to be a party upon the Eighth Amendment Date and (v) a certificate of good standing (or comparable certificate) with respect to such Loan Party issued by the secretary of state (or comparable government authority) of the jurisdiction of organization of such Loan Party;

(x) the Administrative Agent shall have received a favorable written opinion (addressed to the Administrative Agent and the Lenders and dated the Eighth Amendment Date) of Shearman & Sterling LLP and other applicable local counsel for the Loan Parties in form and substance reasonably acceptable to the Administrative Agent (and the Borrowers hereby request such counsel to deliver such opinion);

(y) the Administrative Agent shall have received written copies of all consents (if any) (in form and substance reasonably satisfactory to the Administrative Agent) from the Original ABL Agent required for the Loan Parties to enter into this Amendment and the transactions contemplated hereby; and

(z) the Administrative Agent shall have received such documents and certificates relating to the organization, existence and good standing of the Loan Parties, the authorization of the Transactions and any other legal matters relating to such Loan Parties, the Loan Documents or the Transactions, together with such other legal opinions, certificates, documents, instruments and agreements in connection with the Transactions, all as specified in the list of closing documents attached hereto as Annex D (other than the items set forth in the “Post-Closing Matters” section of the list of closing documents attached hereto as Annex D) and all in form and substance reasonably satisfactory to the Administrative Agent and its counsel.

2. Replacement Lenders. (a) If any Lender under the Existing Credit Agreement has failed to execute and deliver a Required Lender Consent on or prior to the Consent Deadline (each such non-consenting Lender, a “Non-Consenting Lender”), and Lenders constituting the Required Lenders under the Existing Credit Agreement have so consented and the Administrative Agent has received Replacement Lender Consents from the Replacement Lenders (as defined below) such that the Consenting Lenders and the Replacement Lenders collectively constitute all of the Lenders party to the Existing Credit Agreement (after giving effect to the Non-Consenting Lender Replacement), then the Borrowers shall exercise their rights, effective as of the Eighth Amendment Date, to replace each such Non-Consenting Lender in accordance with Section 9.02(e) of the Existing Credit Agreement, and each

such Non-Consenting Lender, upon receipt of an amount equal to the sum of (i) the principal amount of the outstanding Existing Term Loans of such Non-Consenting Lender immediately prior to the effectiveness of this Amendment (but, for the avoidance of doubt, without any prepayment premium thereon), (ii) all interest, fees and other amounts accrued but unpaid to such Non-Consenting Lender by the Borrowers under the Existing Credit Agreement to but excluding the Eighth Amendment Date, including without limitation payments due to such Non-Consenting Lender under Sections 2.15 and 2.17 of the Existing Credit Agreement, and (iii) an amount, if any, equal to the payment which would have been due to such Non-Consenting Lender on the Eighth Amendment Date under Section 2.16 of the Existing Credit Agreement had the Loans of such Non-Consenting Lender been prepaid in full on the Eighth Amendment Date rather than sold to the applicable Replacement Lender (Non-Consenting), shall be deemed to have assigned all of its rights and obligations under the Existing Credit Agreement to one or more assignee Lenders (each of whom shall have consented to this Amendment by delivering a Replacement Lender Consent to the Administrative Agent on or prior to the Consent Deadline (each such assignee Lender, to the extent of such assigned interest, a “Replacement Lender (Non-Consenting)”). Each Lender party hereto or to a Consent hereby waives any requirement of the Borrowers to deliver any notice to the Administrative Agent and/or any Lender in connection with any assignment contemplated herein pursuant to Section 9.02(e) of the Existing Credit Agreement.

(aa) Subject to Section 3(g) above, each Consenting/Exiting Lender, upon receipt of an amount equal to the sum of (i) the principal amount of the outstanding Existing Term Loans of such Consenting/Exiting Lender immediately prior to the effectiveness of this Amendment (but, for the avoidance of doubt, without any prepayment premium thereon) and (ii) all interest, fees and other amounts accrued but unpaid to such Consenting/Exiting Lender by the Borrowers under the Existing Credit Agreement to but excluding the Eighth Amendment Date, including without limitation payments due to such Consenting/Exiting Lender under Sections 2.15 and 2.17 of the Existing Credit Agreement, shall be deemed to have assigned (such assignment, the “Consenting/Exiting Lender Replacement”) all of its rights and obligations under the Existing Credit Agreement to one or more assignee Lenders (each of whom shall have consented to this Amendment by delivering a Replacement Lender Consent to the Administrative Agent on or prior to the Consent Deadline (each such assignee Lender, to the extent of such assigned interest, a “Replacement Lender (Consenting/Exiting)”) and, together with the Replacement Lenders (Non-Consenting), collectively, the “Replacement Lenders”). Each Lender party hereto or to a Consent hereby waives any requirement of the Borrowers to deliver any notice to the Administrative Agent and/or any Lender in connection with any assignment contemplated herein.

(ab) Subject to Section 3(g) above, each Rolling Lender, upon receipt of an amount equal to the sum of (i) the principal amount of outstanding Existing Term Loans of such Rolling Lender, as identified by Jefferies Finance LLC, in its capacity as Arranger, in its sole discretion, on or prior to the Eighth Amendment Date, that are assigned to the Replacement Lenders (Consenting/Exiting) (but, for the avoidance of doubt, without any prepayment premium thereon) and (ii) all interest, fees and other amounts accrued but unpaid to such Rolling Lender in respect of such Existing Term Loans by the Borrowers under the Existing Credit Agreement to but excluding the Eighth Amendment Date, including without limitation payments due to such Rolling Lender under Sections 2.15 and 2.17 of the Existing Credit Agreement, shall be deemed to have assigned all of its rights and obligations under the Existing Credit Agreement in respect of such Existing Term Loans to one or more Replacement Lenders (Consenting/Exiting). Each Lender party hereto or to a Consent hereby waives any requirement of the Borrowers to deliver any notice to the Administrative Agent and/or any Lender in connection with any assignment contemplated herein.

## 5. GOVERNING LAW AND WAIVER OF JURY TRIAL.

(ac) This Amendment shall be governed by, and construed in accordance with, the laws of the State of New York without regard to conflict of law principles (other than sections 5-1401 and 5-1402 of the New York General Obligations Law).

(ad) To the fullest extent permitted by applicable law, each Loan Party hereby irrevocably submits to the exclusive jurisdiction of any New York State court or federal court sitting in the County of New York and the Borough of Manhattan in respect of any claim, suit, action or proceeding arising out of or relating to the provisions of this Amendment and irrevocably agree that all claims in

respect of any such claim, suit, action or proceeding may be heard and determined in any such court and that service of process therein may be made by certified mail, postage prepaid, to your address set forth above. Each Loan Party hereby waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of venue of any such claim, suit, action or proceeding brought in any such court, and any claim that any such claim, suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Amendment shall affect any right that the Agents or any Lender may otherwise have to bring any action or proceeding relating to this Amendment against any Loan Party or its properties in the courts of any jurisdiction.

(ae) Each Loan Party hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Amendment in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(af) Each party to this Amendment irrevocably consents to service of process in the manner provided for notices in Section 9.01 of the Existing Credit Agreement. Nothing in this Amendment will affect the right of any party to this Amendment to serve process in any other manner permitted by law.

(ag) EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AMENDMENT, THE AMENDED CREDIT AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AMENDMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

1. Counterparts; Integration; Effectiveness. This Amendment may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Amendment constitutes the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. This Amendment shall become effective on the Eighth Amendment Date. Except as provided in Section 7, this Amendment shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Amendment by telecopy, e-mailed .pdf or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this Amendment. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to any document to be signed in connection with this Amendment and the transactions contemplated hereby shall be deemed to include electronic signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.



2. Reference to and Limited Effect on the Existing Credit Agreement and the Other Loan Documents.

(ah) On and after the Eighth Amendment Date, (x) each reference in the Amended Credit Agreement to “this Agreement”, “hereunder”, “hereof”, “herein” or words of like import referring to the Existing Credit Agreement, and (y) each reference in the other Loan Documents to the “Credit Agreement”, “thereunder”, “thereof”, “therein” or words of like import referring to the Existing Credit Agreement shall mean and be a reference to the Amended Credit Agreement.

(ai) Except as specifically amended by this Amendment, the Existing Credit Agreement and each of the other Loan Documents shall remain in full force and effect and are hereby ratified and confirmed.

(aj) The execution, delivery and performance of this Amendment shall not constitute a waiver of any provision of, or operate as a waiver of any right, power or remedy of the Agents or Lenders under, the Amended Credit Agreement or any of the other Loan Documents.

(ak) Each Loan Party hereby (i) ratifies, confirms and reaffirms its liabilities, its payment and performance obligations (contingent or otherwise) and its agreements (including its Guarantees) under the Existing Credit Agreement, the Amended Credit Agreement and the other Loan Documents and (ii) acknowledges, ratifies and confirms that such liabilities, obligations and agreements (including its Guarantees) constitute valid and existing Obligations under the Amended Credit Agreement, in each case, to the extent such Loan Party is a party thereto. In addition, each Loan Party hereby ratifies, confirms and reaffirms (i) the liens and security interests granted by it and as created and perfected under the Collateral Documents and any other Loan Documents and (ii) that each of the Collateral Documents to which it is a party remain in full force and effect notwithstanding the effectiveness of this Amendment. Without limiting the generality of the foregoing, each Loan Party further agrees (A) that any reference to “Obligations” contained in any Collateral Documents shall include, without limitation, the “Obligations” (as such term is defined in the Amended Credit Agreement) and (B) that the related guarantees and grants of security contained in such Collateral Documents shall include and extend to such Obligations. This Amendment shall not constitute a modification of the Existing Credit Agreement, except as specified under Section 2 hereto, or a course of dealing with the Agents or any Lender at variance with the Existing Credit Agreement such as to require further notice by any Agent or any Lender to require strict compliance with the terms of the Amended Credit Agreement and the other Loan Documents in the future, except as expressly set forth herein. This Amendment contains the entire agreement among the Loan Parties, the Consenting Lenders, the Replacement Lenders and the Subsequent Lenders contemplated by this Amendment. No Loan Party has any knowledge of any challenge to the Agent’s or any Lender’s claims arising under the Loan Documents or the effectiveness of the Loan Documents. The Agent and Lenders reserve all rights, privileges and remedies under the Loan Documents. Nothing in this Amendment is intended, or shall be construed, to constitute a novation or an accord and satisfaction of any of the Obligations, or otherwise with respect to the Existing Credit Agreement or any other Loan Document, or to constitute a mutual departure from the strict terms, provisions and conditions of the Existing Credit Agreement or any other Loan Document other than with respect to the amendments set forth in Section 2 hereof, or to modify, affect or impair the perfection, priority or continuation of the security interests in, security titles to or other Liens on any Collateral for the Obligations.

(al) Each Loan Party hereby acknowledges that it has reviewed the terms and provisions of this Amendment and consents to the amendment of the Existing Credit Agreement effected pursuant to this Amendment.

(am) Each Loan Party that is not a Borrower acknowledges and agrees that (i) notwithstanding the conditions to effectiveness set forth in this Amendment, such Loan Party is not required by the terms of the Existing Credit Agreement or any other Loan Document to consent to the amendments to the Existing Credit Agreement effected pursuant to this Amendment and (ii) nothing in the Amended Credit Agreement, this Amendment or any other Loan Document shall be deemed to require the consent of such Loan Party to any future amendments to the Amended Credit Agreement.

(an) The parties hereto acknowledge and agree that, for all purposes under the Amended Credit Agreement and the other Loan Documents, this Amendment constitutes a “Loan Document” under and as defined in the Amended Credit Agreement.

6. Expenses. The Borrowers and Holdings agree, jointly and severally, to pay on demand all reasonable and documented out-of-pocket costs and expenses incurred by the Administrative Agent in connection with the preparation, negotiation and execution of this Amendment, including, without limitation, all reasonable, documented and invoiced attorney costs.

7. Severability. Any provision of this Amendment held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions thereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

8. Headings. Section headings used herein are for convenience of reference only, are not part of this Amendment and shall not affect the construction of, or be taken into consideration in interpreting, this Amendment.

9. Conflicts. In the event of any conflict between the terms of this Amendment and the terms of the Amended Credit Agreement or any of the other Loan Documents, the terms of this Amendment shall govern.

*[SIGNATURE PAGES FOLLOW]*

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered by their respective proper and duly authorized officers as of the day and year first written above.

**CHEFS' WAREHOUSE PARENT, LLC,**  
as a Borrower

By: /s/ Alexandros Aldous  
Name: Alexandros Aldous  
Title: General Counsel, Corporate Secretary and  
Chief Government Relations Officer

**DAIRYLAND USA CORPORATION,**  
as a Borrower

By: /s/ Alexandros Aldous  
Name: Alexandros Aldous  
Title: General Counsel, Corporate Secretary and  
Chief Government Relations Officer

[SIGNATURE PAGE TO EIGHTH AMENDMENT TO CREDIT AGREEMENT]

**THE CHEFS' WAREHOUSE, INC.  
THE CHEFS' WAREHOUSE MID ATLANTIC, LLC  
BEL CANTO FOODS, LLC  
THE CHEFS' WAREHOUSE WEST COAST, LLC  
THE CHEFS' WAREHOUSE OF FLORIDA, LLC  
MICHAEL'S FINER MEATS, LLC  
MICHAEL'S FINER MEATS HOLDINGS, LLC  
THE CHEFS' WAREHOUSE MIDWEST, LLC  
THE CHEFS' WAREHOUSE PASTRY DIVISION, INC.  
QZ ACQUISITION (USA), INC.  
QZINA SPECIALTY FOODS NORTH AMERICA (USA), INC.  
QZINA SPECIALTY FOODS, INC., a Florida corporation  
QZINA SPECIALTY FOODS, INC., a Washington corporation  
QZINA SPECIALTY FOODS (AMBASSADOR), INC.  
CW LV REAL ESTATE LLC  
ALLEN BROTHERS 1893, LLC  
DAIRYLAND HP LLC  
THE GREAT STEAKHOUSE STEAKS, LLC  
DEL MONTE CAPITOL MEAT COMPANY HOLDINGS, LLC  
DEL MONTE CAPITOL MEAT COMPANY, LLC  
FELLS POINT HOLDINGS, LLC  
FELLS POINT, LLC  
CHEFS' WAREHOUSE TRANSPORTATION, LLC  
CAMBRIDGE, LLC  
CAMBRIDGE PROTEIN HOLDINGS, LLC  
DAIRYLAND PRODUCE, LLC  
DAIRYLAND PRODUCE HOLDINGS, LLC  
CHEFS' WAREHOUSE MIDDLE EAST HOLDINGS, LLC  
CHEFS' WAREHOUSE MIDDLE EAST, LLC**

By: /s/ Alexandros Aldous  
Name: Alexandros Aldous  
Title: General Counsel, Corporate Secretary and  
Chief Government Relations Officer

[SIGNATURE PAGE TO EIGHTH AMENDMENT TO CREDIT AGREEMENT]

**JEFFERIES FINANCE LLC,**  
as Administrative Agent and Collateral Agent

By: /s/ John Koehler  
Name: John Koehler  
Title: Managing Director

[SIGNATURE PAGE TO EIGHTH AMENDMENT TO CREDIT AGREEMENT]

SCHEDULE 1\*

<b>Term Loans</b>	<b>Aggregate Principal Amount (prior to giving effect to the 2022 New Term Loans)</b>
2022 Converted Term Loans	\$68,009,640.03
Existing Term Loans (other than 2022 Converted Term Loans)	\$99,381,129.02
<b>Total</b>	<b>\$167,390,769.05</b>

\* As of the Eighth Amendment Date, immediately after giving effect to the Amendment and the 2022 Conversion but immediately prior to the funding of the 2022 New Term Loans, the Consenting/Exiting Lender Replacement and the Non-Consenting Lender Replacement.

SCHEDULE 2\*

<b>Term Loans</b>	<b>Aggregate Principal Amount (after giving effect to the 2022 New Term Loans)</b>
2022 Converted Term Loans	\$167,390,769.05
2022 New Term Loans	\$132,609,230.95
<b>Total</b>	<b>\$300,000,000</b>

\* As of the Eighth Amendment Date, immediately after giving effect to the Amendment, the 2022 Conversion, and the funding of the 2022 New Term Loans.

ANNEX A

[FORM OF] REQUIRED LENDER CONSENT

Reference is made to the Eighth Amendment (the "Amendment") to that certain Credit Agreement, dated as of June 22, 2016 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Credit Agreement"), by and among Dairyland USA Corporation, a New York corporation ("Dairyland"), Chefs' Warehouse Parent, LLC, a Delaware limited liability company (together with Dairyland, the "Borrowers"), The Chefs' Warehouse, Inc., a Delaware corporation ("Holdings"), the other Loan Parties party thereto, the lenders party thereto, and Jefferies Finance LLC, as administrative agent for the Lenders (in such capacity, the "Administrative Agent") and as collateral agent for the Secured Parties (in such capacity, the "Collateral Agent" or, as Administrative Agent and Collateral Agent, the "Agents"); capitalized terms used but not otherwise defined herein shall have the respective meanings assigned to such terms in the Amendment or in the Amended Credit Agreement referred to in the Amendment, as applicable.

By signing below, the undersigned Consenting Lender hereby consents to the Amendment (and consents to this consent being appended thereto as its signature page thereto) and the Amended Credit Agreement and irrevocably agrees to, in accordance with the terms, conditions, and provisions of the Amendment and the Amended Credit Agreement:

**PARTICIPATE IN THE CASHLESS ROLL** by converting the aggregate principal amount of all of its Existing Term Loans set forth in the Administrative Agent's Register as of the Consent Deadline into a 2022 Converted Term Loan, which shall constitute a 2022 Term Loan under the Amended Credit Agreement; provided, that the undersigned Consenting Lender further acknowledges and agrees that Jefferies Finance LLC may, in its capacity as Arranger, in its sole discretion, elect to convert less than 100% of the aggregate principal amount of such Consenting Lender's Existing Term Loans into 2022 Converted Term Loans by means of a cashless roll, in which case the difference between the aggregate principal amount of such Consenting Lender's Existing Term Loans (immediately prior to giving effect to the 2022 Conversion) and the allocated principal amount of 2022 Term Loans that will be allocated to the undersigned Consenting Lender by Jefferies Finance LLC, in its capacity as Arranger, in its sole discretion, will be assigned to a Replacement Lender on the Eighth Amendment Date.

**PARTICIPATE IN THE CONSENTING LENDER ASSIGNMENT** by assigning the aggregate principal amount of all of its Existing Term Loans set forth in the Administrative Agent's Register as of the Consent Deadline to a Replacement Lender (Consenting/Exiting); provided, that the undersigned Consenting Lender further acknowledges and agrees that Jefferies Finance LLC may, in its capacity as Arranger, in its sole discretion, elect to allocate to such Consenting Lender 2022 Term Loans in an aggregate amount less than 100% of the aggregate principal amount of such Consenting Lender's Existing Term Loans.

\_\_\_\_\_  
as a Consenting Lender

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

For Consenting Lenders requiring a second signature block:

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



ANNEX B

[FORM OF] REPLACEMENT LENDER CONSENT

Reference is made to the Eighth Amendment (the "Amendment") to that certain Credit Agreement, dated as of June 22, 2016 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Credit Agreement"), by and among Dairyland USA Corporation, a New York corporation ("Dairyland"), Chefs' Warehouse Parent, LLC, a Delaware limited liability company (together with Dairyland, the "Borrowers"), The Chefs' Warehouse, Inc., a Delaware corporation ("Holdings"), the other Loan Parties party thereto, the lenders party thereto, and Jefferies Finance LLC, as administrative agent for the Lenders (in such capacity, the "Administrative Agent") and as collateral agent for the Secured Parties (in such capacity, the "Collateral Agent" or, as Administrative Agent and Collateral Agent, the "Agents"); capitalized terms used but not otherwise defined herein shall have the respective meanings assigned to such terms in the Amendment or in the Credit Agreement.

By signing below, the undersigned Replacement Lender hereby consents to the Amendment (and consents to this consent being appended thereto as its signature page thereto) and the Amended Credit Agreement and irrevocably agrees to assume all obligations under the Existing Term Loans assigned to it in accordance with the terms, conditions, and provisions of the Amendment and the Credit Agreement, as set forth on the Administrative Agent's Register, in the aggregate principal amount of \$\_\_\_\_\_.

\_\_\_\_\_,  
as a Replacement Lender

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

For Replacement Lenders requiring a second signature block:

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

[Replacement Lender Consent to Eighth Amendment to Credit Agreement]

ANNEX C

[FORM OF] SUBSEQUENT LENDER CONSENT

Reference is made to the Eighth Amendment (the "Amendment") to that certain Credit Agreement, dated as of June 22, 2016 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Credit Agreement"), by and among Dairyland USA Corporation, a New York corporation ("Dairyland"), Chefs' Warehouse Parent, LLC, a Delaware limited liability company (together with Dairyland, the "Borrowers"), The Chefs' Warehouse, Inc., a Delaware corporation ("Holdings"), the other Loan Parties party thereto, the lenders party thereto, and Jefferies Finance LLC, as administrative agent for the Lenders (in such capacity, the "Administrative Agent") and as collateral agent for the Secured Parties (in such capacity, the "Collateral Agent" or, as Administrative Agent and Collateral Agent, the "Agents"); capitalized terms used but not otherwise defined herein shall have the respective meanings assigned to such terms in the Amendment or in the Credit Agreement.

By signing below, the undersigned Subsequent Lender hereby consents to the Amendment (and consents to this consent being appended thereto as its signature page thereto) and the Amended Credit Agreement and irrevocably agrees to fund a 2022 New Term Loan to the Borrowers on the Eighth Amendment Date in accordance with the terms, conditions, and provisions of the Amendment and the Amended Credit Agreement, in the original principal amount of \$\_\_\_\_\_.

\_\_\_\_\_,  
as a Subsequent Lender

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

For Subsequent Lenders requiring a second signature block:

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

[Subsequent Lender Consent to Eighth Amendment to Credit Agreement]

ANNEX E

AMENDED CREDIT AGREEMENT

[see attached]

~~Conformed through Seventh Amendment, dated as of February 24, 2021~~

CREDIT AGREEMENT

dated as of

June 22, 2016

as amended by that certain First Amendment to Credit Agreement, dated as of September 14, 2016, that certain Second Amendment to Credit Agreement, dated as of September 1, 2017, that certain Third Amendment to Credit Agreement, dated as of December 13, 2017, that certain Fourth Amendment to Credit Agreement, dated as of November 16, 2018, that certain Fifth Amendment to Credit Agreement, dated as of November 18, 2019, that certain Sixth Amendment to Credit Agreement, dated as of June 8, 2020, ~~and~~ that certain Seventh Amendment to Credit Agreement, dated as of February 24, 2021, and that certain Eighth Amendment to Credit Agreement, dated as of August 23, 2022

among

DAIRYLAND USA CORPORATION

and

CHEFS' WAREHOUSE PARENT, LLC,  
as Borrowers,

THE CHEFS' WAREHOUSE, INC.

and

the other Loan Parties party hereto, as Guarantors,

the Lenders party hereto,

JEFFERIES FINANCE LLC,

as Joint Lead Arranger and Joint Bookrunner, Administrative Agent and Collateral Agent, and

BMO CAPITAL MARKETS CORP., JPMORGAN CHASE  
BANK, N.A.

and

~~Wells Fargo~~ ~~BofA~~ SECURITIES, ~~LLC~~ ~~INC.~~, as Joint Lead  
Arrangers and Joint Bookrunners

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CREDIT AGREEMENT dated as of June 22, 2016, (as it may be amended, restated ~~or~~ , amended and restated or otherwise modified from time to time, this “Agreement”) among DAIRYLAND USA CORPORATION, a New York corporation (“Dairyland”), as a Borrower, CHEFS’ WAREHOUSE PARENT, LLC, a Delaware limited liability company (together with Dairyland, collectively the “Borrowers” and each individually a “Borrower”) as a Borrower, the other Loan Parties party hereto, the Lenders party hereto, and JEFFERIES FINANCE LLC, as Administrative Agent and Collateral Agent.

The parties hereto agree as follows:

## ARTICLE I DEFINITIONS

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

“1.875% Convertible Notes” means the 1.875% Convertible Senior Notes due 2024 issued by Holdings pursuant to an Indenture dated as of November 22, 2019, between Holdings and The Bank of New York Mellon Trust Company, N.A., as Trustee (as amended in accordance with its terms).

“2020 Conversion” shall have the meaning assigned to such term in the Sixth Amendment.

“~~2016~~2020 Extended Term Lenders” means, as of any date of determination pr ior to the Eighth Amendment Date, Lenders holding any ~~2016~~2020 Extended Term Loans.

“~~2016~~2020 Extended Term Loans” means ~~(i) immediately pr ior to the effectiveness of the Sixth Amendment,~~ the term loans made to the Borrowers on the ~~Effective~~Sixth Amendment Date pursuant to the Original Credit Agreement and ~~(ii) immediately upon and after the effectiveness of the,~~ pursuant to the Sixth Amendment and the 2020 Conversion, ~~the term loans made to the Borrowers on the Effective Date pursuant to the Original Credit Agreement that are not~~ converted into “2020 Extended Term Loans” pursuant to the ~~Sixth Amendment~~terms thereof, which remain outstanding under this Agreement ~~as of the Sixth Amendment Date, immediately after giving effect to the 2020 Conversion. As of the Sixth Amendment Date, after giving effect to the 2020 Conversion, the aggregate outstanding pr incipal amount of 2016 Term Loans is \$31,165,852.60.~~immediately pr ior to the effectiveness of the Eighth Amendment and the 2022 Conversion.

“~~2020~~2022 Conversion” shall have the meaning assigned to such term in the ~~Sixth~~Eighth Amendment.

“~~2020 Extended~~2022 Converted Term Lenders” means, as of any date of determination, Lenders holding any ~~2020 Extended~~2022 Converted Term Loans.

“~~2020 Extended~~2022 Converted Term Loans” means, immediately upon and after the effectiveness of the ~~Sixth Amendment, the term loans made to the Borrowers on the Effective Date pursuant to the Original Credit Agreement and, pursuant to the Sixth~~Eighth Amendment and the ~~2020~~2022 Conversion, ~~converted into “ the~~ 2020 Extended Term Loans” ~~thereunder. As of the Sixth converted into “~~ 2022 Converted Term Loans” pursuant to the terms thereof. As of the Eighth Amendment Date, immediately after giving effect to the ~~2020~~2022 Conversion ~~and the Sixth~~

~~Amendment Prepayment (as defined in the Sixth Amendment)~~, the aggregate outstanding principal amount of ~~2020 Extended 2022 Converted~~ Term Loans is ~~\$171,243,753.47~~ \$167,390,769.05.

“2022 New Term Lenders” means, as of any date of determination, Lenders holding any 2022 New Term Loans.

“2022 New Term Loans” means the Term Loans made by the 2022 New Term Lenders to the Borrowers on the Eighth Amendment Date pursuant to the Eighth Amendment and this Agreement. As of the Eighth Amendment Date, immediately after giving effect to the funding of the 2022 New Term Loans, the aggregate outstanding principal amount of 2022 New Term Loans is \$132,609,230.95.

“2022 Term Loans” means the 2022 Converted Term Loans and the 2022 New Term Loans, collectively. As of the Eighth Amendment Date, immediately after giving effect to the 2022 Conversion and the funding of the 2022 New Term Loans, the aggregate outstanding principal amount of 2022 Term Loans is \$300,000,000.

“ABL Agent” means (i) the Original ABL Agent and (ii) each administrative agent and/or collateral agent under any ABL Facility (other than the Original ABL Facility), including the successors and permitted assigns of each of the foregoing.

“ABL Facility” means (i) the Original ABL Facility, as amended, restated, amended and restated, supplemented or otherwise modified in accordance with the terms of the Intercreditor Agreement and (ii) each refinancing or replacement of any ABL Facility, in accordance with the terms of the Intercreditor Agreement.

“ABL Loan” shall have the meaning assigned to the term “Loan” in the ABL Facility.

“ABL Loan Documents” shall have the meaning assigned to the term “Loan Documents” in the ABL Facility.

“ABL Obligations” shall have the meaning assigned to the term “Secured Obligations” in the ABL Facility.

“ABL Priority Collateral” shall have the meaning assigned to such term in the Intercreditor Agreement.

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

“ABR Borrowing” means a Borrowing that accrues interest based on the Alternate Base Rate.

“ABR Loan” means a Loan that accrues interest based on the Alternate Base Rate.

“ABR Term SOFR Determination Day” has the meaning specified in the “Term SOFR” definition.

“Account” has the meaning assigned to such term in the Security Agreement. “Account Debtor”

means any Person obligated on an Account.



“Acquisition Consideration” has the meaning assigned to it in the ‘ Permitted Acquisition’ definition.

“Act” has the meaning assigned to such term in Section 9.14.

“Adjusted Daily Simple SOFR” means an interest rate per annum equal to (a) Daily Simple SOFR, plus (b) 0.15% ; provided that if the Adjusted Daily Simple SOFR as so determined would be less than 0.50% , then Adjusted daily Simple SOFR shall be deemed to be 0.50% .

“Adjusted ~~LIBOR Rate~~Term SOFR” means, with respect to any ~~Eurodollar Borrowing for any~~ Interest Period, ~~the greater of (a) (i) an interest rate per annum (rounded upward, if necessary, to the next 1/100th of 1%) determined by the Administrative Agent to be equal to the LIBOR Rate for such Eurodollar Borrowing in effect for such Interest Period divided by (ii) 1 minus the Statutory Reserve Rate (if any) for such Eurodollar Borrowing for such~~ equal to the sum of (i) Term SOFR plus (ii) 0.10% for any tenor up to and including a one-month Interest Period, 0.15% for any tenor greater than a one-month Interest Period up to and including a three-month Interest Period, and 0.25% for any tenor greater than a three-month Interest Period and ~~(b) 0.00% per annum up to and including a six-month Interest Period; provided, that if Adjusted Term SOFR as so determined shall be less than 0.50% , then Adjusted Term SOFR shall be deemed to be 0.50% .~~

“Administrative Agent” means Jefferies Finance LLC, in its capacity as administrative agent for the Lenders hereunder and any successor Administrative Agent appointed pursuant to the terms of this Agreement.

“Administrative Questionnaire” means an administrative questionnaire in a form supplied by the Administrative Agent or otherwise acceptable to the Administrative Agent.

“Affected Financial Institution”: means (a) any EEA Financial Institution or (b) any UK Financial Institution.

“Affected Foreign Subsidiary” means any Foreign Subsidiary to the extent ~~more than~~ 66 2/3% or more of the voting Equity Interests of such Foreign Subsidiary being pledged to support the Secured Obligations could reasonably be expected to cause a Deemed Dividend Issue.

“Affiliate” means, with respect to a specified Person, another Person that (i) directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified or (ii) with respect to any Loan Party or Subsidiary, has the power to vote, directly or indirectly, 10% or more of the Equity Interests of such specified Person. For purposes of the Loan Documents, Jefferies LLC and its Affiliates shall be deemed to be Affiliates of Jefferies Finance LLC and its Affiliates.

“Agents” means, collectively, the Administrative Agent and the Collateral Agent. “Agreement”

has the meaning ascribed to it in the preamble.

“All-in-Yield” means, as to any Indebtedness, the effective yield applicable thereto calculated by the Administrative Agent in consultation with the Borrower Representative in a manner consistent with generally accepted financial practices, which shall include (a) interest rate margin and interest rate floors (subject to the proviso set forth below), (b) any amendment to the relevant interest rate margins and interest rate floors that became effective after the ~~Effective~~Eighth Amendment Date but prior to the applicable date of determination and (c) original issue discount (based on, to the extent applicable, an

assumed four-year average life to maturity) and upfront or similar fees paid by the Borrowers or any Loan Party, but shall exclude any customary arrangement, commitment, structuring, underwriting and similar fees that are not paid to all of the Lenders providing the applicable Incremental Facility; provided, however, if any such Indebtedness includes any interest rate floor that is greater than that applicable to the then-existing Term Loans and such floor is applicable to the then-existing Term Loans on the date of determination, such excess amount shall be equated to interest rate margin for determining the increase.

“Alternate Base Rate” means, for any day, highest of (a) the Prime Rate, (b) the Federal Funds Effective Rate from time to time, plus 0.50% , (c) 1.00% and (d) the Adjusted ~~LIBOR Rate~~ Term SOFR for a one-month Interest Period plus 1.00% . If the Administrative Agent shall have determined in good faith (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Effective Rate or the applicable Adjusted ~~LIBOR Rate~~ Term SOFR for any reason, including the inability or failure of the Administrative Agent to obtain sufficient quotations in accordance with the terms of the definition thereof, the Alternate Base Rate shall be determined without regard to clause (b) or clause (d), as applicable, of the preceding sentence until the circumstances giving rise to such inability no longer exist. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or the then applicable Adjusted ~~LIBOR Rate~~ Term SOFR shall be effective on the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or the then applicable Adjusted ~~LIBOR Rate~~ Term SOFR, respectively. “Alternate Base Rate,” when used in reference to any Loan or Borrowing, is used when such Loan comprising such Borrowing is, or the Loans comprising such Borrowing are, bearing interest at a rate determined by reference to the Alternate Base Rate in accordance with the provisions of Article II.

“Applicable Percentage” means, with respect to any Lender, (a) with respect to ~~Delayed-Draw Term Loans~~, a percentage equal to a fraction the numerator of which is such Lender’s DDTL Commitment and the denominator of which is the aggregate DDTL Commitments of all DDTL Lenders (if the DDTL Commitments have terminated or expired, the Applicable Percentages shall be determined based upon the DDTL Commitments most recently in effect, giving effect to any assignments), ~~(b) with respect to 2016~~ the 2022 New Term Loans, a percentage equal to a fraction the numerator of which is such Lender’s outstanding principal amount of the ~~2016~~ 2022 New Term Loans and the denominator of which is the aggregate outstanding principal amount of the ~~2016~~ 2022 New Term Loans of all ~~2016~~ 2022 New Term Lenders, ~~(c)~~ (b) with respect to ~~2020-Extended~~ the 2022 Converted Term Loans, a percentage equal to a fraction the numerator of which is such Lender’s outstanding principal amount of the ~~Extended-2020~~ 2022 Converted Term Loans and the denominator of which is the aggregate outstanding principal amount of the ~~2020-Extended~~ 2022 Converted Term Loans of all ~~2020-Extended~~ 2022 Converted Term Lenders, and ~~(d)~~ (c) with respect to Term Loans other than ~~Delayed Draw Term Loans, 2016~~ the 2022 New Term Loans and ~~2020-Extended~~ the 2022 Converted Term Loans, a percentage equal to a fraction the numerator of which is such Lender’s outstanding principal amount of such Term Loans and the denominator of which is the aggregate outstanding principal amount of all such Term Loans; provided that, in the case of Section 2.20 when a Defaulting Lender shall exist, any such Defaulting Lender’s Commitment shall be disregarded in the calculations under clauses (a), (b), and (c) ~~and (d)~~ above.

“Applicable Pledge Percentage” means 100% but 65% in the case of a pledge by the Borrowers or any Domestic Subsidiary of its Equity Interests in an Affected Foreign Subsidiary or its Equity Interests in a FSHCO.

“ Applicable Rate” means, from and after the Eighth Amendment Date, (i) with respect to any SOFR Loan, 4.75% per annum or (ii) with respect to any ABR Loan, 3.75% per annum.

~~“Applicable Premium” means, with respect to the aggregate principal amount of 2020 Extended Term Loans being prepaid pursuant to Section 2.11(a) or Section 2.11(c) (or in connection with any amendment, modification or waiver of, or consent under, this Agreement resulting in any “Repricing Event” with respect to the 2020 Extended Term Loans), on any applicable prepayment date, the excess (to the extent positive) of (a) the present value at such prepayment date of (i) 101.00% of the aggregate principal amount of all such 2020 Extended Term Loans so prepaid on such date, plus (ii) all required remaining scheduled interest payments due on such prepaid 2020 Extended Term Loans to and excluding the first anniversary of the Sixth Amendment Date (excluding accrued but unpaid interest to, but excluding, the prepayment date) (assuming that for such period the prepaid 2020 Extended Term Loans will bear interest based on the Adjusted LIBOR Rate (or the applicable replacement interest rate with respect thereto adopted pursuant to this Agreement) in effect for three-month Interest Periods as of the date of the applicable notice of prepayment (for the avoidance of doubt, subject to the interest rate “floor” set forth in the definition of Adjusted LIBOR Rate)), computed using a discount rate equal to the Applicable Treasury Rate at such prepayment date plus 50 basis points, over (b) the outstanding aggregate principal amount of such 2020 Extended Term Loans so prepaid on such applicable prepayment date, in each case, as calculated in a manner that is reasonably agreed between the Administrative Agent and the Borrower Representative.~~

~~“Applicable Rate” means (a) for any day from the Effective Date through the date immediately preceding the First Amendment Date, (i) with respect to any Eurodollar Loan, 4.75% per annum or (ii) with respect to any ABR Loan, 3.75% per annum, (b) for any day from the First Amendment Date through the day that immediately precedes the Closing Date Leverage Restoration Date, (i) with respect to any Eurodollar Loan, 5.75% per annum or (ii) with respect to any ABR Loan, 4.75% per annum, (c) for any day from the Closing Date Leverage Restoration Date through the day that immediately precedes the Third Amendment Date, (i) with respect to any Eurodollar Loan, 4.75% per annum or (ii) with respect to any ABR Loan, 3.75% per annum, (d) for any day from the Third Amendment Date through the day that immediately precedes the Fourth Amendment Date, (i) with respect to any Eurodollar Loan, 4.00% per annum or (ii) with respect to any ABR Loan, 3.00% per annum, and (e) from and after the Fourth Amendment Date, (i) with respect to any Eurodollar Loan that is a 2016 Term Loan, 3.50% per annum, (ii) with respect to any ABR Loan that is a 2016 Term Loan, 2.50% per annum, (iii) with respect to any Eurodollar Loan that is a 2020 Extended Term Loan, 5.50% per annum or (iv) with respect to any ABR Loan that is a 2020 Extended Term Loan, 4.50% per annum.~~

~~“Applicable Treasury Rate” means the yield to maturity at the time of computation of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) which has become publicly available at least two Business Days (but not more than five Business Days) prior to the applicable prepayment date (or, if such statistical release is not so published or available, any publicly available source of similar market data reasonably agreed between the Borrower Representative and the Administrative Agent)) most nearly equal to the period from the applicable prepayment date to the first anniversary of the Sixth Amendment Date; provided, however, that if the period from the applicable prepayment date to the first anniversary of the Sixth Amendment Date is not equal to the constant maturity of a United States Treasury security for which a weekly average yield is given, the Applicable Treasury Rate shall be obtained by linear interpolation (calculated to the nearest one-twelfth of a year) from the weekly average yields of United States Treasury securities for which such yields are given, except that if the period from the prepayment date to such applicable date is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year shall be used.~~



“Approved Fund” has the meaning assigned to such term in Section 9.04(b).

“Arrangers” means each of Jefferies Finance LLC (acting through any of its Affiliates as it deems appropriate), BMO Capital Markets Corp., JPMorgan Chase Bank, N.A. and ~~Wells Fargo~~ BofA Securities, LLC Inc. in its capacity as joint lead arranger and joint bookrunner for the credit facilities evidenced by this Agreement.

“Assignment and Assumption” means an assignment and assumption agreement entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.04), and accepted by the Administrative Agent, in substantially the form of Exhibit A or any other form approved by the Administrative Agent in its reasonable discretion.

“Augmenting Lender” has the meaning assigned to such term in Section 2.22(a).

“Authorized Officer” means, with respect to any Loan Party, the chief executive officer, the president, a Financial Officer or any other officer of such Loan Party with responsibility for the administration of the relevant portion of this Agreement.

~~“Availability Per iod” means the per iod from and including the Effective Date to but excluding the First Amendment Date.~~

“ Available Amount” means at any date, an amount, not less than zero in the aggregate, determined on a cumulative basis equal to, without duplication:

(a) \$35,000,000; plus

(b) the Cumulative Retained Cash Flow Amount; plus

(c) any Declined Proceeds; plus

(d) (i) the cumulative amount of cash and cash equivalent proceeds received from the sale or issuance of Equity Interests of Holdings subsequent to the Eighth Amendment Date and contributed to the capital of the Borrowers, and (ii) the principal amount of Indebtedness (other than Subordinated Indebtedness or Indebtedness that is owed to an Unrestricted Subsidiary) of the Restricted Group owed to a Person other than a Loan Party or a Restricted Subsidiary of a Loan Party incurred subsequent to the Eighth Amendment Date that is converted to Equity Interests of Holdings; plus

(e) the aggregate amount received in cash and cash equivalents received by the Loan Parties or any Restricted Subsidiary from any sale or other disposition (other than to a Loan Party or a Restricted Subsidiary) of investments made pursuant to clause (B) of Section 6.04(r), in each case after the Eighth Amendment Date and in an aggregate amount not to exceed the original amount of the investment made pursuant to clause (B) of Section 6.04(r); plus

(f) in the case of (i) the designation of a Restricted Subsidiary as an Unrestricted Subsidiary and such Unrestricted Subsidiary is thereafter redesignated as a Restricted Subsidiary, (ii) the merger, consolidation or amalgamation of an Unrestricted Subsidiary into a Borrower or a Restricted Subsidiary, or (iii) the transfer of all or substantially all of the assets of an Unrestricted Subsidiary to a Borrower or a Restricted Subsidiary, in each case after the Eighth Amendment Date, the fair market value of the

investment made in such Unrestricted Subsidiary pursuant to Section 6.04(u) (or the assets transferred), as determined in good faith by the Borrower Representative at the time of the redesignation of such Unrestricted Subsidiary as a Restricted Subsidiary or at the time of such merger, consolidation or amalgamation or transfer of assets (after taking into consideration any Indebtedness associated with the Unrestricted Subsidiary so designated or merged or consolidated or Indebtedness associated with the assets so transferred), in an aggregate amount not to exceed the original amount of the investment made in such Unrestricted Subsidiary pursuant to Section 6.04(u); plus

(g) the aggregate amount received in cash and cash equivalents received by any Loan Party or any Restricted Subsidiary from any dividend or other distribution, interest, returns of principal, profits on sale, repayments, income and similar amounts received in respect of any investments made pursuant to clause (B) of Section 6.04(r) after the Eighth Amendment Date and in an aggregate amount not to exceed the original amount of the investment made pursuant to Section clause (B) of Section 6.04(r); minus

(h) the aggregate amount of the Available Amount used to make investments pursuant to clause (B) of Section 6.04(r) after the Eighth Amendment Date and prior to such time; minus

(i) the aggregate amount of the Available Amount used to make Restricted Payments pursuant to Section 6.08(a)(ii)(D)(2) after the Eighth Amendment Date and prior to such time; minus

(j) the aggregate amount of the Available Amount used to make Restricted Debt Payments pursuant to clause (B) of Section 6.08(b)(xi) after the Eighth Amendment Date and prior to such time.

“ Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark pursuant to this Agreement, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed (but not then-reinstated) from the definition of “ Interest Period” pursuant to clause (b)(iv) of Section 2.14.

“Average Life” means, as of the date of determination, with respect to any Indebtedness, the quotient obtained by dividing (i) the sum of the products of (A) the numbers of years (calculated to the nearest one-twelfth) from the date of determination to the dates of each successive scheduled principal payment of such Indebtedness multiplied by (B) the amount of such payment by (ii) the sum of all such payments.

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

“Bail-In Legislation” means, (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation, rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom,

Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“Bankruptcy Event” means, with respect to any Person, such Person becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business, appointed for it, or, in the good faith determination of the Administrative Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment; provided that a Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof; provided, further, that such ownership interest does not result in or provide such Person with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Person (or such Governmental Authority or instrumentality), to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

“ Benchmark” means, initially, the Term SOFR Reference Rate; provided that if a Benchmark Transition Event and the related Benchmark Replacement Date have occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then “ Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to, and in accordance with, Section 2.14.

“ Benchmark Replacement” means, with respect to any Benchmark Transition Event, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date:

(a) Adjusted Daily Simple SOFR; or

(b) the sum of: (i) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower Representative as the replacement for the then-current Benchmark for the applicable corresponding tenor giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities at such time in the United States and (ii) the related Benchmark Replacement Adjustment.

If the Benchmark Replacement as determined pursuant to clause (a) or (b) above would be less than 0.50% , the Benchmark Replacement will be deemed to be 0.50% .

“ Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower Representative for the applicable corresponding tenor giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted

Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities at such time.

“ Benchmark Replacement Date” means, with respect to any Benchmark, the earliest to occur of the following events with respect to such then-current Benchmark:

(a) in the case of clause (a) or (b) of the definition of “ Benchmark Transition Event”, the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(b) in the case of clause (c) of the definition of “ Benchmark Transition Event” , the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be no longer representative; provided, that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the “ Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“ Benchmark Transition Event” means, with respect to any Benchmark, the occurrence of one or more of the following events with respect to such then-current Benchmark:

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such



(c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer, or as of a specified future date will no longer be, representative.

For the avoidance of doubt, a “ Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“ Benchmark Unavailability Period” means, with respect to any Benchmark, the period (if any) (a) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.14 and (b) ending at the time that a Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.14.

“Beneficial Owner” means, with respect to any U.S. Federal withholding Tax, the beneficial owner, for U.S. Federal income tax purposes, to whom such Tax relates.

“Beneficial Ownership Certification” means a certification regarding beneficial ownership ~~or control~~ as required by the Beneficial Ownership Regulation.

“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.

“Benefit Plan” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of Section 3(42) of ERISA or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“BHC Act Affiliate” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“Board” means the Board of Governors of the Federal Reserve System of the United States of America.

“Borrower” or “Borrowers” each has the meaning assigned to such term in the preamble. “Borrower

Representative” has the meaning assigned to such term in Section 11.01.

“Borrowing” means a Term Loan made, converted or continued on the same date and, in the case of ~~Eurodollar~~ **SOFR** Loans, as to which a single Interest Period is in effect.

“Borrowing Request” means a request by the Borrower Representative for a Term Loan Borrowing in accordance with Section 2.03.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; ~~provided that, when used~~

~~in connection with a Eurodollar Loan, the term “Business Day” shall also exclude any day on which banks are not open for dealings in Dollar deposits in the London interbank market.~~

“Capital Expenditures” means, without duplication, any expenditure or commitment to expend money for any purchase or other acquisition of any asset which would be classified as a fixed or capital asset on a consolidated balance sheet of Holdings and its Subsidiaries prepared in accordance with GAAP.

“Capital Lease Obligations” of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, in each case, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

~~“Change in Control” means (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the SEC thereunder as in effect on the Effective Date) other than~~

~~(i) Christopher Pappas, John Pappas, Dean Facatselis or Kay Facatselis, (ii) the officers, directors or management of Holdings as of the Effective Date or (iii) any corporation, limited liability company or partnership owned and controlled directly or indirectly by any Person or Persons described in clauses (i) and (ii), of Equity Interests representing more than 50% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of Holdings or an event or series of events by which (a) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act, but excluding any employee benefit plan of such person or its Subsidiaries and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) other than one or more of the Permitted Holders becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a person or group shall be deemed to have “beneficial ownership” of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an “option right”)), directly or indirectly, of more than 50.0% of the Equity Interests of Holdings entitled to vote for members of the board of directors or equivalent governing body of Holdings on a fully-diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right) or~~ (b) Holdings shall cease to own and control all of the outstanding Equity Interests of any of the Borrowers on a fully diluted basis.

“Change in Law” means the occurrence, after the ~~Effective~~**Eighth Amendment** Date (or with respect to any Lender, if later, the date on which such Lender becomes a Lender), of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority, or (c) the making or issuance of any request, rules, guideline, requirement or directive (whether or not having the force of law) by any Governmental Authority; provided however, that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements and directives thereunder, issued in connection therewith or in implementation thereof, and (ii) all requests, rules, guidelines, requirements and directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law” regardless of the date enacted, adopted, issued or implemented.

~~“Closing Date Leverage Restoration Date” means the first Business Day immediately following the date on which a Financials Certificate is delivered to the Administrative Agent and the Lenders pursuant to Section 5.01(c), demonstrating that the Total Leverage Ratio as of the last day of the most recent Fiscal Quarter for which financial statements shall have been delivered pursuant to Section 5.01(a) or 5.01(b) does not exceed 4.90: 1.00.~~

“Code” means the Internal Revenue Code of 1986, as amended.

“Collateral” means any and all property owned by a Person that is covered by or purported to be covered by the Collateral Documents and any and all other property of any Loan Party, now existing or hereafter acquired, that may at any time be or become subject to a Lien in favor of the Collateral Agent, on behalf of itself and the Lenders and other Secured Parties, to secure the Secured Obligations; provided that “Collateral” shall not include any Excluded Assets or, for the avoidance of doubt, any of the Equity Interests in, or property or assets of, the Excluded Subsidiary.

“Collateral Agent” means Jefferies Finance LLC, in its capacity as collateral agent for the Secured Parties and any successor Collateral Agent appointed pursuant to the terms of this Agreement and the Intercreditor Agreement.

“Collateral Documents” means, collectively, the Security Agreement, the Mortgages, any short form intellectual property security agreement and all other agreements, instruments and documents executed in connection with this Agreement that are intended to create, perfect or evidence Liens to secure the Secured Obligations.

“Commitment” means, with respect to each Lender, ~~such Lender’s DDTL Commitment. The amount of each Lender’s Commitment is set forth on the Commitment Schedule, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Commitment, as applicable.~~ its obligation to make Loans to the Borrowers pursuant to Section 2.01 or Section 2.22.

~~“Commitment Schedule” means Schedule 2.01(b) attached hereto.~~

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“Conforming Changes” means, with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Alternate Base Rate,” the definition of “Business Day,” the definition of “Interest Period,” the definition of “U.S. Government Securities Business Day”, the timing and frequency of determining rates and making payments of interest, the timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent (in consultation with the Borrower Representative) decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Administrative Agent (in consultation with the Borrower Representative).



decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

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

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Covered Entity” means any of the following:

- (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
- (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Covered Party” has the meaning assigned to such term in Section 9.21.

“Credit Party” means the Administrative Agent, the Collateral Agent or any other Lender. “Cumulative Retained

Excess Cash Flow Amount” means, as of any date, an amount not less

than zero in the aggregate for any Excess Cash Flow Period, determined on a cumulative basis equal to the aggregate cumulative sum of the Retained Excess Cash Flow for all Excess Cash Flow Periods ending after the Effective Eighth Amendment Date and prior to such date ~~minus the sum of (i) the aggregate amount of investments made in reliance on Section 6.04(r) in excess of \$5,000,000, (ii) the aggregate amount of Restricted Payments made in reliance on Section 6.08(a)(iv) in excess of \$5,000,000 and (iii) the aggregate amount of payments in respect of Subordinated Indebtedness made in reliance on Section 6.08(b)(xi), in each case prior to such date.~~

“Daily Simple SOFR” means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Administrative Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for syndicated business loans; provided that if the Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent may (in consultation with the Borrower Representative) establish another convention in its reasonable discretion.

“Dairyland” has the meaning ascribed to it in the preamble.

“Dairyland HP” means Dairyland HP LLC, a Delaware limited liability company.

“Dairyland HP Facility” means the premises at 200-240 Food Center Drive, Bronx, New York. “Dairyland HP

Indebtedness” means the Indebtedness (including, without limitation, loans and Guarantees) incurred under the New Markets Tax Credit Financing.

“ Declined Proceeds” has the meaning given such term in Section 2.11(g).

~~“**DDTL Commitment**” means (a) as to any DDTL Lender, the aggregate commitment of such DDTL Lender to make Delayed Draw Term Loans as set forth on Schedule 2.01(b) or in the most recent Assignment and Assumption or other documentation contemplated hereby executed by such DDTL Lender and (b) as to all DDTL Lenders, the aggregate commitment of all DDTL Lenders to make Delayed Draw Term Loans, which aggregate commitment shall be \$50,000,000 on the date of this Agreement and which may be reduced or terminated from time to time in accordance with Section 2.09. After advancing all Delayed Draw Term Loans, each reference to a DDTL Lender’s DDTL Commitment shall refer to that DDTL Lender’s Applicable Percentage of the Delayed Draw Term Loans. As of the Sixth Amendment Date, the aggregate DDTL Commitments of all Lenders is \$0.~~

~~“**DDTL Lender**” means, as of any date of determination, a Lender with a DDTL Commitment or, if the DDTL Commitments have terminated or expired, a Lender with Delayed Draw Term Loans.~~

“**Deemed Dividend Issue**” means, with respect to any Foreign Subsidiary, such Foreign Subsidiary’s accumulated and undistributed earnings and profits being deemed to be repatriated to Holdings or the applicable parent Domestic Subsidiary under Section 956 of the Code and the effect of such repatriation causing materially adverse tax consequences to Holdings or such parent Domestic Subsidiary, in each case as determined by the Borrower Representative in its commercially reasonable judgment acting in good faith and in consultation with its legal and tax advisors.

“**Default**” means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

“**Default Right**” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. § 252.81, 47.2 or 382.1, as applicable.

“**Defaulting Lender**” means any Lender that (a) has failed, within two (2) Business Days of the date required to be funded or paid, to (i) fund any portion of its Loans or (ii) pay over to any Credit Party any other amount required to be paid by it hereunder, unless, in the case of clause (i) above, such Lender notifies the Administrative Agent in writing that such failure is the result of such Lender’s good faith determination that a condition precedent to funding (specifically identified and including the particular Default, if any) has not been satisfied; (b) has notified any Borrower or any Credit Party in writing, or has made a public statement, to the effect that it does not intend or expect to comply with any of its funding obligations under this Agreement (unless such writing or public statement indicates that such position is based on such Lender’s good faith determination that a condition precedent to funding a Loan under this Agreement (specifically identified and including the particular Default, if any) cannot be satisfied) or generally under other agreements in which it commits to extend credit; (c) has failed, within three (3) Business Days after request by a Credit Party, acting in good faith, to provide a certification in writing from an authorized officer of such Lender that it will comply with its obligations to fund prospective Loans; provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon such Credit Party’s receipt of such certification in form and substance satisfactory to it and the Administrative Agent or (d) has become the subject of (i) a Bankruptcy Event or (ii) a Bail-In Action.

~~“**Delayed Draw Term Loans**” means the delayed draw term loans made by the DDTL Lenders to the Borrowers pursuant to Section 2.01(b).~~

“Designated Non-Cash Consideration” means the fair market value of non-cash consideration received by the Borrowers or one of their Restricted Subsidiaries in connection with a disposition that is so designated as Designated Non-Cash Consideration pursuant to a certificate of an Authorized Officer, setting forth the basis of such valuation, less the amount of cash or cash equivalents received in connection with a subsequent payment, redemption, retirement, sale or other disposition of such Designated Non-Cash Consideration. A particular item of Designated Non-Cash Consideration will no longer be considered to be outstanding when and to the extent it has been paid, redeemed or otherwise retired or sold or otherwise disposed of in compliance with Section 6.05.

“Dollars” or “\$” refers to lawful money of the United States of America.

“Domestic Subsidiary” means a Subsidiary organized under the laws of a jurisdiction located in the United States of America.

“EBITDA” means, for any period, Net Income for such period *plus* (a) without duplication and to the extent deducted in determining Net Income for such period, the sum of (i) Interest Expense for such period, (ii) income tax expense for such period net of tax refunds, (iii) all amounts attributable to depreciation and amortization expense for such period, (iv) any extraordinary non-cash charges for such period, (v) any other non-cash charges for such period (but excluding any non-cash charge in respect of an item that was included in Net Income in a prior period and any non-cash charge that relates to the write-down or write-off of inventory or accounts receivable), (vi) non-recurring fees, cash charges and other cash expenses made or incurred in connection with a completed Permitted Acquisition, (vii) non-recurring cash charges related to workers’ compensation claims, (viii) non-recurring fees, cash charges and other cash expenses, in an aggregate amount not to exceed \$10,000,000 for any period of four (4) consecutive Fiscal Quarters and (ix) expected cost savings, operating improvements, expense reductions, ~~other operating improvements and expense reductions~~ and product margin synergies and product cost and other synergies (“Expected Cost Savings”) projected by the Borrower Representative in good faith to be realized as a result of any asset sale, merger or other business combination, acquisition, investment, disposition or divestiture, operating improvement and expense reductions, restructurings, cost saving initiatives, any similar initiative and/or specified transaction taken or to be taken by Holdings or any of its Restricted Subsidiaries, net of the amount of actual benefits realized during such period from such actions; provided that such ~~cost savings, expense reductions, operating improvements and synergies~~ Expected Cost Savings are reasonably identifiable and factually supportable and are reasonably anticipated to be realized within ~~12~~18 months after the change, acquisition, disposition or other transaction that is expected to result in such ~~cost savings, expense reductions, or operating improvements and other synergies~~; Expected Cost Savings; provided, further, that the aggregate amount that can be added back in reliance on this clause (ix), shall not exceed ~~10~~20% of EBITDA in any period (calculated before giving effect to any such add-backs and adjustments and which ~~10~~20% cap shall not apply to amounts added back in reliance on any other clause in this definition of “EBITDA”), *minus* (b) without duplication and to the extent included in Net Income, any extraordinary gains and any non-cash items of income for such period, all calculated for Holdings and its Restricted Subsidiaries on a consolidated basis in accordance with GAAP.

“ECF Percentage” has the meaning assigned to such term in Section 2.11(d).

“ECP” means an “eligible contract participant” as defined in Section 1(a)(18) of the Commodity Exchange Act or any regulations promulgated thereunder and the applicable rules issued by the Commodity Futures Trading Commission and/or the SEC.

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in ~~clauses~~clause (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

~~“Effective Date” means the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 9.02).~~

“Effective Date” means June 22, 2016.

“Eighth Amendment” means that certain Eighth Amendment to Credit Agreement, dated as of August 23, 2022, by and among the Borrowers, Holdings, the other Loan Parties party thereto, the Lenders party thereto, the Administrative Agent and the Collateral Agent.

“Eighth Amendment Date” has the meaning assigned to such term in the Eighth Amendment.

“Engagement Letters” means, collectively, (a) that certain Amended and Restated Engagement Letter, dated June 2, 2016, among Holdings ~~and the Arrangers, Jefferies Finance LLC, BMO Capital Markets Corp., J P Morgan Chase Bank, N.A. and Wells Fargo Securities, LLC~~, (b) that certain Engagement Letter, dated December 7, 2017, between Holdings and Jefferies Finance LLC, (c) that certain Engagement Letter, dated November 7, 2018, between Holdings and Jefferies Finance LLC, ~~and~~ (d) that certain Engagement Letter, dated May 26, 2020, between Holdings and Jefferies Finance LLC, ~~and (e) that certain Amended and Restated Engagement Letter, dated August 18, 2022, among Holdings and the Arrangers,~~ in each case, as the same may be amended, supplemented, restated or otherwise modified from time to time.

~~“Enterprise Transformative Acquisition” means any merger, acquisition or investment by any Loan Party that either (a) is not permitted by the terms of the Loan Documents immediately prior to the consummation of such transaction or (b) if permitted by the terms of the Loan Documents immediately prior to the consummation of such transaction, would result in the Borrowers and its Subsidiaries having insufficient flexibility under the Loan Documents for the continuation and/or expansion of their combined operations following such consummation.~~

“Environmental Laws” means all laws (including, without limitation, common law), rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the management, release or threatened release of any Hazardous Material or to public or worker health and safety matters.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of Holdings or any

Subsidiary directly or indirectly resulting from or based upon (a) any violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) any exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Equity Interests” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest. Notwithstanding the foregoing, neither Permitted Convertible Notes nor Permitted Call Spread Swap Agreements shall constitute Equity Interests.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with a Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“ERISA Event” means (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the failure to satisfy the “minimum funding standard” (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by any Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by any Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by any Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal of any Borrower or any of its ERISA Affiliates from any Plan or Multiemployer Plan; or (g) the receipt by any Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from any Borrower or any ERISA Affiliate of any notice, concerning the imposition upon any Borrower or any of its ERISA Affiliates of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

**“ Erroneous Payment” has the meaning assigned to it in Section 9.23(a).**

**“ Erroneous Payment Deficiency Assignment” has the meaning assigned to it in Section 9.23(d)(i).**

**“ Erroneous Payment Impacted Class” has the meaning assigned to it in Section 9.23(d)(i). “ Erroneous**

**Payment Return Deficiency” has the meaning assigned to it in Section 9.23(d)(i).**

**“ Erroneous Payment Subrogation Rights” has the meaning assigned to it in Section 9.23(e).**

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

~~“Eurodollar”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBOR Rate.~~

“~~Event~~Events of Default” has the meaning assigned to such term in Article VII.

“Exchange Act” means the Securities Exchange Act of 1934.

“Excess Cash Flow” means, without duplication, with respect to ~~any~~each full Fiscal Year of Holdings and its Restricted Subsidiaries ending after the Eighth Amendment Date, subject to Section 1.04(e), (a) the sum of (i) EBITDA and (ii) the decrease, if any, in the Working Capital from the beginning of such period to the end of such period minus (b) the sum of (i) unfinanced Capital Expenditures, (ii) Fixed Charges (less any dividends or distributions paid in cash), (iii) the aggregate amount of non-cash adjustments to EBITDA for periods prior to the beginning of such period to the extent paid in cash by Holdings and Restricted Subsidiaries during such period, (iv) the aggregate amount actually paid in cash by Holdings and its Restricted Subsidiaries during such period (or contracted to be paid during such period and so paid prior to the date the prepayment required under Section 2.11(d) in respect of such Excess Cash Flow is paid) with internally generated cash on account of investments permitted by clause (l) of Section 6.04 and Restricted Payments permitted by ~~clause (a)(x) of Section 6.08~~ and (v) Section 6.08(a)(ii)(J), (v) any amounts added back to EBITDA pursuant clause (ix) of the definition of “EBITDA” and (vi) the increase, if any, in the Working Capital from the beginning to the end of such period.

“Excess Cash Flow Period” means each Fiscal Year of Holdings commencing with the Fiscal Year ending on or about December 31, ~~2017~~2023, but in all cases for purposes of calculating the Cumulative Retained Excess Cash Flow Amount shall only include such Fiscal Years for which financial statements and a Financials Certificate have been delivered in accordance with Sections 5.01(a), 5.01(b) and 5.01(c) and for which any prepayments required by Section 2.11(d) (if any) have been made.

“Excluded Assets” means (a) (i) any lease, license, contract, document, instrument or agreement to which any Loan Party is a party or (ii) property subject to a purchase money security interest, Capital Lease Obligation or similar arrangements permitted under this Agreement or the other Loan Documents, in the case of each of clauses (i) and (ii), to the extent that the creation of a Lien on such assets would, under the express terms thereof, violate or invalidate the terms of, or constitute a default under, such lease, license, contract, document, instrument, agreement, purchase money security interest, Capital Lease Obligation or similar arrangement or create a right of termination in favor of any other party thereto (other than a Loan Party) (other than to the extent (i) that any such term has been waived or (ii) any such term would be rendered ineffective pursuant to Sections 9-406, 9-408, 9-409 or other applicable provisions of the UCC of any relevant jurisdiction or any other applicable law (including bankruptcy laws) or principles of equity); provided that, immediately upon the ineffectiveness, lapse or termination of any such express term, such assets shall automatically cease to constitute “Excluded Assets”, (b) any Trademark (as defined in the Security Agreement) application filed on an intent to use basis until such time as a statement of use has been filed and accepted by the U.S. Patent and Trademark Office, (c) any Equity Interests in any Subsidiary that is not a Pledge Subsidiary, (d) (i) any Equity Interests in any Affected Foreign Subsidiary or FSHCO representing more than 65% of the total voting Equity Interests in such Affected Foreign Subsidiary or FSHCO, (ii) Equity Interests which constitute margin stock (within the meaning of Regulation U of the ~~Federal Reserve~~ Board) and (iii) Equity Interests in any Person other than wholly-owned Subsidiaries, (e) any leasehold interest of Dairyland HP

in the Dairyland HP Facility, (f) Fixtures (as defined in the Security Agreement) located at the Dairyland HP Facility, (g) rights and obligations in connection with the Master Operating Sublease, dated on April 26, 2012, between Dairyland and Dairyland HP, relating to the Dairyland HP Facility, as the same may be amended from time to time, (h) any real property leasehold interests of any Loan Party, (i) any real property owned by a Loan Party, unless such real property (i) has an individual fair market at any time of greater than ~~\$5,000,000~~ 10,000,000 or (ii) is subject to a Mortgage, (j) any property of the Excluded Subsidiary and (k) motor vehicles, rolling stock or other assets subject to certificates of title (unless otherwise capable of perfection by filing of UCC financing statements); provided that, (x) "Excluded Assets" shall not include any proceeds, products, substitutions or replacements of Excluded Assets (unless such proceeds, products, substitutions or replacements would otherwise constitute Excluded Assets) and (y) the foregoing exclusions shall not apply to any asset or property of Holdings and its Subsidiaries on which a Lien has been granted in favor of the ABL Agent to secure the ABL Obligations.

~~"Excluded Subsidiary" means each of (i) Dairyland HP, so long as such entity is a single purpose real estate holding entity and an obligor under the New Markets Tax Credit Financing and (ii) any Subsidiaries"~~ means (a) Insurance Subsidiaries (including any trust established by any such Insurance Subsidiary as grantor pursuant to applicable insurance regulations), (b) any Subsidiary that is not wholly owned, directly or indirectly, by any of the Loan Parties, (c) any Immaterial Subsidiary, (d) any Subsidiary that is prohibited by applicable Requirement of Law or contractual obligations existing on the Eighth Amendment Date (or, in the case of any newly acquired Subsidiary, in existence at the time of acquisition but not entered into in contemplation thereof) from Guaranteeing the Obligations or if Guaranteeing the Obligations would require governmental (including regulatory) or third party consent, unless such consent has been obtained (it being agreed that there shall be no obligation on any Borrower or any Restricted Subsidiary to obtain any such consent), (e) any other Subsidiary with respect to which (x) Guaranteeing the Obligations would result in any material adverse Tax consequences (as reasonably determined by the Borrower Representative) or (y) the cost of providing a Guarantee of the Obligations shall be excessive in view of the practical benefits to be obtained by the Lenders therefrom (as reasonably determined by the Borrower Representative and the Administrative Agent), (f) any Foreign Subsidiary of any Borrower, (g) any Unrestricted Subsidiary, (h) any special purpose securitization vehicle (or similar entity) or non-profit Subsidiary, and (i) any FSHCO.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient: (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed by the United States or as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction (or any political subdivision thereof) imposing such Tax ~~(or any political subdivision thereof)~~ or (ii) that are Other Connection Taxes; (b) in the case of a Lender, U.S. Federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrowers under Section 2.19(b)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.17, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender acquired the applicable interest in a Loan or Commitment or to such Lender immediately before it changed its lending office; (c) Taxes attributable to such Recipient's failure to comply with Section 2.17(f); and (d) any U.S. Federal withholding Taxes imposed under FATCA.

"Expected Cost Savings" has the meaning specified in the "EBITDA" definition.

“FATCA” means (a) Sections 1471 through 1474 of the Code, as of the ~~Effective~~Eighth Amendment Date (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), (b) any current or future regulations or official interpretations thereof and any agreement entered into pursuant to Section 1471(b)(1) of the Code and (c) any intergovernmental agreement between the U.S. and a non-U.S. jurisdiction which facilitates the implementation of any law or regulation referred to in clause (a) above and any fiscal or regulatory legislation, rules or official administrative practices adopted pursuant to any such intergovernmental agreement.

“FDA” means the United States Food and Drug Administration, or any successor Governmental Authority.

“FDC Act” means the United States Food, Drug, and Cosmetic Act (21 U.S.C. 201 *et seq.*) as amended to date together with any rules or regulations promulgated thereunder.

“Federal Funds Effective Rate” means, for any day, the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System of the United States arranged by federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100th of 1% ) of the quotations for the day for such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by it.

“Fee Letter” means that certain Fee Letter, dated as of ~~June 22, 2016,~~August 8, 2022 by and among the Borrowers and Jefferies Finance LLC, as the same may be amended, supplemented, restated or otherwise modified from time to time.

“Financial Officer” means, with respect to any Person(s), the chief financial officer, principal accounting officer, treasurer or controller of such Person(s).

“Financials Certificate” means a certificate of a Financial Officer of Holdings in substantially the form of Exhibit E or such other form which is approved by the Administrative Agent from time to time in its reasonable discretion.

“First Lien Leverage Ratio” means, on any date, the ratio of (a) Total Net Indebtedness that is secured by a Lien on any assets of the Restricted Group on a pari passu basis with the Obligations (other than Obligations in respect of Incremental Term Loans secured on a junior lien basis to other Obligations) on such date to (b) EBITDA for the most recent Test Period.

“First Amendment” means the ~~First Amendment to Credit Agreement, dated as of September 14, 2016, by and among the Borrowers, Holdings, the other Loan Parties party thereto, the Lenders party thereto, the Administrative Agent and the Collateral Agent.~~

“First Amendment Consenting Lenders” means the ~~Lenders party to the First Amendment that consented to the First Amendment no later than 3:00 p.m. (New York time) on September 9, 2016.~~

“First Amendment Date” means the ~~date on which all the conditions precedent set forth in Section 4 of the First Amendment shall have been satisfied in accordance with the terms thereof.~~



“First Tier Foreign Subsidiary” means each Foreign Subsidiary with respect to which any one or more of the Loan Parties directly owns or Controls more than 50% of such Foreign Subsidiary’s issued and outstanding Equity Interests.

“Fiscal Month” means any fiscal month in a Fiscal Year.

“Fiscal Quarter” means each of four consecutive three-Fiscal Month periods in each Fiscal Year. “Fiscal Year”

means the 52- or 53-week period ending in the month of December that Holdings

uses for accounting and financial reporting purposes, which period does not necessarily conform to the calendar year. All references in the Loan Documents to the Fiscal Year shall be deemed to refer to the year end that Holdings actually uses for financial reporting purposes.

**“Fixed Amounts” has the meaning assigned to such term in Section 1.04(f).**

“Fixed Charges” means, for any period, without duplication, cash Interest Expense, *plus* scheduled principal payments on Indebtedness actually made, *plus* expense for taxes paid in cash, *plus* Restricted Payments paid in cash, *plus* Capital Lease Obligation payments, *plus* cash payments (excluding cash payments financed solely with the proceeds of issuances of ~~equity~~ Equity Interests by Holdings) made in connection with any earn-out obligation relating to any acquisition, divestiture, merger or similar transaction that are not accounted for or reflected in the consolidated statements of operations of Holdings and its Restricted Subsidiaries provided pursuant to Section 5.01(a) or 5.01(b) hereof, *plus* any payments made in respect of the sinking fund requirement under the New Markets Tax Credit Financing, all calculated for Holdings and its Restricted Subsidiaries on a consolidated basis in accordance with GAAP.

“Food Security Act” means the Food Security Act of 1985, as the same now exists or may from time to time hereafter be amended, restated, modified, recodified or supplemented, together with all rules, regulations and interpretations thereunder or related thereto.

“Foreign Lender” means (a) if a Borrower is a U.S. Person, a Lender, with respect to such Borrower, that is not a U.S. Person, and (b) if a Borrower is not a U.S. Person, a Lender, with respect to such Borrower, that is resident or organized under the laws of a jurisdiction other than that in which such Borrower is resident for tax purposes.

“Foreign Subsidiary” means any Subsidiary which is not a Domestic Subsidiary.

~~“Fourth Amendment” means that certain Fourth Amendment to Credit Agreement, dated as of November 16, 2018, by and among the Borrowers, Holdings, the other Loan Parties party thereto, the Lenders party thereto, the Administrative Agent and the Collateral Agent.~~

~~“Fourth Amendment Date” means November 16, 2018.~~

“FSHCO” means any Subsidiary that owns no material assets other than the Equity Interests of one or more ~~“controlled foreign corporations” as defined in Section 957 of the Code~~ Affected Foreign Subsidiaries.

“GAAP” means generally accepted accounting principles in the United States of America.

“Governmental Authority” means the government of the United States of America, any other nation or, in each case, any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive,

legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, including any central bank, stock exchange, regulatory body, arbitrator, public sector entity, supra-national entity (including the European Union and the European Central Bank) and any self-regulatory organization (including the National Association of Insurance Commissioners).

“Governmental Permits” means all authorizations, approvals, licenses, registrations, certificates or exemptions issued by any Governmental Authority to Borrowers that are required or necessary for the development, manufacture, distribution, marketing, storage, transportation, use, or sale of the Loan Parties’ products.

“Guarantee” or of “Guaranteeing” by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

“Guaranteed Obligations” has the meaning assigned to such term in Section 10.01.

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

“Holdings” means The Chefs’ Warehouse, Inc., a Delaware corporation.

“ Immaterial Subsidiary” means any Restricted Subsidiary that does not, as of the last day of the most recent Test Period, have assets with a fair market value in excess of 5.0% of the consolidated total assets of the Restricted Group as of such date and revenues in excess of 5.0% of the consolidated revenues of the Restricted Group for such Test Period; provided that the aggregate amount of assets and revenues of Restricted Subsidiaries constituting Immaterial Subsidiaries shall not at any time exceed 7.5% of the consolidated total assets or consolidated revenues of the Restricted Group.

“Increasing Lender” has the meaning assigned to such term in Section 2.22(a).

“Incremental Cap” means the sum of (a) an amount equal to (x) the greater of (1) \$35,000,000, 120,000,000 and (2) 100% of EBITDA on a pro forma basis for the most recent Test Period plus (y) (B) the aggregate principal amount of all voluntary prepayments of the Term Loans (in the case of Term Loans consisting of Incremental Term Loans (or any refinancing thereof), solely to the extent such Incremental Term Loans were incurred in reliance on this clause (a)), to the extent not funded with the proceeds of Indebtedness for borrowed money that matures on a date less than one year after the maturity date of such Term Loans being prepaid, minus (z) the, without duplication, the aggregate principal amount of (z)(1) any Indebtedness incurred in reliance on Section 6.01(n) and (2) any Incremental Term Loans and Incremental Equivalent Debt incurred in reliance on this clause

(a), plus (b) an **additional** unlimited amount, so long as (i) ~~the Total Leverage Ratio would not exceed 4.90: 1.00 calculated~~ on a pro forma basis (including the application of the proceeds of any Incremental Facility **and Incremental Equivalent Debt**) as of the last day of the most recent ~~Fiscal Quarter for which financial statements shall have been delivered pursuant to Section 5.01(a) or 5.01(b) (or, prior to the delivery of any such financial statements, as of the last Fiscal Quarter included in the financial statements referred to in Section 3.04(a))~~ **Test Period**, (A) **if such Incremental Term Loans or Incremental Equivalent Debt ranks pari passu in right of security on the Collateral with the Obligations (other than any Obligations in respect of other Incremental Term Loans secured on a junior lien basis to other Obligations), the First Lien Leverage Ratio does not exceed 2.75: 1.00,** (B) **if such Incremental Term Loans or Incremental Equivalent Debt ranks junior in right of security on the Collateral to the Obligations, the Secured Leverage Ratio does not exceed 3.25: 1.00,** and (C) **if such Incremental Term Loans or Incremental Equivalent Debt is unsecured, the Total Leverage Ratio does not exceed 5.00: 1.00,** and (ii) the Borrower Representative shall have delivered to the Administrative Agent a certificate of a Financial Officer of ~~Holdings~~ **the Borrower Representative**, setting forth reasonably detailed calculations demonstrating the satisfaction of the ~~condition~~ **applicable leverage ratio** appearing in clause (b)(i) above.

**“ Incremental Equivalent Debt” has the meaning assigned to such term in Section 6.01(t).** **“ Incremental**

**Facility” has the meaning assigned to such term in Section 2.22(a).** **“Incremental Term ~~Loan~~Loans”** has the

meaning assigned to such term in Section 2.22(a).

**“Incremental Term Loan Amendment”** has the meaning assigned to such term in Section 2.22(d).

**“ Incurrence-Based Amounts” has the meaning assigned to such term in Section 1.04(d).**

**“Indebtedness”** of any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (g) all Guarantees by such Person of Indebtedness of others, (h) all Capital Lease Obligations of such Person, (i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, (j) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances, (k) all obligations of such Person under any liquidated earn-out and (l) any other Off-Balance Sheet Liability of such Person. The Indebtedness of any Person shall include the Indebtedness of any other Person (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor; provided that Indebtedness shall not include earn out obligations relating to Permitted Acquisitions to the extent the conditions for payment thereof (other than the occurrence of a date certain) have not yet been satisfied. Notwithstanding the foregoing and for avoidance of doubt, obligations arising under any Permitted Call Spread Swap Agreement shall not be considered Indebtedness.

“Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and

(b) to the extent not otherwise described in the foregoing clause (a) hereof, Other Taxes. “Insurance

Subsidiary” has the meaning assigned to such term in Section 6.04(s).

“Intercreditor Agreement” means the Intercreditor Agreement, dated as of the Effective Date, by and among the Administrative Agent, the Collateral Agent, the ABL Agent and each of the Loan Parties party thereto, as amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

“Interest Election Request” means a request by the Borrower Representative to convert or continue a Borrowing in accordance with Section 2.072.08.

“Interest Expense” means, for any period, total interest expense (including that attributable to Capital Lease Obligations) of Holdings and its Subsidiaries for such period with respect to all outstanding Indebtedness of Holdings and its Subsidiaries (including all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptances and net costs under Swap Agreements in respect of interest rates to the extent such net costs are allocable to such period in accordance with GAAP), calculated on a consolidated basis for Holdings and its Subsidiaries for such period in accordance with GAAP.

“Interest Payment Date” means (a) with respect to any ABR Loan, the first Business Day of each calendar quarter and the **applicable** Maturity Date and (b) with respect to any **Eurodollar SOFR** Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part (and, in the case of a **Eurodollar SOFR** Borrowing with an Interest Period of more than three months’ duration, each day prior to the last day of such Interest Period that occurs at intervals of three months’ duration after the first day of such Interest Period) and the **applicable** Maturity Date.

“Interest Period” means, with respect to any **Eurodollar SOFR** Borrowing, the period commencing on the date of such **Eurodollar SOFR** Borrowing (including by continuation or conversion) and ending on the numerically corresponding day in the calendar month that is one, three or six months thereafter, ~~or, to the extent consented to by each applicable Lender, twelve (12) months thereafter~~; in each case, as the Borrower Representative may elect; provided that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day ~~and~~, (ii) any Interest Period pertaining to a **Eurodollar SOFR** Borrowing that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period, (iii) no Interest Period shall extend beyond the Maturity Date and (iv) unless reinstated in accordance with Section 2.14(b)(iv), no tenor that has been removed from this definition pursuant to Section 2.14 shall be available for specification in a Borrowing Request or an Interest Election Request. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“Inventory” has the meaning assigned to such term in the Security Agreement. “IRS” means the

United States Internal Revenue Service.

“Joinder Agreement” means a Joinder Agreement in substantially the form of Exhibit F.

“Latest Maturity Date” means, as of any date of determination, the latest maturity date or termination date applicable to any Loan hereunder at such time.

“ LCA Election” has the meaning assigned to such term in Section 1.04(c). “ LCA Test Date” has the meaning assigned to such term in Section 1.04(c).

“Lenders” means the Persons ~~listed on Schedules 2.01(a) and (b) who provide Loans~~ and any other Person that shall have become a Lender hereunder pursuant to Section 2.22 or pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption. For the avoidance of doubt, from and after the Sixth Eighth Amendment Date, “Lenders” shall include ~~2016~~2022 Converted Term Lenders and ~~2020 Extended~~2022 New Term Lenders.

~~“LIBOR Rate” means, with respect to any Eurodollar Borrowing for any applicable Interest Period therefor, the rate per annum equal to the arithmetic mean (rounded to the nearest 1/100th of 1% ) of the offered rates for deposits in Dollars with a term comparable to such Interest Period that appears on Reuters Screen LIBOR01 (or such other page as may replace such page on such service for the purpose of displaying the rates at which Dollar deposits are offered by leading banks in the London interbank deposit market as designated by the Administrative Agent from time to time) at approximately 11: 00 a.m., London, England time, on the second full Business Day preceding the first day of such Interest Period; provided, however, that (i) if no comparable term for an Interest Period is available, the LIBOR Rate shall be determined using the weighted average of the offered rates for the two terms most nearly corresponding to such Interest Period and (ii) if Reuters Screen LIBOR01 shall at any time no longer exist, “ LIBOR Rate” shall mean, with respect to each day during each Interest Period pertaining to Eurodollar Borrowings comprising part of the same Borrowing, the rate per annum equal to the rate at which the Administrative Agent is offered deposits in Dollars at approximately 11: 00 a.m., London, England time, two Business Days prior to the first day of such Interest Period in the London interbank market for delivery on the first day of such Interest Period for the number of days comprised therein and in an amount comparable to its portion of the amount of such Eurodollar Borrowing to be outstanding during such Interest Period. “ Reuters Screen LIBOR01” shall mean the display designated on the Reuters 3000 Xtra Page (or such other page as may replace such page on such service for the purpose of displaying the rates at which Dollar deposits are offered by leading banks in the London interbank deposit market).~~

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust or similar instrument, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

“Limited Condition Acquisition” means any purchase or other acquisition, by merger, amalgamation, consolidation or otherwise, by the Borrowers or any Subsidiary thereof of Equity Interests in, or all or substantially all the assets of (or all or substantially all the assets constituting a business unit,

division, product line or line of business of), any Person the consummation of which is not conditioned on the availability of, or on obtaining, third party financing.

~~“Liquidity” means, as of any date of determination, an amount equal to the sum of (i) all unrestricted (other than Liens granted under the ABL Loan Documents and the Loan Documents) cash and cash equivalents of the Loan Parties as of such date, plus (ii) Availability under and as defined in the ABL Facility as of such date.~~

~~“Liquidity Cure Amount” has the meaning assigned to such term in Article VII. “Liquidity Cure Deadline” has the meaning assigned to such term in Article VII. “Liquidity Cure Right” has the meaning assigned to such term in Article VII.~~

“Loan Documents” means this Agreement, any promissory notes issued pursuant to this Agreement, the Collateral Documents, the Loan Guaranty, the Intercreditor Agreement, the Fee Letter and the Engagement Letters. Any reference in this Agreement or any other Loan Document to a Loan Document shall include all appendices, exhibits or schedules thereto, and all amendments, restatements, supplements or other modifications thereto, and shall refer to this Agreement or such Loan Document as the same may be in effect at any and all times such reference becomes operative.

“Loan Guarantor” means each Loan Party.

“Loan Guaranty” means Article X of this Agreement and each separate Guarantee, in form and substance satisfactory to the Administrative Agent, as it may be amended or modified and in effect from time to time.

“Loan Parties” means Holdings, the Borrowers and the Borrowers’ ~~Domestic~~ Subsidiaries (other than ~~the~~ Excluded ~~Subsidiary~~ Subsidiaries) who become a party to this Agreement pursuant to a Joinder Agreement or otherwise and their successors and assigns.

“Loans” means the loans and advances made by the Lenders pursuant to this Agreement, including Term Loans ~~and Delayed Draw Term Loans~~.

“Material Adverse Effect” means a material adverse effect on (a) the business, assets, operations, properties or condition (financial or otherwise) of the Loan Parties taken as a whole, (b) the ability of any Loan Party to perform any of its obligations under the Loan Documents to which it is a party, (c) the Collateral, or the Collateral Agent’s Liens (on behalf of itself and the other Secured Parties) on the Collateral or the priority of such Liens, in each case, as to Collateral having an aggregate value in excess of ~~\$5,000,000~~ 10,000,000, or (d) the rights of or benefits available to any Agent or the Lenders under any of the Loan Documents (other than with respect to Collateral having an aggregate value of ~~\$5,000,000~~ 10,000,000 or less), in each case excluding any effect resulting from or arising in connection with the COVID-19 pandemic.

“Material Indebtedness” means (i) Indebtedness (other than the Loans) or (ii) obligations in respect of one or more Swap Agreements, in each case of any one or more of Holdings and its Restricted Subsidiaries in an aggregate principal amount exceeding ~~\$10,000,000~~ 15,000,000. For purposes of determining Material Indebtedness, the “principal amount” of obligations of any Loan Party or any Subsidiary in respect of any Swap Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that such Loan Party or such Subsidiary would be required to pay if such Swap Agreement were terminated at such time.

“Maturity Date” means ~~(i) with respect to the 2016 Term Loans, June 22, 2022 and (ii) with respect to the 2020 Extended Term Loans, June 22, 2025~~August 23, 2029; provided that the Maturity



Date ~~with respect to the 2020 Extended Term Loans~~ shall be June 22, 2024 if, by June 22, 2024, ~~any~~ 1.875% Convertible Notes in an aggregate principal amount in excess of \$40,000,000 remain outstanding that have not either been repaid, repurchased or redeemed or refinanced with Indebtedness permitted hereunder having a maturity date not earlier than six months after ~~June 22, 2025; provided, further that in the event all of the Obligations in respect of the 2016 Term Loans (other than contingent indemnification obligations for which no claim has been made) have been prepaid in full in accordance with the terms of this Agreement at any time prior to June 22, 2022, clause (i) of this definition shall be automatically deleted.~~ August 23, 2029.

“Maximum Liability” has the meaning assigned to such term in Section 10.10.

~~“Minimum Liquidity Requirement” has the meaning assigned to such term in Section 6.13. “Minimum~~

~~Liquidity Requirement Amount” has the meaning assigned to such term in~~

~~Section 6.13.~~

“Moody’s” means Moody’s Investors Service, Inc.

“Mortgage Instruments” means such title reports, ALTA title insurance policies (with endorsements), evidence of zoning compliance, property insurance, flood certifications and flood insurance (and, if applicable FEMA form acknowledgements of insurance), opinions of counsel, ALTA surveys, appraisals, environmental assessments and reports, Phase I and Phase II studies, mortgage tax affidavits and declarations and other similar information and related certifications as are requested by, and in form and substance reasonably acceptable to, the Agents from time to time.

“Mortgages” means any mortgage, deed of trust or other agreement which conveys or grants (or purports to convey or grant) a Lien in favor of the Collateral Agent, for the benefit of the Collateral Agent and the other Secured Parties, on real property of a Loan Party, including any amendment, modification or supplement thereto.

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA. “Net Income”

means, for any period, the consolidated net income (or loss) of Holdings and its

Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP; provided that there shall be excluded (a) ~~(except as set forth in Sections 1.04(b))~~ solely for purposes of the definition of “Excess Cash Flow”, (giving pro forma effect to applicable Specified Transactions) the income (or deficit) of any Person accrued prior to the date it becomes a Subsidiary or is merged into or consolidated with Holdings or any of its Restricted Subsidiaries, (b) the income (or deficit) of any Person (other than a Restricted Subsidiary) in which Holdings or any of its Restricted Subsidiaries has an ownership interest, except to the extent that any such income is actually received by Holdings or such Restricted Subsidiary in the form of dividends or similar distributions ~~and~~, (c) the undistributed earnings of any Restricted Subsidiary to the extent that the declaration or payment of dividends or similar distributions by such Restricted Subsidiary is not at the time permitted by the terms of any contractual obligation (other than under any Loan Document) or Requirement of Law applicable to such Restricted Subsidiary, and (d) the income (or loss) of all Unrestricted Subsidiaries.

“Net Proceeds” means, with respect to any event, (a) the cash proceeds received in respect of such event including (i) any cash received in respect of any non-cash proceeds (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but excluding any interest payments), but only as and when received, (ii) in the case of a casualty, insurance proceeds and (iii) in the case of a



condemnation or similar event, condemnation awards and similar payments, net of (b) the sum of (i) all reasonable fees and out-of-pocket expenses paid to third parties (other than Loan Parties and their Affiliates) in connection with such event, (ii) in the case of a sale, transfer or other disposition of an asset (including pursuant to a sale and leaseback transaction or a casualty or a condemnation or similar proceeding), the amount of all payments required to be made as a result of such event to repay Indebtedness (other than Loans) secured by such asset or otherwise subject to mandatory prepayment as a result of such event and (iii) the amount of all taxes paid (or reasonably estimated to be payable) and the amount of any reserves established to fund contingent liabilities reasonably estimated to be payable, in each case during the year that such event occurred or the next succeeding year and that are directly attributable to such event (as determined reasonably and in good faith by a Financial Officer of Borrower Representative).

“New Markets Tax Credit Financing” means a secured credit facility provided by Commercial Lending II LLC, as a lender, to Dairyland HP, as borrower, entered into as of April 26, 2012, in an aggregate principal amount of \$11,000,000, pursuant to the New Markets Tax Credit Program established as part of the Community Renewal Tax Relief Act of 2000.

“Non-Consenting Lender” has the meaning assigned to such term in Section 9.02(e). “Non-Paying

Guarantor” has the meaning assigned to such term in Section 10.11.

“Non-Public Information” means information which has not been disseminated in a manner making it available to investors generally, within the meaning of Regulation FD promulgated by the SEC under the Securities Act and the Exchange Act.

“Obligated Party” has the meaning assigned to such term in Section 10.02.

“Obligations” means, collectively, all unpaid principal of and all accrued and unpaid interest on the Loans, all accrued and unpaid fees and all expenses, reimbursements, indemnities and other obligations and indebtedness (including interest and fees accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), obligations and liabilities of any of the Loan Parties to any of the Lenders, the Agents or any indemnified party, individually or collectively, direct or indirect, joint or several, absolute or contingent, matured or unmatured, liquidated or unliquidated, secured or unsecured, arising by contract, operation of law or otherwise, arising or incurred under this Agreement or any of the other Loan Documents or in respect of any of the Loans made or reimbursement or other obligations incurred or any of the instruments at any time evidencing any thereof, **including, for the avoidance of doubt, the Erroneous Payment Subrogation Rights**.

“Off-Balance Sheet Liability” of a Person means (a) any repurchase obligation or liability of such Person with respect to accounts or notes receivable sold by such Person, (b) any indebtedness, liability or obligation under any so-called “synthetic lease” transaction entered into by such Person, or (c) any indebtedness, liability or obligation arising with respect to any other transaction which is the functional equivalent of or takes the place of borrowing but which does not constitute a liability on the balance sheets of such Person (other than operating leases).

“Original ABL Agent” means ~~J-PMorgan-Chase~~**BMO Harris** Bank, N.A., in its capacity as administrative agent under the Original ABL Facility.

“Original ABL Facility” means that certain asset-based revolving credit facility of certain Loan Parties entered into with the ABL Agent and the lenders party thereto on ~~the Effective Date~~**June 29,**

2018 with aggregate commitments in respect thereof not exceeding ~~\$75,000,000 on such date~~ 200,000,000 as of the Eighth Amendment Date (as such commitments may be increased in accordance with the terms of the Intercreditor Agreement), the proceeds of which shall be used by the borrowers thereunder for working capital purposes.

“Original Credit Agreement” means this Agreement, amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the ~~Sixth~~ Eighth Amendment Date.

**“ Other Applicable Indebtedness” has the meaning assigned to such term in Section 2.11(c).**

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

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

“PACA” means the Perishable Agricultural Commodities Act, 1930, as amended, 7 U.S.C. Section 499a et seq., as the same now exists or may from time to time hereafter be amended, restated, modified, recodified or supplemented, together with all rules, regulations and interpretations thereunder or related thereto.

“Parent” means, with respect to any Lender, the Person as to which such Lender is, directly or indirectly, a subsidiary.

“Participant” has the meaning assigned to such term in Section 9.04(c). “Participant Register”

has the meaning assigned to such term in Section 9.04(c). “Paying Guarantor” has the meaning assigned to such term in Section 10.11.

**“ Payment Recipient” has the meaning assigned to it in Section 9.23(a).**

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

**“ Per iodic Term SOFR Determination Day” has the meaning specified in the “ Term SOFR” definition.**

“Permitted Acquisition” means, any acquisition (whether by purchase, merger, consolidation or otherwise) or series of related acquisitions by any Loan Party (other than Holdings) of (i) all or substantially all the assets of or (ii) all or substantially all the Equity Interests in, a Person or division or line of business of a Person, if, at the time of and immediately after giving effect thereto: (1) subject to Section 1.04(c), no Event of Default under clauses (a), (b), (h), (i) or (j) of Article VII has occurred and is continuing or would arise after giving effect thereto, (2) such Person or division or line of business is engaged in the same or a similar line of business as the Borrowers and the Restricted Subsidiaries or



business reasonably related, complementary or ancillary thereto or a logical extension thereof (including, without limitation, food and beverage service, distribution, wholesale and retail), and (3) ~~all actions required to be taken with respect to such acquired or newly formed Subsidiary under Section 5.13 shall have been taken within the time periods set out therein,~~ (4) (x) the Total Leverage Ratio would not exceed 4.90: 1.00 calculated on a pro forma basis (as if such acquisition (and any related incurrence or repayment of Indebtedness, with any new Indebtedness being deemed to be ~~amortized over the applicable testing period in accordance with its terms) had occurred on the first day of the relevant period~~) as of the last day of the most recent Fiscal Quarter for which financial statements ~~shall have been delivered pursuant to Section 5.01(a) or 5.01(b) (or, prior to the delivery of any such financial statements, as of the last Fiscal Quarter included in the financial statements referred to in Section 3.04(a))~~ and (y) with respect to any Permitted Acquisition for which the

*Acquisition Consideration* (defined below) is at least \$25,000,000, *the Borrower Representative shall have delivered to the Administrative Agent a certificate of a Financial Officer of Holdings, setting forth reasonably detailed calculations demonstrating the satisfaction of the condition appearing in clause* (x) above, (5) in the case of an acquisition in the form of a merger and/or consolidation involving a Loan Party (other than Holdings), a Loan Party is the surviving entity of such merger and/or consolidation and (6) with respect to any such acquisitions or series of related acquisitions consummated after the Eighth Amendment Date, the total consideration paid or payable (including all transaction costs, Indebtedness incurred, assumed and/or reflected on a consolidated balance sheet of the Loan Parties and their Restricted Subsidiaries after giving effect to such acquisition and the maximum amount of all deferred payments, including earnouts) (such amounts, collectively, the “Acquisition Consideration”) for all acquisitions consummated ~~during the term of this Agreement~~ after the Eighth Amendment Date where either (x) the target becomes a Restricted Subsidiary but not a Loan Party hereunder or (y) the acquired assets do not become Collateral shall not exceed ~~\$10,000,000~~, in the aggregate ~~for all such acquisitions, the greater of \$110,000,000 and 85% of EBITDA on a pro forma basis (taking into account the proposed acquisition) for the most recent Test Period at the time of such acquisition~~ (in each case, after giving effect to any time periods contained in Section 5.13).

“Permitted Call Spread Swap Agreements” means (a) any Swap Agreement (including, but not limited to, any bond hedge transaction or capped call transaction) pursuant to which Holdings acquires an option requiring the counterparty thereto to deliver to Holdings shares of common stock of Holdings, the cash value of such shares or a combination thereof from time to time upon exercise of such option and

(b) any Swap Agreement pursuant to which Holdings issues to the counterparty thereto warrants to acquire common stock of Holdings (whether such warrant is settled in shares, cash or a combination thereof), in each case entered into by Holdings in connection with the issuance of Permitted Convertible Notes (other than Permitted Convertible Seller Notes); provided that (i) the terms, conditions and covenants of each such Swap Agreement shall be such as are customary for Swap Agreements of such type (as determined by the Board of Directors of Holdings in good faith) and (ii) in the case of clause (b) above, such Swap Agreement would be classified as an equity instrument in accordance with GAAP, and the settlement of such Swap Agreement does not require Holdings to make any payment in cash or cash equivalents that would disqualify such Swap Agreement from so being classified as an equity instrument.

“Permitted Convertible Notes” means, collectively, (a) Permitted Convertible Seller Notes and (b) any other unsecured notes issued by Holdings that are convertible into common stock of Holdings, cash or any combination thereof; provided that, for purposes of clause (b) of this definition, the Indebtedness thereunder satisfies the following requirements: (i) both immediately prior to and immediately after giving effect (including pro forma effect) to the incurrence of such Indebtedness, no Default or Event of Default shall exist or result therefrom, (ii) such Indebtedness matures after, and does not require any scheduled amortization or other scheduled payments of principal prior to, (A) with respect to such Indebtedness

incurred prior to the Sixth Amendment Date, the date that is six (6) months after June 22, 2022, (B) with respect to any 1.875% Convertible Notes, November 30, 2024-~~and~~, (C)

with respect to such Indebtedness incurred on or after the Sixth Amendment Date but prior to the Eighth Amendment Date (other than any 1.875% Convertible Notes), the date that is six (6) months after the Latest Maturity Date immediately prior to giving effect to the Eighth Amendment, and (D) with respect to such Indebtedness incurred on or after the Eighth Amendment Date, the date that is six (6) months after the Latest Maturity Date immediately after giving effect to the Eighth Amendment (it being understood that, in each case, neither (x) any provision requiring an offer to purchase such Indebtedness as a result of change of control or asset sale or other fundamental change nor (y) any early conversion of any Permitted Convertible Notes in accordance with the terms thereof shall violate the foregoing restriction), (iii) such Indebtedness is not guaranteed by any Subsidiary of Holdings other than the Loan Guarantors (which guarantees, if such Indebtedness is subordinated, shall be expressly subordinated to the Secured Obligations on terms not less favorable to the Lenders than the subordination terms of such Subordinated Indebtedness) and (iv) the covenants applicable to such Indebtedness are not more onerous or more restrictive in any material respect (taken as a whole) than the applicable covenants set forth in this Agreement.

“Permitted Convertible Seller Notes” means, collectively, those certain Convertible Subordinated Non-Negotiable Promissory Notes, dated as of April 6, 2015, issued by Del Monte Capitol Meat Company, LLC (a subsidiary of Holdings) to each of (i) TJ Seafood, LLC evidencing Subordinated Indebtedness in the aggregate principal amount of \$7,350,000 and (ii) T.J. Foodservice Co., Inc. evidencing Subordinated Indebtedness in an aggregate principal amount of \$29,400,000 and in each case, that are convertible solely into common stock of Holdings.

“Permitted Encumbrances” means:

(a) Liens imposed by law for Taxes that are not yet delinquent or are being contested in compliance with Section 5.04;

(b) carriers’, warehousemen’ s, mechanics’, materialmen’ s, repairmen’ s and other like Liens imposed by law arising in the ordinary course of business and securing obligations that (i) are not overdue by more than thirty (30) days or (ii) (A) are being contested in ~~compliance with Section 5.04; good faith by appropriate proceedings, (B) for which the applicable Loan Party or Restricted Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP, and (C) if being contested in good faith by appropriate proceedings, the failure to make payment pending such contest would not reasonably be expected to result in a Material Adverse Effect;~~

(c) pledges and deposits made in the ordinary course of business in compliance with workers’ compensation, unemployment insurance and other social security laws or regulations;

(d) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;

(e) judgment liens in respect of judgments that do not constitute an Event of Default under clause (k) of Article VII;

(f) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business of the Borrowers that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of any if Holdings or the Subsidiaries; and



(g) Liens arising in the ordinary course of business in favor of, or claims or rights of any producer, grower or seller under PACA, the Food Security Act, PSA or other similar law, treaty, rule or regulation.

“Permitted Holdings Dividends” means dividends paid by a Loan Party to Holdings Holder” means any one or more of the following:

- (i) Christopher Pappas;
  - (ii) John Pappas;
  - (iii) the officers, directors or management of Holdings as of the Eighth Amendment Date; or
  - (iv) any trust, corporation, limited liability company, partnership or other entity owned and controlled directly or indirectly by any Person or Persons described in the immediately preceding clauses (i), (ii) and (iii).
- ~~(f) to the extent actually used substantially concurrently by Holdings to pay the same, in amounts necessary to pay (x) such franchise taxes and other fees required to maintain the legal existence of Holdings and (y) out-of-pocket legal, accounting and filing costs and other expenses in the nature of overhead in the ordinary course of business of Holdings; provided, that the aggregate amount of dividends paid under this clause (i) shall not to exceed \$2,500,000 in any period of twelve consecutive months;~~
- ~~(ii) in amounts necessary to enable (x) Holdings to repurchase or redeem its Equity Interest or (y) Holdings or the holders of Holdings’ Equity Interests to pay withholding taxes due as a result of its ownership of Holdings or any other Loan Party; provided, that (x) the aggregate amount of such dividends shall not exceed \$2,500,000 in any period of twelve consecutive months and (y) such dividend shall be actually used for a purpose set forth above substantially concurrently with the making of such dividend;~~
- ~~(iii) to the extent necessary to permit, and actually used substantially concurrently by, Holdings to discharge the consolidated Tax liabilities of the Loan Parties or Taxes attributable to the distributions used to pay such consolidated Tax liabilities; and~~
- ~~(iv) to the extent used substantially concurrently by Holdings to make payments in respect of Indebtedness permitted to be incurred by Holdings hereunder, which payments are permitted under Section 6.08(b).~~

“Permitted Investments” means:

- (a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof;
- (b) investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, the highest credit rating obtainable from S& P or from Moody’s;

(c) investments in certificates of deposit, banker's acceptances and time deposits maturing within 180 days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof which has a combined capital and surplus and undivided profits of not less than \$500,000,000;

(d) fully collateralized repurchase agreements with a term of not more than thirty (30) days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria described in clause (c) above; and

(e) money market funds that (i) comply with the criteria set forth in SEC Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated AAA by S& P and Aaa by Moody's and (iii) have portfolio assets of at least \$5,000,000,000.

**“ Permitted Ratio Debt” means Indebtedness incurred by the Borrowers or any Loan Party in the form of one or more series of notes or loans; provided that (i) such Indebtedness shall rank *pari passu* or junior in right of payment to the Secured Obligations, (ii) such Indebtedness shall not have a shorter Average Life than the remaining Average Life of the then-existing Loans or a maturity date earlier than the Latest Maturity Date (or, if such Indebtedness is secured on a junior basis to the Secured Obligations or unsecured, a maturity date earlier than the date that is 91 days after the Latest Maturity Date), (iii) such Indebtedness is not at any time guaranteed by any Person that is not a Loan Party or secured by any assets other than the Collateral, (iv) in the case of such Indebtedness that is secured, (x) such Indebtedness shall be subject to an intercreditor agreement reasonably acceptable to the Administrative Agent and (y) in the case of such Indebtedness that is in the form of loans that are secured on a *pari passu* basis with the Secured Obligations and is incurred on or prior to the date that is the two-year anniversary of the Eighth Amendment Date, the All-in-Yield for such loans shall be subject to the “ most favored nation” requirements set forth in Section 2.22(c)(iii), as applicable, and (v) in the case of such Indebtedness that is unsecured, such Indebtedness shall not require any scheduled amortization or scheduled payments of principal or be subject to any mandatory redemption, repurchase, repayment or sinking fund obligation (other than (A) payments as part of an “ applicable high yield discount obligation” catch-up payment, (B) customary offers to repurchase in connection with any change of control, asset disposition or casualty event and (C) customary acceleration rights after an event of default), in each case prior to the date that is 91 days after the Latest Maturity Date (for the avoidance of doubt, in the case of such Indebtedness that is unsecured, (x) scheduled payments of interest and (y) conversion into common Equity Interests shall be permitted).**

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Plan” means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which any Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Platform” means Debt Domain, IntraLinks, SyndTrak or a substantially similar electronic transmission system.

“Pledge Subsidiary” means (i) each Domestic Subsidiary (other than any Excluded Subsidiary) and (ii) each First Tier Foreign Subsidiary.

“Prepayment Event” means:

(a) any sale, transfer or other disposition (including pursuant to a sale and leaseback transaction) of any property or asset of any Loan Party (other than dispositions described in Section 6.05(a)(i), 6.05(b), 6.05(d), 6.05(g), 6.05(i), 6.05(m) or 6.05(o)); or

(b) any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of any Loan Party; or

(c) the incurrence by any Loan Party of any Indebtedness, other than Indebtedness permitted under Section 6.01, ~~but in any event including any Indebtedness under Permitted Convertible Notes issued pursuant to Section 6.01(m)~~.

“Prime Rate” means, for any day, the “U.S. Prime Lending Rate” as published in *The Wall Street Journal* for such date; *provided* that if *The Wall Street Journal* ceases to publish for any reason such rate of interest, “Prime Rate” ~~shall mean~~ means the prime lending rate as set forth on the Bloomberg page PRIMBB Index (or successor page) for such day (or such other service as determined by the Administrative Agent from time to time for purposes of providing quotations of prime lending interest rates); each change in the Prime Rate shall be effective on the date such change is effective. The prime rate is not necessarily the lowest rate charged by any financial institution to its customers.

“pro forma basis” or “pro forma effect” means, as to any Person, for any Specified Transaction identified by the Borrowers that occurs (i) during any applicable Test Period or (ii) subsequent to any applicable Test Period ended prior to or simultaneously with the occurrence of such Specified Transaction (the “Reference Period”) for which any ratio or test is being calculated (including the calculation of First Lien Leverage Ratio, Total Leverage Ratio, Secured Leverage Ratio, (subject to Section 1.04(e)) EBITDA or any other ratio or test under any applicable provision of this Agreement or any other Loan Document), such calculation as will give effect to such Specified Transaction as if such Specified Transaction had occurred on the first day of such Reference Period and, to the extent applicable, to the historical earnings and cash flows associated with the assets acquired or disposed of and any related incurrence or reduction of Indebtedness, all in accordance with Article 11 of Regulation S-X under the Securities Act, and that:

(a) in calculating EBITDA or any component thereof, effect shall be given to any Specified Transaction and any Expected Cost Savings arising therefrom or relating thereto, in each case, that occurred during the Reference Period or, with respect to any such event or transaction included in clauses (a) and (b) of the definition of Specified Transactions, that are reasonably identifiable and factually supportable and are reasonably anticipated to occur within 18 months of the closing date of such Specified Transaction;

(b) in making any determination on a pro forma basis or of pro forma effect, (x) all Indebtedness (including Indebtedness issued, incurred or assumed as a result of, or to finance, any relevant transactions and for which the financial effect is being calculated, whether incurred under the Loan Documents or otherwise) issued, incurred, assumed or repaid during the Reference Period (or, with respect to Indebtedness repaid, during the Reference Period or subsequent to the end of the Reference Period and prior to, or simultaneously with, the event for which the calculation of any such ratio is made) shall be deemed to have been issued, incurred, assumed or repaid on the first day of such Reference Period and (y) interest expense of such Person attributable to interest on any Indebtedness, for which pro forma effect is being given as provided in the preceding clause (x), bearing floating interest rates shall be computed on a pro forma basis as if the rates that would

have been in effect during the Reference Period for which pro forma effect is being given had been actually in effect during such Reference Period;

(c) with respect to (x) any re-designation of an Unrestricted Subsidiary as an Restricted Subsidiary, effect shall be given to such Subsidiary re-designation and all other Subsidiary redesignations after the first day of the relevant Reference Period and on or prior to the date of the respective Subsidiary re-designation then being designated, collectively, and (y) any designation of a Restricted Subsidiary as an Unrestricted Subsidiary, effect shall be given to such designation and all other designations of Subsidiaries as Unrestricted Subsidiaries after the first day of the relevant Reference Period and on or prior to the date of the then applicable designation of a Subsidiary as an Unrestricted Subsidiary, collectively, and in each of the foregoing clauses (x) and (y), Unrestricted Subsidiaries shall be treated as if they were not consolidated with any other member of the Restricted Group and otherwise accounts of Unrestricted Subsidiaries shall be eliminated for purposes of any such calculation;

(d) notwithstanding anything to the contrary in this definition, for purposes of calculating any “ net” ratio test utilized in any debt incurrence test (including the First Lien Leverage Ratio, Total Leverage Ratio, Secured Leverage Ratio or any other ratio or test under any applicable provision of this Agreement or any other Loan Document), such ratio shall be calculated after giving effect to any such incurrence on a pro forma basis, and in each case, with respect to any commitment, assuming a borrowing of the maximum amount of loans available thereunder, and such calculation shall be made excluding the cash proceeds of any such Indebtedness for purposes of calculating any such ratio; and

(e) notwithstanding anything to the contrary in this definition or in any classification under GAAP of any Person, business, assets or operations in respect of which a definitive agreement for the asset sale, transfer, disposition or lease thereof has been entered into as discontinued operations, no pro forma effect shall be given to the classification thereof as discontinued operations (and the EBITDA or any component thereof attributable to any such Person, business, assets or operations shall not be excluded for any purposes hereunder) until such asset sale, transfer, disposition or lease shall have been consummated.

“Projections” has the meaning assigned to such term in Section 5.01(e).

“PSA” means the Packers and Stockyard Act of 1921, 7 U.S.C. 181, as the same now exists or may from time to time hereafter be amended, restated, modified, recodified or supplemented, together with all rules, regulations and interpretations thereunder or related thereto.

“PTE” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“Public Lender” means any Lender that does not wish to receive Non-Public Information with respect to Holdings or its Subsidiaries or their respective securities.

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

“QFC Credit Support” has the meaning assigned to such term in Section 9.21.

“Recipient” means, as applicable, (a) the Administrative Agent and (b) any Lender.

“ Reference Period” has the meaning specified in the “ pro forma basis” or “ pro forma effect” definition.

“Register” has the meaning assigned to such term in Section 9.04(b)(iv). “Reinvestment Period”

has the meaning assigned to such term in Section 2.11(c). “ Rejection Notice” has the meaning assigned to such term in Section 2.11(g).

“Related Parties” means, with respect to any specified Person, such Person’ s Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person’ s Affiliates.

“ Relevant Governmental Body” means the Board and/or the Federal Reserve Bank of New York or a committee officially endorsed or convened by the Board and/or the Federal Reserve Bank of New York or, in each case, any successor thereto.

“ Replaced Term Loans” has the meaning assigned to such term in Section 9.02(c)(ii).

“ Replacement Term Loans” has the meaning assigned to such term in Section 9.02(c)(ii).

“Repricing Event” has the meaning assigned to such term in Section 2.12(e).

“Required ~~DDTL~~ Lenders” means, at any time, Lenders then holding more than fifty percent (50% ) of the sum of the aggregate ~~DDTL Commitments then in effect, if any, plus the aggregate~~ unpaid principal amount of the ~~Delayed Draw-Term~~ Loans then outstanding.

~~“ Required Lenders” means, at any time, (a) Lenders then holding more than fifty percent (50% ) of the sum of the aggregate DDTL Commitments then in effect, if any, plus the aggregate unpaid principal amount of the Loans then outstanding, or (b) if the DDTL Commitments have terminated, Lenders then holding more than fifty percent (50% ) of the aggregate unpaid principal amount of the Loans then outstanding.~~

“Requirement of Law” means, with respect to any Person, (a) the charter, articles or certificate of organization or incorporation and bylaws or other organizational or governing documents of such Person and (b) any statute, law (including common law), treaty, rule, regulation, code, ordinance, order, decree, writ, judgment, injunction or determination of any arbitrator or court or other Governmental Authority (including Environmental Laws), in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Resolution Authority”: means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“ Restricted Group” means, collectively, Holdings, the Borrowers and the Borrowers’ Restricted Subsidiaries.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in Holdings or any of its Subsidiaries to their Equity Interest holders in such capacity, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement,

acquisition, cancellation or termination of any such Equity Interests in Holdings or its Subsidiaries or any option, warrant or other right to acquire any such Equity Interests in Holdings or its Subsidiaries, or any payment of management or similar fees to any Person. Notwithstanding the foregoing, and for the avoidance of doubt, (i) the conversion of (including any cash payment upon conversion), or payment of any principal or premium on, or payment of any interest with respect to, any Permitted Convertible Notes shall not constitute a Restricted Payment and (ii) any payment with respect to, or early unwind or settlement of, any Permitted Call Spread Swap Agreement shall not constitute a Restricted Payment.

**“Restricted Subsidiary” means any Subsidiary of the Borrowers other than an Unrestricted Subsidiary.**

“Retained Excess Cash Flow” means, with respect to any Fiscal Year of Holdings **(commencing with the Fiscal Year ending on or about December 31, 2023)**, (a) the Excess Cash Flow for such Fiscal Year minus (b) the aggregate prepayment amount payable by the Borrowers pursuant to Section 2.11(d) for such Fiscal Year.

“S&P” means S&P Global Ratings, a Standard & Poor’s Financial Services LLC business, or any successor thereto.

“Sale and Leaseback Transaction” has the meaning assigned to such term in Section 6.06. “SEC” means the United States Securities and Exchange Commission.

**“Secured Leverage Ratio” means, on any date, the ratio of (a) Total Net Indebtedness that is secured by a Lien on any assets of the Restricted Group on such date to (b) EBITDA for the most recent Test Period.**

“Secured Obligations” means the Obligations.

“Secured Parties” means the holders of the Secured Obligations from time to time and shall include (i) each Lender in respect of its Loans, (ii) the Agents and the Lenders in respect of all other present and future obligations and liabilities of the Borrowers and each Subsidiary of every type and description arising under or in connection with this Agreement or any other Loan Document, (iii) each indemnified party under Section 9.03 in respect of the obligations and liabilities of the Borrowers to such Person hereunder and under the other Loan Documents, and (iv) their respective successors and (in the case of a Lender, permitted) transferees and assigns.

“Security Agreement” means that certain Pledge and Security Agreement (including any and all supplements thereto), dated as of the Effective Date, between the Loan Parties and the Collateral Agent, for the benefit of the Secured Parties, and any other pledge or security agreement entered into, after the Effective Date by any other Loan Party (as required by this Agreement or any other Loan Document) or any other Person and the Collateral Agent, as the same may be amended, **restated, amended and restated**, supplemented, **restated** or otherwise modified from time to time.

**“Senior Secured Leverage Ratio” means, on any date, the ratio of (a) Total Net Indebtedness (other than Subordinated Indebtedness) that is secured by a Lien on any assets of Holdings or its Subsidiaries on such date to (b) EBITDA for the period of four (4) consecutive Fiscal Quarters ended on such date (or, if such date is not the last day of a Fiscal Quarter, ended on the last day of the Fiscal Quarter most recently ended prior to such date).**

“Sixth Amendment” means that certain Sixth Amendment to Credit Agreement, dated as of June 8, 2020, by and among the Borrowers, Holdings, the other Loan Parties party thereto, the Lenders party thereto, the Administrative Agent and the Collateral Agent.

“Sixth Amendment Date” has the meaning assigned to such term in the Sixth Amendment.

~~“Specified Earn-Out Payment” means any payment made by a Loan Party or any Subsidiary in respect of earn-out obligations arising pursuant to that certain Additional Earn-Out Agreement, dated as of April 6, 2015, by and among, *inter alia*, Holdings, T.J. Foodservice Co., Inc., TJ Seafood, LLC, and John DeBenedetti, as the Sellers’ Representative (as defined therein).~~

~~“Statutory Reserve Rate” means, for any Interest Period for any Eurodollar Borrowing, the average maximum rate at which reserves (including any marginal, supplemental or emergency reserves) are required to be maintained during such Interest Period under Regulation D by member banks of the United States Federal Reserve System in New York City with deposits exceeding one billion Dollars against “Eurocurrency liabilities” (as such term is used in Regulation D). Eurodollar Borrowings shall be deemed to constitute Eurodollar liabilities and to be subject to such reserve requirements without benefit of or credit for proration, exceptions or offsets which may be available from time to time to any Lender under Regulation D.~~

“SOFR” means a rate equal to the secured overnight financing rate as administered by the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“SOFR Borrowing” means a Borrowing that accrues interest based on Adjusted Term SOFR, other than pursuant to clause (d) of the definition of “Alternate Base Rate.”

“SOFR Loan” means a Loan that accrues interest based on Adjusted Term SOFR, other than pursuant to clause (d) of the definition of “Alternate Base Rate.”

“Specified Transaction” means (a) any acquisition (including any Permitted Acquisition), investment, sale, transfer or other disposition of assets or property, (b) any merger or consolidation, or any similar transaction, (c) any incurrence, issuance or repayment of Indebtedness, (d) any Restricted Payment, (e) any Subsidiary designation or re-designation under Section 5.11 hereof, or (f) any other event, in each case of the foregoing clauses (a) through (f), to the extent permitted by this Agreement and with respect to which the terms of this Agreement or any other Loan Documents permitting such transaction require compliance with a test or ratio (including compliance with a First Lien Leverage Ratio, Total Leverage Ratio or Secured Leverage Ratio) hereunder or thereunder to be calculated on a “pro forma basis” or to be given “pro forma effect.”

“Subordinated Indebtedness” of a Person means any Indebtedness of such Person (including seller notes) which is subordinated to the Secured Obligations on terms reasonably satisfactory to the Administrative Agent.

“subsidiary” means, with respect to any Person (the “parent”) at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting

power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

“Subsidiary” means any direct or indirect subsidiary of Holdings.

“Supported QFC” has the meaning assigned to such term in Section 9.21.

“Swap Agreement” means any agreement with respect to any swap, forward, spot, future, credit default or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrowers or the Subsidiaries shall be a Swap Agreement.

“Taxes” means any and all present or future taxes, levies, imposts, duties, deductions, withholdings, (including backup withholding), ~~value added taxes, or any other goods and services, use or sales taxes,~~ assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Term Lenders” means, as of any date of determination, Lenders holding any Term Loans. “Term Loans” means

the ~~2016~~2022 Converted Term Loans, the ~~2020-Extended~~2022 New Term Loans, ~~the Delayed Draw Term Loans~~ and the Incremental Term Loans.

“ Term SOFR” means (a) for any calculation with respect to a SOFR Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the “ Per iodic Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to the first day of such applicable Interest Period, or (b) for any calculation with respect to an ABR Loan on any day, the Term SOFR Reference Rate for a tenor of one month on the day (such day, the “ ABR Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to such day, in each case as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5: 00 p.m. (New York City time) on any Per iodic Term SOFR Determination Day or any ABR Term SOFR Determination Day, as applicable, the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to Term SOFR has not occurred, then the Term SOFR Reference Rate for such Term SOFR Determination Day or such ABR Term SOFR Determination Day, as applicable, will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Term SOFR Determination Day or such ABR Term SOFR Determination Day, as applicable.

“ Term SOFR Administrator” means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Administrative Agent (in consultation with the Borrower Representative) in its reasonable discretion).



“Term SOFR Reference Rate” means the forward-looking term rate based on SOFR.

“Test Period” means, for and as of any date of determination under this Agreement, the most recent four Fiscal Quarter period for which financial statements have been delivered (or were required to be delivered) pursuant to Section 5.01.

“Testing Date” has the meaning assigned to such term in Section 5.01(f).

~~“Third Amendment” means that certain Third Amendment to Credit Agreement dated as of December 13, 2017, by and among the Borrowers, Holdings, the other Loan Parties party thereto, the Lenders party thereto, the Administrative Agent and the Collateral Agent.~~

~~“Third Amendment Date” shall mean the “Third Amendment Date” as defined in the Third Amendment.~~

“Total Net Indebtedness” means, at any date, the aggregate principal amount of all Indebtedness of ~~Holdings and its Subsidiaries~~the Restricted Group at such date, determined on a consolidated basis in accordance with GAAP, but (x) excluding (i) the face amount of any issued and undrawn letters of credit and (ii) obligations under any Guarantee by Holdings’ Subsidiaries of the mortgage dated as of April 26, 2012 between Dairyland HP, as mortgagor, and Commercial Lending II LLC, as mortgagee with respect to the Dairyland HP Facility and (y) net of unrestricted (other than Liens granted under the ABL Loan Documents and Liens permitted under Section 6.02(a) or Section 6.02(m)) cash and cash equivalents of the ~~Loan Parties of up to \$25,000,000~~Restricted Group. For purposes of determining Total Net Indebtedness, the Indebtedness of any Loan Party or any Subsidiary in respect of any Swap Agreement on any date of determination shall be the maximum aggregate amount (giving effect to any netting agreements) that such Loan Party or such Subsidiary would be required to pay if such Swap Agreement were terminated at such time.

“Total Leverage Ratio” means, on any date, the ratio of (a) Total Net Indebtedness on such date to (b) EBITDA for the ~~per iod of four (4) consecutive Fiscal Quarters ended on such date (or, if such date is not the last day of a Fiscal Quarter, ended on the last day of the Fiscal Quarter most recently ended prior to such date)~~most recent Test Period.

“Transactions” means the execution, delivery and performance by the Loan Parties of this Agreement and the other Loan Documents, the borrowing of Loans and other credit extensions (including the borrowing of ABL Loans and the issuance of letters of credit under the ABL Facility on the Effective on the Eighth Amendment Date), the use of the proceeds thereof and the repayment of the Indebtedness ~~if required hereunder~~under the Eighth Amendment.

“Type”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to ~~the~~ Adjusted ~~LIBOR Rate~~Term SOFR or the Alternate Base Rate.

“UCC” means the Uniform Commercial Code as in effect from time to time in the State of New York or any other state the laws of which are required to be applied in connection with the attachment, perfection or priority of, or remedies with respect to, any Agent’s or any Lender’s Lien on any Collateral.

“UK Financial Institution” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended ~~form~~from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain

credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

**“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.**

“Unliquidated Obligations” means, at any time, any Secured Obligations (or portion thereof) that are contingent in nature or unliquidated, including any Secured Obligation that is: (i) any other obligation (including any guarantee) that is contingent in nature; (ii) an indemnity or (iii) an obligation to provide collateral to secure any of the foregoing types of obligations.

**“Unrestricted Subsidiary” means any Subsidiary of the Borrowers designated by the Borrower Representative as an “Unrestricted Subsidiary” pursuant to and in accordance with Section 5.11, so long as such Subsidiary has not been re-designated by the Borrower Representative as a “Restricted Subsidiary” pursuant to and in accordance with Section 5.11. For the avoidance of doubt, there are no Unrestricted Subsidiaries as of the Eighth Amendment Date.**

“U.S.” means the United States of America.

**“U.S. Government Securities Business Day” means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.**

“U.S. Person” means a “United States person” within the meaning of Section 7701(a)(30) of the Code.

“U.S. Special Resolution Regime” has the meaning assigned to such term in Section 9.21. “U.S. Tax Compliance

Certificate” has the meaning assigned to such term in Section 2.17(f)(ii)(B)(3).

“Withdrawal Liability” means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

“Withholding Agent” means each of the Borrower Representative and the Administrative Agent. “Working

Capital” means, at any date, the excess of current assets of Holdings and its Subsidiaries on such date (excluding cash and Permitted Investments) over current liabilities of Holdings and its Subsidiaries on such date (excluding any ABL Loans and the current portion of any Indebtedness), all determined on a consolidated basis in accordance with GAAP.

“Write-Down and Conversion Powers” means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which

that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

SECTION 1.02. Classification of Loans and Borrowings. For purposes of this Agreement, Loans and Borrowings may be classified and referred to by Type (e.g., a “**Eurodollar SOFR** Loan” or “**Eurodollar SOFR** Borrowing”).

SECTION 1.03. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless expressly provided to the contrary or the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, **amended and restated**, supplemented or otherwise modified (subject to any restrictions on such amendments, **amendments and restatements**, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, **and, in the case of any Governmental Authority, any other Governmental Authority that shall have succeeded to any or all functions thereof**, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (e) any reference in any definition to the phrase “at any time” or “for any period” shall refer to the same time or period for all calculations or determinations within such definition, and (f) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

SECTION 1.04. Accounting Terms; GAAP; Pro Forma Calculations; LCA Election; **Certain Calculations.** (a) Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that, if after the **Effective Eighth Amendment** Date there occurs any change in GAAP or in the application thereof on the operation of any provision hereof and the Borrower Representative notifies the Administrative Agent that the Borrowers request an amendment to any provision hereof to eliminate the effect of such change in GAAP or in the application thereof (or if the Administrative Agent notifies the Borrower Representative that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. Notwithstanding any other provision contained herein, (i) all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made (x) without giving effect to any election under Accounting Standards Codification 825-10-25 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of Holdings or any Subsidiary at “fair value”, as defined therein and (y) without giving effect to any treatment of Indebtedness in respect of convertible debt instruments under Accounting Standards Codification 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full



stated principal amount thereof and (ii) any obligations relating to a lease that was accounted for by such Person as an operating lease as of ~~the Effective Date~~ December 31, 2015 and any similar lease entered into ~~after the Effective Date~~ thereafter by such Person (or any Subsidiary or Affiliate of such Person) shall continue to be accounted for by such Person as an operating lease and not as Capital Lease Obligations, regardless of any change in GAAP following December 31, 2015 that would otherwise require such obligations to be recharacterized (on a prospective or retroactive basis or otherwise) as Capital Lease Obligations.

~~(b) All pro forma computations required to be made hereunder giving effect to any acquisition or disposition, or issuance, incurrence or assumption of Indebtedness, or other transaction shall in each case be calculated giving pro forma effect thereto (and, in the case of any pro forma computation made hereunder to determine whether such acquisition or disposition, or issuance, incurrence or assumption of Indebtedness, or other transaction is permitted to be consummated hereunder, to any other such transaction consummated since the first day of the period covered by any component of such pro forma computation and on or prior to the date of such computation) as if such transaction had occurred on the first day of the period of four consecutive Fiscal Quarters ending with the most recent Fiscal Quarter for which financial statements shall have been delivered pursuant to Section 5.01(a) or 5.01(b) (or, prior to the delivery of any such financial statements, ending with the last Fiscal Quarter included in the financial statements referred to in Section 3.04(a)), and, to the extent applicable, to the historical earnings and cash flows associated with the assets acquired or disposed of) and any related incurrence or reduction of Indebtedness, all in accordance with Article 11 of Regulation S-X under the Securities Act. If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date of determination had been the applicable rate for the entire period (taking into account any Swap Agreement applicable to such Indebtedness).~~

(b) [Reserved].

(c) Notwithstanding anything in this Agreement or any Loan Document to the contrary, in connection with any action being taken solely in connection with a Limited Condition Acquisition, for purposes of:

(i) determining compliance with any provision of this Agreement which requires the calculation of the First Lien Leverage Ratio, the Total Leverage Ratio ~~or~~ , the ~~Senior~~-Secured Leverage Ratio or EBITDA;

(ii) determining compliance with representations, warranties, defaults or Events of Default upon consummation of such Limited Condition Acquisition; and

(iii) testing availability under baskets set forth in this Agreement;

in each case, at the option of the Borrower Representative (the Borrower Representative's election to exercise such option in connection with any Limited Condition Acquisition, an "LCA Election"), the date of determination of whether any such action is permitted hereunder shall be deemed to be the date the definitive agreements for such Limited Condition Acquisition are entered into (the "LCA Test Date"). If, on a pro forma basis after giving effect to such Limited Condition Acquisition and the other transactions to be entered into in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) with such ratios and other provisions being calculated as if such Limited Condition Acquisition and other transactions had occurred at the beginning of the most ~~recently ended period of four consecutive Fiscal Quarters (taken as one accounting period) for which financial~~

~~statements shall have been delivered pursuant to Section 5.01(a) or 5.01(b) (or, prior to the delivery of any such financial statements, as of the last Fiscal Quarter included in the financial statements referred to in Section 3.04(a))~~ recent Test Period ending prior to the LCA Test Date, the Borrowers could have taken such action on the relevant LCA Test Date in compliance with such ratio, default, Events of Default or basket, such ratio, default, Event of Default or basket shall be deemed to have been complied with for purposes of such Limited Condition Acquisition. For the avoidance of doubt, if the Borrower Representative has made an LCA Election and any of the ratios or baskets for which compliance was determined or tested as of the LCA Test Date are exceeded as a result of fluctuations in any such ratio or basket, including due to fluctuations in EBITDA of the Borrowers or the Person subject to such Limited Condition Acquisition, at or prior to the consummation of the relevant transaction or action, such baskets or ratios will not be deemed to have been exceeded as a result of such fluctuations, and such ratios and compliance with such conditions shall not be tested at the time of consummation of such Limited Condition Acquisition or related transactions. If the Borrower Representative has made an LCA Election for any Limited Condition Acquisition, then in connection with any subsequent calculation of any ratios, representations, warranties, defaults, Events of Default or basket availability with respect to the incurrence of Indebtedness or Liens, or the making of Restricted Payments, mergers, the conveyance, lease or other transfer of all or substantially all of the assets of the Borrowers and their Restricted Subsidiaries, the making of asset sales or dispositions, or the prepayment, redemption, purchase, defeasance or other satisfaction of Indebtedness on or following the relevant LCA Test Date and prior to the earlier of the date on which such Limited Condition Acquisition is consummated or the date that the definitive agreement for such Limited Condition Acquisition is terminated or expires without consummation of such Limited Condition Acquisition, any such ratios, representations, warranties, defaults, Events of Default or baskets shall be calculated on a pro forma basis assuming such Limited Condition Acquisition and other transactions in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) have not been consummated until such time as the applicable Limited Condition Acquisition has actually closed (it being further understood that any Net Income and/or EBITDA therefrom shall not be included in determining Net Income or EBITDA, as applicable, in any such subsequent calculation until such Limited Condition Acquisition has actually closed).

(d) Notwithstanding anything to the contrary herein but subject to Sections 1.04(c) and 1.04(g), any financial ratios and tests (including, without limitation, any First Lien Leverage Ratio, Total Leverage Ratio, Secured Leverage Ratio and/or EBITDA) contained in this Agreement or any other Loan Documents that are calculated with respect to any Test Period during which any Specified Transaction occurs shall be calculated with respect to such Test Period and such Specified Transaction on a pro forma basis or be given pro forma effect. For all purposes of this paragraph and the calculations subject hereto, at any Borrower's election, the acquisition of any Person, property, business or assets (and any pro forma events to occur in connection therewith, including the assumption or incurrence of any Indebtedness or Liens) shall be deemed to have "occurred" and been "consummated" upon any Borrower or any Subsidiary entering into a binding definitive agreement with respect thereto, and such deemed occurrence shall continue until such transaction is actually consummated or is abandoned or such definitive agreement is otherwise terminated.

(e) Notwithstanding anything to the contrary herein, EBITDA shall not be determined on a pro forma basis for the purposes of the definition of "Excess Cash Flow".

(f) Notwithstanding anything to the contrary herein, with respect to any amounts incurred or transactions entered into (or consummated) in reliance on a provision of this Agreement that does not require compliance with a financial ratio or test (including, without limitation, any First Lien Leverage Ratio, Total Leverage Ratio and/or Secured Leverage Ratio).

(any such amounts, including such amounts that are based off EBITDA, the “ Fixed Amounts”) substantially concurrently with any amounts incurred or transactions entered into (or consummated) under the same covenant in reliance on a provision in such covenant that requires compliance with a financial ratio or test (including, without limitation, any First Lien Leverage Ratio, Total Leverage Ratio and/or Secured Leverage Ratio) (any such amounts, the “ Incurrence-Based Amounts”), it is understood and agreed that the Fixed Amounts shall be disregarded in the calculation of the financial ratio or test applicable to the Incurrence-Based Amounts.

(g) For purposes of determining the permissibility of any action, change, transaction or event that by the terms of this Agreement or any other Loan Documents makes reference to a percentage of EBITDA or requires a calculation of any financial ratio or test (including, without limitation, any First Lien Leverage Ratio, Total Leverage Ratio and/or Secured Leverage Ratio), no Default or Event of Default shall be deemed to have occurred solely as a result of a change in such amount of EBITDA or such financial ratio or test occurring after the time such action is taken, such change is made, such transaction is consummated or such event occurs, as the case may be.

(h) For purposes of determining compliance with any of the covenants set forth in Article V or Article VI (including in connection with any Incremental Facility) at any time (whether at the time of incurrence or thereafter), if any Indebtedness (other than the 2022 Term Loans), Liens (other than Liens in respect of the 2022 Term Loans), investment, asset sale or other disposition, Restricted Payment, restricted debt payment or Affiliate transaction meets the criteria of one, or more than one, of the categories permitted pursuant to Article V or Article VI (including in connection with any Incremental Facility), the Borrower Representative may in its sole discretion determine under which category such Indebtedness, Liens, investment, asset sale or other disposition, Restricted Payment, restricted debt payment or Affiliate transaction (or, in each case, any portion thereof) is permitted and will only be required to include the amount and type of such transaction (or portion thereof) in any one category.

SECTION 1.05. Status of Obligations. In the event that any Loan Party shall at any time issue or have outstanding any Subordinated Indebtedness, such Loan Party shall take all such actions as shall be necessary to cause the Secured Obligations to constitute senior indebtedness (however denominated) in respect of such Subordinated Indebtedness and to enable the Administrative Agent and the Lenders to have and exercise any payment blockage or other remedies available or potentially available to holders of senior indebtedness under the terms of such Subordinated Indebtedness. Without limiting the foregoing, the Obligations are hereby designated as “senior indebtedness” and as “designated senior indebtedness” and words of similar import under and in respect of any indenture or other agreement or instrument under which such Subordinated Indebtedness is outstanding and are further given all such other designations as shall be required under the terms of any such Subordinated Indebtedness in order that the Lenders may have and exercise any payment blockage or other remedies available or potentially available to holders of senior indebtedness under the terms of such Subordinated Indebtedness.

SECTION 1.06. ~~LIBOR Discontinuation Interest Rates. Notwithstanding anything to the contrary contained in this Agreement or the other Loan Documents, if at any time there ceases to exist a LIBOR Rate or other interbank rate in the London market regulated or otherwise overseen or authorized by the ICE Benchmark Administration or U.K. Financial Conduct Authority for interest periods greater than one Business Day or the Administrative Agent determines (which determination shall be conclusive absent manifest error) that (i) the circumstances set forth in Section 2.14 have arisen and such circumstances are unlikely to be~~

~~temporary or (ii) the circumstances in Section 2.14 have not arisen but the supervisor for the administrator of the LIBOR Rate or a relevant Governmental Authority has made a public statement identifying a specific date after which the LIBOR Rate shall no longer be used for determining interest rates for loans (such specific date, the “Scheduled Unavailability Date”), then the Administrative Agent and the Borrower Representative shall endeavor to establish an alternate rate of interest to the LIBOR Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for fixed periods for syndicated loans in the United States at such time for similarly situated borrowers, and shall enter into an amendment to the Loan Documents to reflect such alternate rate of interest and such other related changes as may be applicable which are agreed by the Borrower Representative and the Administrative Agent at such time; provided that, if such alternate rate of interest shall be less than zero percent, such rate shall be deemed to be zero percent for purposes of this Agreement. Notwithstanding anything to the contrary in the Loan Documents, such amendment shall *become effective without any further action*~~

~~or consent of any other party to the Loan Documents (other than the written consent of the Administrative Agent and the Borrower Representative) so long as the Administrative Agent shall not have received, within five (5) Business Days of the date notice of such alternate rate of interest is provided to the Lenders, a written notice from the Required Lenders stating that they object to such amendment. If no such alternate rate has been determined and the circumstances set forth in Section 2.14 exist or the Scheduled Unavailability Date has occurred (as applicable), the Administrative Agent will promptly so notify the Borrower Representative and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurodollar Loans shall be suspended (to the extent of the affected Eurodollar Loans or Interest Periods), and (y) the Adjusted LIBOR Rate component shall no longer be utilized in determining the Alternate Base Rate. Upon receipt of such notice, the Borrower Representative may revoke any pending request for a Loan of, conversion to or continuation of Eurodollar Loans (to the extent of the affected Eurodollar Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of ABR Loans (subject to clause (y) in the immediately preceding sentence) in the amount specified therein.~~

The Administrative Agent does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Alternate Base Rate, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Alternate Base Rate, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes (excluding, in each case, in the event of bad faith, gross negligence or willful misconduct on the part of the Administrative Agent (as determined by a court of competent jurisdiction in a final, non-appealable judgment)). The Administrative Agent and its affiliates or other related entities may engage in transactions that affect the calculation of the Alternate Base Rate, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) and/or any relevant adjustments thereto, in each case, in a manner adverse to the Borrowers. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain the Alternate Base Rate, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR or any other Benchmark, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrowers, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential





**damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.**

SECTION 1.07. Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its ~~equity interests~~ Equity Interests at such time.

## ARTICLE II THE CREDITS

SECTION 2.01. Loans. (a) Subject to the terms and conditions set forth in the **Original Credit Agreement, each Term Lender with a Term Loan Commitment (as defined in the Original Credit Agreement) on the Effective Date made a Term Loan in Dollars to the Borrowers on the Effective Date, in an amount equal to such Lender's Term Loan Commitment (as defined in the Original Credit Agreement) on the Effective Date. On Sixth Amendment, on** the Sixth Amendment Date, each 2020 Extended Term Lender converted the aggregate principal amount of its 2016 Term Loans **(as defined in this Agreement immediately after giving effect to the Sixth Amendment)** into an equal principal amount of 2020 Extended Term Loans. **On the Eighth Amendment Date, (i) each 2022 Converted Term Lender converted the aggregate principal amount of its outstanding 2020 Extended Term Loans into an equal principal amount of 2022 Converted Term Loans and (ii) each 2022 New Term Lender made its 2022 New Term Loans, in each instance** in accordance with the terms of the ~~Sixth~~ Eighth Amendment.

~~(b) Subject to the terms and conditions set forth herein, each DDTL Lender with a DDTL Commitment (severally and not jointly) agrees to make up to five (5) Delayed Draw Term Loans in Dollars to the Borrowers from time to time during the Availability Period, in an aggregate principal amount not to exceed such Lender's DDTL Commitment. Except as set forth in Section 4.03, any Delayed Draw Term Loan shall be on the same terms (including all-in pricing and maturity date) as, and pursuant to documentation applicable to, the initial Term Loan. The DDTL Commitment of each DDTL Lender shall be reduced by the aggregate amount of Delayed Draw Term Loans funded by such DDTL Lender. All Delayed Draw Term Loans, once funded shall become part of and be deemed to be of the same class as the initial Term Loan unless otherwise determined by the Administrative Agent. Each of the parties hereto hereby agrees that the Administrative Agent may, in consultation with the Borrower Representative, take any and all actions as may be reasonably necessary to ensure that all Delayed Draw Term Loans, when or originally made or thereafter, are included in each Borrowing of outstanding initial Term Loans on a pro rata basis. Without limiting the generality of the foregoing, this may be accomplished by requiring each outstanding Borrowing of the initial Term Loan that is a Eurodollar Loan to be converted into a Borrowing of the initial Term Loan that is an ABR Loan on the date of each such Delayed Draw Term Loan, or by allocating a portion of each such Delayed Draw Term Loan to each outstanding Borrowing of the initial Term Loan that is a Eurodollar Loan on a pro rata basis. Any conversion of Eurodollar Loans to ABR Loans required by the preceding sentence shall be subject to Section 2.16. In addition, each scheduled amortization payment under Section 2.10(a).~~

**with respect to then-existing Term Loans required to be made after the making of any Delayed Draw Term Loan shall be ratably increased by the aggregate principal amount of such Delayed**

Draw Term Loan for all Lenders on a pro rata basis to the extent necessary (including to avoid any reduction in the amortization payments to which the initial Term Lenders are entitled in respect of such Delayed Draw Term Loan). To the extent any installment under Section 2.10(a) that is scheduled to be made in respect of the initial Term Loans on any day shall have been reduced or eliminated due to the application thereto of a prepayment prior to the date on which a Delayed Draw Term Loan is funded, then notwithstanding the provisions of Section 2.18 hereof to the contrary, Lenders who hold such funded Delayed Draw Term Loans on such day shall be entitled to receive the entire portion of each payment of, or application to, the installment with respect to ~~such funded Delayed Draw Term Loan scheduled to be made on such day.~~

(b) ~~(e)~~ Amounts repaid or prepaid in respect of Term Loans may not be reborrowed.

SECTION 2.02. Loans and Borrowings. ~~(a) Each Delayed Draw Term Loan shall be made as part of a Borrowing consisting of Delayed Draw Term Loans of the same class and Type made by the Lenders r atably in accordance with their respective DDTL Commitments of the applicable class. The failure of any Lender to make any Delayed Draw Term Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided that the DDTL Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required. The Loans shall amortize as set forth in Section 2.10.~~

~~.(a) [Reserved].~~

(b) Subject to Section 2.14, each Borrowing shall be comprised entirely of ABR Loans or ~~Eurodollar~~ SOFR Loans as the Borrower Representative may request in accordance herewith. Each Lender at its option may make any ~~Eurodollar~~ SOFR Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan (and in the case of an Affiliate, the provisions of Sections 2.15, 2.16 and 2.17 shall apply to such Affiliate to the same extent as to such Lender); provided that any exercise of such option shall not affect the obligation of the Borrowers to repay such Loan in accordance with the terms of this Agreement.

(c) At the commencement of each Interest Period for any ~~Eurodollar~~ SOFR Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of \$500,000 and not less than \$1,000,000. ABR Borrowings may be in any amount. Borrowings of more than one Type and class may be outstanding at the same time; provided that there shall not at any time be more than a total of five (5) ~~Eurodollar~~ SOFR Borrowings outstanding at any time.

(d) Notwithstanding any other provision of this Agreement, the Borrower Representative shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the ~~applicable~~ Maturity Date.

SECTION 2.03. Requests for Borrowings. To request a Borrowing, the Borrower Representative shall notify the Administrative Agent of such request either in writing (delivered by hand or facsimile) in a form approved by the Administrative Agent and signed by the Borrower Representative or by telephone not later than (a) in the case of a ~~Eurodollar~~ SOFR Borrowing, 10:00 a.m., New York City time, three (3) Business Days before the date of the proposed Borrowing or (b) in the case of an ABR Borrowing, 10:00 a.m., New York City time, one Business Day before the date of the proposed Borrowing. Each such Borrowing Request shall be irrevocable and each telephonic Borrowing Request shall be confirmed promptly by hand delivery or facsimile to the Administrative Agent of a written Borrowing Request in a form approved by the Administrative Agent and signed by the Borrower Representative. Each Borrowing Request shall specify the following information:

(iv) the aggregate amount of the requested Borrowing and a breakdown of the separate wires comprising such Borrowing;

(v) the date of such Borrowing, which shall be a Business Day;

(vi) whether such Borrowing is to be an ABR Borrowing or a **Eurodollar SOFR** Borrowing;

(vii) in the case of a **Eurodollar SOFR** Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period"; and

(viii) the location and account number of the account to which funds are to be disbursed, which shall comply with the requirements of Section 2.07.

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

SECTION 2.04. [Intentionally Omitted]. SECTION 2.05.

[Intentionally Omitted]. SECTION 2.06. [Intentionally

Omitted].

SECTION 2.07. Funding of Borrowings. (a) Each Lender shall make each Loan to be made by such Lender hereunder on the proposed date thereof by wire transfer of immediately available funds by 11:00 a.m., New York City time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders in an amount equal to such Lender's Applicable Percentage of such Loan; provided that Term Loans shall be made as provided in Section 2.01(a). The Administrative Agent will make such Loans available to the Borrowers by promptly crediting the amounts so received, in like funds, to one or more account(s) of the Borrowers designated in the Borrowing Request.

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption, make available to the Borrowers a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrowers severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrowers to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of the Borrowers, the interest rate applicable to ABR Loans. If

such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing.

SECTION 2.08. Interest Elections. (a) Each ~~2020 Extended~~2022 Term Loan shall initially ~~be deemed to shall~~ be a **Eurodollar SOFR** Borrowing ~~with having~~ an initial Interest Period equal to the remaining duration (as of the Sixth Amendment Date) of the Interest Period applicable to the Existing Term Loans (as defined in the Sixth Amendment) from which such 2020 Extended Term Loans were converted. Each 2016 Term Loan shall initially be deemed to be a Eurodollar Borrowing with the Interest Period in effect under the Original Credit Agreement ~~immediately prior to the Sixth Amendment Date~~ of one month, as reflected (in the case of the 2022 New Term Loans) in the applicable Borrowing Request. Each other ~~Borrowing~~Term Loan initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a **Eurodollar SOFR** Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. The Borrower Representative may subsequently elect to convert a Borrowing to a different Type or to continue such Borrowing and, in the case of a **Eurodollar SOFR** Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower Representative may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section, the Borrower Representative shall notify the Administrative Agent of such election by telephone by (a) in the case of an election of a conversion to, or continuation of, a **Eurodollar SOFR** Borrowing, not later than 11:00 a.m., New York City time, three (3) Business Days before the date of the proposed election or (b) in the case of a conversion to an ABR Borrowing, not later than 11:00 a.m., New York City time, one (1) Business Day before the date of the proposed election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery or facsimile to the Administrative Agent of a written Interest Election Request in a form approved by the Administrative Agent and signed by the Borrower Representative. Notwithstanding any contrary provision herein, this Section shall not be construed to permit the Borrower Representative to elect an Interest Period for **Eurodollar SOFR** Loans that does not comply with Section 2.02.

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

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

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

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

If any such Interest Election Request requests a **Eurodollar SOFR** Borrowing but does not specify an Interest Period, then the Borrowers shall be deemed to have selected an Interest Period of one month's duration.

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

(e) If the Borrower Representative fails to deliver a timely Interest Election Request with respect to a **Eurodollar SOFR** Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing. Notwithstanding any contrary provision hereof, if a Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower Representative, then, so long as a Default is continuing (i) no outstanding Borrowing may be converted to or continued as a **Eurodollar SOFR** Borrowing and (ii) unless repaid, each **Eurodollar SOFR** Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

SECTION 2.09. ~~Termination and Reduction of Commitments~~[Reserved].

~~(a) [Intentionally Omitted];~~

~~(b) The Borrower Representative may at any time terminate, or from time to time reduce, the DDTL Commitments; provided that reduction of the DDTL Commitments shall be in an amount that is an integral multiple of \$1,000,000 and not less than \$5,000,000.~~

~~(c) The Borrower Representative shall notify the Administrative Agent of any election to terminate or reduce the DDTL Commitments under paragraph (b) of this Section at least three (3) Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Borrower Representative pursuant to this Section shall be irrevocable; provided that a notice of termination of the DDTL Commitments delivered by the Borrower Representative may state that such notice is conditioned upon the effectiveness of other credit facilities or other transactions specified therein, in which case such notice may be revoked by the Borrower Representative (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the DDTL Commitments shall be permanent. Each reduction of the DDTL Commitments shall be made ratably among the Lenders in accordance with their respective DDTL Commitments.~~

SECTION 2.10. Repayment and Amortization of Loans; Evidence of Debt. (a) ~~(i)~~ The Borrowers shall repay ~~each 2016~~the 2022 Term ~~Loan~~Loans in quarterly installments, commencing on the last day of ~~the calendar quarter during which such 2016 Term Loan is funded hereunder and~~ continuing on the last day of each calendar quarter thereafter, and (ii) the Borrowers shall repay each 2020 Extended Term Loan in quarterly installments, commencing on the last day of the ~~calendar quarter~~ first full Fiscal Quarter ending after the ~~Sixth~~Eighth Amendment Date and continuing on the last day of each ~~calendar quarter~~ Fiscal Quarter ending thereafter. Each such installment ~~referenced in the immediately preceding sentence~~ shall be in an amount equal to 0.25% of the aggregate principal amount of such Term Loan (as adjusted from time to time pursuant to Section 2.11(e) or otherwise under the Loan Documents). ~~Notwithstanding the foregoing two sentences, all installment payments required under this Section 2.10(a) have been paid in full as of the Sixth~~

~~Amendment Date.~~ To the extent not previously paid, (i) all the then unpaid balances of all ~~2016 Term Loans shall be paid in full by the Borrowers on the Maturity Date applicable thereto and (ii) all the then unpaid balances of all 2020 Extended~~ 2022 Converted Term Loans and 2022 New Term Loans shall be paid in full by the Borrowers on the Maturity Date ~~applicable thereto~~.

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

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

(d) The entries made in the accounts maintained pursuant to paragraphs (cb) or (dc) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrowers to repay the Loans in accordance with the terms of this Agreement.

(e) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrowers shall prepare, execute and deliver to such Lender a promissory note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent.

SECTION 2.11. Prepayment of Loans. (a) The Borrowers shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to prior notice in accordance with paragraph (f) of this Section.

(b) [Intentionally Omitted].

(c) Subject to the Intercreditor Agreement, in the event and on each occasion that any Net Proceeds are received by or on behalf of any Loan Party or any Restricted Subsidiary in respect of any Prepayment Event, the Borrowers shall, within ~~onethree (13)~~ Business ~~DayDays~~ after such Net Proceeds are received by such Loan Party or Subsidiary, prepay the Obligations as set forth in Section 2.11(e) below in an aggregate principal amount equal to, in the case of any event described in clause (a), (b) or (c) of the definition of "Prepayment Event," 100% of such Net Proceeds ~~and; provided~~ that, (x) in the case of any event described in clause (a) or (b), of the definition of the term "Prepayment Event," no payment shall be due under this Section until ~~(i) subject to clause (ii), the aggregate Net Proceeds received in connection with such Prepayment Events after the Effective Date exceed \$10,000,000 and (ii),~~ in any Fiscal Year, the aggregate Net Proceeds received in connection with such Prepayment Events during such Fiscal Year exceed ~~\$2,500,000~~ 10,000,000 and (y) in the case of any event described in clause (b) of the definition of the term "Prepayment Event" (other than insurance and condemnation proceeds arising from casualty or losses to Inventory), if the Borrower Representative shall deliver to the Administrative Agent following the receipt of such Net Proceeds a certificate of a Financial Officer to the effect that the Loan Parties intend to apply the Net Proceeds from such event (or a portion thereof specified in such certificate), within 360 days after receipt of such Net Proceeds (such period of time, the "Reinvestment Period"), to acquire (or replace or rebuild) real property, equipment or other tangible assets (other than ABL Priority Collateral) to be used in the business of the Loan Parties,





and certifying that no Default **or Event of Default** has occurred and is continuing, then no prepayment shall be required pursuant to this paragraph in respect of the Net Proceeds specified in such certificate; provided that, to the extent of any such Net Proceeds therefrom that have not been so applied or contractually committed by the end of the applicable Reinvestment Period (and, if so contractually committed in writing by the end of the applicable Reinvestment Period, applied within 180 days of the end of the applicable Reinvestment Period), a prepayment in accordance with Section 2.11(e) shall be promptly (and, in any event, within ~~one~~**three** (~~3~~) Business ~~Day~~**Days**) required in an amount equal to the aggregate amount of such Net Proceeds that have not been so applied; provided, further that, in the case of any event described in clause (a) of the definition of the term “Prepayment Event”, if, at the time that any such prepayment would be so required, the Borrowers are required to offer to repurchase Incremental Equivalent Debt or Permitted Ratio Debt that is secured on a pari passu basis with the Obligations pursuant to the terms of the documentation governing such Indebtedness with the Net Proceeds of such Prepayment Event (such Incremental Equivalent Debt or Permitted Ratio Debt required to be offered to be so repurchased, “Other Applicable Indebtedness”), then the Borrowers may apply such Net Proceeds on a pro rata basis (determined on the basis of the aggregate outstanding principal amount of the Term Loans and Other Applicable Indebtedness at such time; provided that the portion of such Net Proceeds allocated to Other Applicable Indebtedness shall not exceed the amount of such Net Proceeds required to be allocated to Other Applicable Indebtedness pursuant to the terms thereof, and the remaining amount, if any, of such Net Proceeds shall be allocated to the Term Loans in accordance with the terms hereof) to the prepayment of the Term Loans and to the repurchase of Other Applicable Indebtedness, and the amount of prepayment of the Term Loans that would have otherwise been required pursuant to this Section 2.11(c) shall be reduced accordingly; provided, further, that to the extent the holders of Other Applicable Indebtedness decline to have such Indebtedness repurchased (after giving effect to any requirement under the documentation for such Other Applicable Indebtedness to offer such declined payments to other holders of such Other Applicable Indebtedness prior to making such proceeds available to the Borrowers), the declined amount shall promptly (and in any event within 10 Business Days after the date of such rejection) be applied to prepay the Term Loans in accordance with the terms hereof. If the precise amount of insurance or condemnation proceeds allocable to Inventory as compared to Equipment, Fixtures and real property is not otherwise determined, the allocation and application of those proceeds shall be determined by the Administrative Agent, in its reasonable judgment. Nothing in this clause (c) shall be deemed to be implied consent to any transaction underlying a Prepayment Event that is otherwise prohibited by the terms of this Agreement.

(d) The Borrowers shall prepay the Obligations as set forth in Section 2.11(e) below on the date that is ten (10) days after the earlier of (i) the date on which Holdings’ and its **Restricted** Subsidiaries’ annual audited financial statements for the immediately preceding Fiscal Year are delivered pursuant to Section 5.01 and (ii) the date on which such annual audited financial statements were required to be delivered pursuant to Section 5.01, in an amount equal to (x) the ECF Percentage (as defined below) of the Loan Parties’ Excess Cash Flow for the immediately preceding Fiscal Year, commencing with the Fiscal Year ending on or about December 31, ~~2017~~**2023** *minus* (y) ~~commencing with the Fiscal Year ending December 31, 2020~~, the aggregate amount of voluntary prepayments of the Term Loans made during such Fiscal Year pursuant to Section 2.11(a). Each Excess Cash Flow prepayment shall be accompanied by a certificate signed by a Financial Officer of the Borrower Representative certifying the manner in which Excess Cash Flow and the resulting prepayment were calculated, which certificate shall be in form and substance reasonably satisfactory to Administrative Agent. As used herein, “ECF Percentage” means (x) fifty percent (50%) if the Total Leverage Ratio as of the last day of applicable Excess Cash Flow Period is greater than or equal to ~~4.00~~**3.25**; 1.00, (y) twenty-five percent (25%) if the Total Leverage Ratio as of the last day of applicable Excess Cash Flow Period is generated was greater than or equal to ~~3.25~~**2.75**:1.00 but less than ~~4.00~~**3.25**; 1.00 and

(z) zero percent (0% ) if the Total Leverage Ratio as of the last day of applicable Excess Cash Flow Period is less than ~~3.252.75~~1.00. Each Excess Cash Flow prepayment shall be accompanied by a certificate signed by a Financial Officer certifying the manner in which Excess Cash Flow and the resulting prepayment were calculated, which certificate shall be in form and substance reasonably satisfactory to Administrative Agent.

(e) All amounts prepaid pursuant to Section 2.11(c) and (d) shall be applied to the first eight (8) installments of the 2022 Term Loans in direct order of maturity and thereafter , pro rata, to prepay all remaining installments of the 20162022 Term Loans ~~and the 2020 Extended Term Loans (to be applied to installments of all such Term Loans in inverse order of maturity).~~

(f) The Borrower Representative shall notify the Administrative Agent by telephone (confirmed by facsimile) of any prepayment hereunder not later than 10:00 a.m., New York City time, (A) in the case of prepayment of a **Eurodollar SOFR** Borrowing, three (3) Business Days before the date of prepayment, or (B) in the case of prepayment of an ABR Borrowing, one (1) Business Day before the date of prepayment (or, in each case in the foregoing clauses (A) and (B), such shorter time periods as agreed by the Administrative Agent in its sole discretion); provided, that notwithstanding the foregoing, no notice shall be required for the making of the **SixthEighth** Amendment Prepayment (as defined in the **SixthEighth** Amendment) on the **SixthEighth** Amendment Date. Each such notice shall (i) specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid and (ii) be irrevocable, except that such notice may be conditioned upon the effectiveness of other credit facilities or transactions on the specified prepayment date, in which case such notice may be revoked by the Borrower Representative (by notice to the Administrative Agent on or prior to such specified prepayment date) if such condition is not satisfied. Promptly following receipt of any such notice relating to a Borrowing, the Administrative Agent shall advise the Lenders of the contents thereof. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.13, amounts due under Section 2.16 (if any) and the prepayment premiums referred to in ~~Sections~~Section 2.12(b) and 2.12(c)e (if and to the extent applicable).

(g) Notwithstanding anything in this Section 2.11, any Lender may reject all or its Pro Rata Share or other applicable share of any mandatory prepayment (such declined amounts, the “ Declined Proceeds”) of Term Loans required to be made pursuant to this Section 2.11 by providing written notice (each, a “ Rejection Notice”) to the Administrative Agent and the Borrower Representative no later than 5: 00 p.m., New York City time, one Business Day after the date of such Lender’ s receipt of notice from the Administrative Agent regarding such prepayment; provided that, for the avoidance of doubt, no Lender may reject any prepayment arising under clause (c) of the definition of “ Prepayment Event”. If a Lender fails to deliver a Rejection Notice to the Administrative Agent within the time frame specified above, any such failure will be deemed an acceptance of the total amount of such mandatory prepayment of Term Loans unless the Borrower Representative and the Administrative Agent agree to an extension of time for such failure to be corrected. Any Declined Proceeds shall not be subject to the prepayment provisions of this Section 2.11.

SECTION 2.12. Fees. (a) [Reserved].

(b) [Reserved].

~~(a) . (a) The Borrowers agree to pay to the Administrative Agent for the account of each DDTL Lender with a DDTL Commitment a commitment fee in an aggregate amount equal to~~

~~(v) the average daily principal amount of the DDTL Commitment of such DDTL Lender during the period from and including the Effective Date to but excluding the date on which the Lenders'~~

DDTL Commitments terminate *multiplied by* (ii) a percentage equal to 50% of the Applicable Rate with respect to Eurodollar Loans. Accrued commitment fees shall be payable in arrears on the last day of each calendar quarter (commencing on the first such date to occur after the Effective Date) and on the date on which the DDTL Commitments terminate. All commitment fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed.

~~(b) In the event that, prior to the second anniversary of the Sixth Amendment Date, the Borrowers (A) prepay any 2020 Extended Term Loans pursuant to Section 2.11(a), (B) prepay or refinance any 2020 Extended Term Loans, in each case, pursuant to Section 2.11(c) but solely in connection with a Prepayment Event referenced in clause (c) of the definition of “Prepayment Event”, or (C) effect any amendment, modification or waiver of, or consent under, this Agreement resulting in any “Repricing Event” with respect to the 2020 Extended Term Loans (it being understood and agreed for the avoidance of doubt that prepayments as a result of purchases or assignments made pursuant to Section 9.04 shall not be subject to this Section 2.12(b)), the Borrowers shall pay to the Administrative Agent, for the ratable account of each of the applicable 2020 Extended Term Lenders in the case of clauses (A) and (B), a premium, and in the case of clause (C), a fee, in each case, in an amount equal to: (i) in the event such prepayment or refinancing occurs prior to the first anniversary of the Sixth Amendment Date, the Applicable Premium or (ii) in the event that such prepayment or refinancing occurs on or after the first anniversary of the Sixth Amendment Date but prior to the second anniversary of the Sixth Amendment Date, 1.00% of the aggregate principal amount of the 2020 Extended Term Loans so prepaid or subject to such Repricing Event. All such amounts shall be due and payable on the date of the relevant prepayment pursuant to Sections 2.11(a) or 2.11(c) or the relevant amendment, modification, waiver or consent. For the avoidance of doubt, no prepayment premium or fee pursuant to this Section 2.12(b) shall be payable hereunder in connection with any prepayment or refinancing of 2020 Extended Term Loans (or any “Repricing Event” in respect of the 2020 Extended Term Loans) on or after the second anniversary of the Sixth Amendment Date.~~

(e) The Borrowers agree to pay to the Administrative Agent, for its own account (as applicable), the fees payable under the Engagement Letters as and when the same are due and such other fees in the amounts and at the times as are separately agreed upon between the Borrowers and the Administrative Agent, including those fees payable under the Fee Letter.

~~(d)~~ All fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Administrative Agent for distribution, in the case of commitment fees and participation fees, to the Lenders. Fees paid shall not be refundable under any circumstances.

(e) In the event that all or any portion of any Term Loan is subject to a Repricing Event (as defined below) prior to the six-month anniversary of the ~~Fourth~~Eighth Amendment Date, the Borrowers shall pay a prepayment premium in connection with any such Repricing Event in an amount equal to 1.0% of the Term Loan subject to such Repricing Event. The term “Repricing Event” shall mean (i) any prepayment or repayment of a Term Loan with the proceeds of, or any conversion of such loans into, any new or replacement class of term loans bearing interest at an “effective” interest rate less than the “effective” interest rate applicable to such Term Loan (as such comparative rates are determined by the Administrative Agent) and (ii) any amendment that, directly or indirectly, reduces the “effective” interest rate applicable to a Term Loan (in each case in (i) and (ii), with original issue discount and upfront fees, which shall be deemed to constitute like amounts of original issue discount, being equated to interest margins in a manner consistent with generally accepted financial practice based on an assumed four-year life to maturity). For the avoidance of doubt, any Lender that is replaced pursuant to Section 2.19, Section 9.02(e) or otherwise in connection with any conversion or amendment effecting any



Repricing Event shall be entitled to receive the foregoing prepayment premium, which shall be payable by the Borrowers.

SECTION 2.13. Interest. (a) The Loans comprising each ABR Borrowing shall bear interest on the outstanding principal amount thereof at the Alternate Base Rate plus the Applicable Rate.

(b) ~~The Subject to the provisions of Section 2.14 below, the~~ Loans comprising each ~~Eurodollar~~ SOFR Borrowing shall bear interest ~~at~~ on the ~~Adjusted LIBOR Rate for the~~ outstanding principal amount thereof for each Interest Period ~~in effect at a rate per annum equal to Adjusted Term SOFR~~ for such ~~Borrowing Interest Per iod~~ plus the Applicable Rate.

(c) [Intentionally Omitted].

(d) Notwithstanding the foregoing, during the occurrence and continuance of an Event of Default, the Administrative Agent or the Required Lenders may, at their option, by notice to the Borrower Representative (which notice may be revoked at the option of the Required Lenders notwithstanding any provision of Section 9.02 requiring the consent of “each Lender affected thereby” for reductions in interest rates), declare that (i) the overdue principal amount of all Loans shall bear interest at 2% plus the rate otherwise applicable to such Loans as provided in the preceding paragraphs of this Section or (ii) in the case of any other overdue amount outstanding hereunder, such amount shall accrue at 2% plus the rate applicable to such fee or other obligation as provided hereunder; provided that no notice shall be required and the foregoing rates shall automatically take effect upon the occurrence of an Event of Default under clause (a), (h), (i) or (j) of Article VII.

(e) Accrued interest on each Loan (for ABR Loans, accrued through the last day of the prior calendar month) shall be payable in arrears on each Interest Payment Date for such Loan; provided that (i) interest accrued pursuant to paragraph (d) of this Section shall be payable on demand,

(ii) in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any ~~Eurodollar~~ SOFR Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(f) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed. The applicable Alternate Base Rate, Adjusted ~~LIBOR Rate or LIBOR~~ Term SOFR or the Term SOFR Reference Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error. In connection with the use or administration of Term SOFR, the Administrative Agent (in consultation with the Borrower Representative) will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document (other than the Administrative Agent in consultation with the Borrower Representative). The Administrative Agent will promptly notify the Borrower Representative and the Lenders of the effectiveness of any Conforming Changes in connection with the use or administration of Term SOFR.

SECTION 2.14. ~~Alternate Rate of Interest~~Inability to Determine Rates; Effect of Benchmark Transition; Illegality.

~~-If prior to the commencement of any Interest Period for a Eurodollar Borrowing:~~

(a) Inability to Determine Rates. Subject to Section 2.14(b), if, on or prior to the first day of any Interest Period for any SOFR Loan:

(i) ~~(a)~~ the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that adequate and reasonable means do not exist for ascertaining ~~the Adjusted LIBOR Rate or the LIBOR Rate, as applicable,~~Term SOFR (including because Term SOFR is not available or published on a current basis) for such Interest Period; or

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

(i) the Required Lenders determine that for any reason in connection with any request for a SOFR Loan or a conversion thereto or a continuation thereof that Term SOFR for such Interest Period with respect to a proposed SOFR Loan will not adequately and fairly reflect the cost to such Lenders of funding such Loan, and the Required Lenders have provided notice of such determination to the Administrative Agent;

then the Administrative Agent shall give notice thereof to the Borrower Representative and the Lenders ~~by telephone or facsimile~~as provided in Section 9.01 as promptly as practicable thereafter ~~and, until. Upon notice thereof by the Administrative Agent notifies to the Borrower Representative and, any obligation of the Lenders that to make or continue SOFR Loans shall be suspended (to the extent of the affected SOFR Loans and the affected Interest Periods) until the circumstances giving rise to such notice no longer exist,~~ ~~(i) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective, and (ii) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing shall be made as an ABR Borrowing, and the Administrative Agent promptly notifies the Borrower Representative that such notice is revoked. Upon receipt of such notice, (i) the Borrowers may revoke any pending request for a borrowing of, conversion to or continuation of SOFR Loans (to the extent of the affected SOFR Loans and the affected Interest Periods) or, failing that, the Borrowers will be deemed to have converted any such request into a request for a Borrowing of, or conversion to, ABR Loans in the amount specified therein and (ii) any outstanding affected SOFR Loans will be deemed to have been converted into ABR Loans at the end of the applicable Interest Period. Upon any such conversion, the Borrowers shall also pay any additional amounts required pursuant to Section 2.16 (if and to the extent applicable).~~

(b) Effect of Benchmark Transition Event. Notwithstanding anything to the contrary herein or in any other Loan Document:

(vi) Benchmark Replacement. If a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to any setting of the then-current Benchmark, then (A) if a Benchmark Replacement is determined in accordance with clause (a) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such



Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (B) if a Benchmark Replacement is determined in accordance with clause

(b) of the definition of “ Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5: 00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders. If the Benchmark Replacement is Adjusted Daily Simple SOFR, all interest payments will be payable on a quarterly basis.

(vii) Benchmark Replacement Conforming Changes. Notwithstanding anything to the contrary herein or in any other Loan Document, in connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Administrative Agent (in consultation with the Borrower Representative) will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will *become effective without any further action or consent of any other party to* this Agreement or any other Loan Document (other than the Administrative Agent in consultation with the Borrower Representative).

(viii) Notice; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower Representative and the Lenders of (A) the occurrence of any Benchmark Transition Event, (B) the implementation of any Benchmark Replacement, (C) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement, (D) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (iv) below and (E) the commencement or conclusion of any Benchmark Unavailability Period. The Administrative Agent will promptly notify the Borrower of the removal or reinstatement of any tenor of a Benchmark pursuant to Section 2.14. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.14, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.14.

(ix) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement) (A) if the then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (1) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (2) the administration of such Benchmark or the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of

information announcing that any tenor for such Benchmark is not or will not be representative or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks, then the Administrative Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable, non-representative, non-compliant or non-aligned tenor and (B) if a tenor that was removed pursuant to clause (A) above either (1) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (2) ceases to not be representative or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor .

(x) Benchmark Unavailability Period. Upon the Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any pending request for a SOFR Loan, or conversion to or continuation of SOFR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to ABR Loans. During a Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of Base Rate.

(c) Illegality. If any Lender determines that any Requirement of Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable lending office to make, maintain or fund Loans whose interest is determined by reference to Term SOFR, or to determine or charge interest rates based upon Term SOFR, then, on notice thereof by such Lender to the Borrower Representative through the Administrative Agent, (i) any obligation of such Lender to make or continue SOFR Loans or to convert ABR Loans to SOFR Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining ABR Loans the interest rate of which is determined by reference to the Term SOFR component of the Alternate Base Rate, the interest rate on which ABR Loans of such Lender shall, if and to the extent necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Term SOFR component of the Alternate Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower Representative that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the applicable Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all SOFR Loans of such Lender to ABR Loans (the interest rate on which ABR Loans of such Lender shall, if and to the extent necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Term SOFR component of the Alternate Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such SOFR Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such SOFR Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon Term SOFR, the Administrative Agent shall during the period of such suspension compute the Alternate Base Rate applicable to such Lender without reference to the Term SOFR component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon Term SOFR. Upon any such prepayment

or conversion, the applicable Borrower shall also pay or cause to be paid accrued and unpaid interest on the amount so prepaid or converted.

SECTION 2.15. Increased Costs. (a) If any Change in Law shall:

(ii) impose, modify or deem applicable any reserve, special deposit, liquidity or similar requirement (including any compulsory loan requirement), insurance charge or other assessment against assets of, deposits with or for the account of, or credit extended by, any Lender ~~(except any such reserve requirement reflected in the Adjusted LIBOR Rate)~~;

(iii) impose on any Lender or the **London** applicable interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or any participation therein; or

(iv) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, continuing, converting into or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or **such other Recipient** or to reduce the amount of any sum received or receivable by such Lender or such other Recipient hereunder (whether of principal, interest or otherwise), then the Borrowers will pay to such Lender or such other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender or such other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

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

(b) A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower Representative and shall be conclusive absent manifest error. The Borrowers shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(c) Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Borrowers shall not be required to compensate a Lender pursuant to this Section for any increased costs or reductions incurred more than 180 days prior to the date that such Lender notifies the Borrower Representative of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor; provided, further, that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

SECTION 2.16. Break Funding Payments. In the event of (a) the payment of any principal of any **Eurodollar SOFR** Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default or as a result of any prepayment pursuant to Section 2.11), (b) the conversion of any **Eurodollar SOFR** Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any **Eurodollar SOFR** Loan on the date specified in any notice delivered pursuant hereto), or (d) the assignment of any **Eurodollar SOFR** Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower Representative pursuant to Section 2.19, then, in any such event, the Borrowers shall compensate each Lender for the loss, cost and expense attributable to such event. **In the case of a Eurodollar Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Eurodollar Loan had such event not occurred, at the Adjusted LIBOR Rate that would have been applicable to such Eurodollar Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Eurodollar Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for Dollar deposits of a comparable amount and period from other banks in the eurodollar market.** A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section and a description in reasonable detail of the calculation thereof shall be delivered to the Borrower Representative and shall be conclusive absent manifest error. The Borrowers shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

SECTION 2.17. Withholding of Taxes; Gross-Up.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable withholding agent) requires the deduction or withholding of any Tax from any such payment by a withholding agent, then the applicable withholding agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding for Indemnified Taxes has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.17) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made..

(b) Payment of Other Taxes by the Borrowers Loan Parties. The Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for, Other Taxes.

(c) Evidence of Payments. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 2.17, such Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(d) Indemnification by the Loan Parties. The Loan Parties shall jointly and severally indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any

Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability, including a description of the basis for the indemnification claim to the extent reasonably available, delivered to any Loan Party by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 9.04(c) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to such Lender from any other source against any amount due to the Administrative Agent under this paragraph (e).

(f) Status of Lenders.

(xi) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower Representative and the Administrative Agent, at the time or times reasonably requested by the Borrower Representative or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower Representative or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower Representative or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower Representative or the Administrative Agent as will enable the Borrowers or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.17(f)(ii)(A), 2.17(f)(ii)(B), and 2.17(f)(ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(xii) Without limiting the generality of the foregoing, in the event that any Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to the Borrower Representative and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable

request of the Borrower Representative or the Administrative Agent), an executed [copy of](#) IRS Form W-9 certifying that such Lender is exempt from U.S. Federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower Representative and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, [an](#) executed [copiescopy](#) of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. Federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. Federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(2) in the case of a Foreign Lender claiming that its extension of credit will generate U.S. effectively connected income, [an](#) executed [copiescopy](#) of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit G-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of a Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “[U.S. Tax Compliance Certificate](#)”) and (y) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable; or

(4) to the extent a Foreign Lender is not the Beneficial Owner, [an](#) executed [copiescopy](#) of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-2 or Exhibit G-3, IRS Form W-9, and/or other certification documents from each Beneficial Owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower Representative and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign

Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or the Administrative Agent), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. Federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrowers or the Administrative Agent to determine the withholding or deduction required to be made; and

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

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower Representative and the Administrative Agent in writing of its legal inability to do so.

(g) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.17 (including by the payment of additional amounts pursuant to this Section 2.17), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.17 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts ~~giving rise with respect~~ to such ~~refund~~ Tax had never been paid. This paragraph (g) shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) Survival. Each party's obligations under this Section 2.17 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

- (i) Defined Terms. For purposes of this Section 2.17, the term “applicable law” includes FATCA.

SECTION 2.18. Payments Generally; Allocation of Proceeds; Sharing of Set-offs.

(a) The Borrowers shall make each payment required to be made by them hereunder (whether of principal, interest or fees, or of amounts payable under Section 2.15, 2.16 or 2.17, or otherwise) prior to 4:00 p.m., New York City time, on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices at 520 Madison Avenue, New York, New York 10022, or to the account designated by Administrative Agent in writing, except that payments pursuant to Section 2.15, 2.16, 2.17 and 9.03 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall accrue and be payable for the period of such extension. All payments hereunder shall be made in Dollars.

(b) Any proceeds of Collateral received by the Agents (i) not constituting (A) a specific payment of principal, interest, fees or other sum payable under the Loan Documents (which shall be applied as specified by the Borrowers) or (B) a mandatory prepayment (which shall be applied in accordance with Section 2.11), or (ii) after an Event of Default has occurred and is continuing and the Administrative Agent so elects or the Required Lenders so direct, shall be applied, subject to the terms of the Intercreditor Agreement, ratably first, to pay any fees, indemnities, or expense reimbursements including amounts then due to the Agents from the Borrowers, second, to pay any fees or expense reimbursements then due to the Lenders from the Borrowers, third, to pay interest then due and payable on the Loans ratably, fourth, to prepay principal on the Loans ratably (with amounts applied to the Loans applied to installments of such Loans in inverse order of maturity), and fifth, to the payment of any other Obligation due to the Agents or any Lender. Notwithstanding anything to the contrary contained in this Agreement, unless so directed by the Borrower Representative, or unless a Default is in existence, neither the Administrative Agent nor any Lender shall apply any payment which it receives to any **Eurodollar SOFR** Loan of a class, except (a) on the expiration date of the Interest Period applicable thereto or (b) in the event, and only to the extent, that there are no outstanding ABR Loans of the same class and, in any such event, the Borrowers shall pay the break funding payment required in accordance with Section 2.16 (if and to the extent applicable). The Administrative Agent and the Lenders shall have the continuing and exclusive right to apply and reverse and reapply any and all such proceeds and payments to any portion of the Obligations.

(c) At the election of the Administrative Agent, all payments of principal, interest, fees, premiums, reimbursable expenses (including, without limitation, all reimbursement for fees and expenses pursuant to Section 9.03), and other sums payable under the Loan Documents, may be paid from the proceeds of Borrowings made hereunder whether made following a request by the Borrower Representative pursuant to Section 2.03 or a deemed request as provided in this Section or may be deducted from any deposit account of any Borrower maintained with the Administrative Agent. The Borrowers hereby irrevocably authorize (i) the Administrative Agent to make a Borrowing for the purpose of paying each payment of principal, interest and fees as it becomes due hereunder or any other amount due under the Loan Documents and agrees that all such amounts charged shall constitute Loans and that all such Borrowings shall be deemed to have been requested pursuant to Section 2.03 and (ii) the Administrative Agent to charge any deposit account of any Borrower maintained with the Administrative



Agent for each payment of principal, interest and fees as it becomes due hereunder or any other amount due under the Loan Documents.

(d) If, except as otherwise expressly provided herein, any Lender shall, by exercising any right of set off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and accrued interest thereon than the proportion received by any other similarly situated Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by all such Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by the Borrowers pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to the Borrowers or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). The Borrowers consent to the foregoing and agree, to the extent they may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrowers rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrowers in the amount of such participation.

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

(f) If any Lender shall fail to make any payment required to be made by it hereunder, then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), (i) apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations hereunder until all such unsatisfied obligations are fully paid and/or (ii) hold any such amounts in a segregated account as cash collateral for, and application to, any future funding obligations of such Lender hereunder; application of amounts pursuant to clauses (i) and (ii) above shall be made in such order as may be determined by the Administrative Agent in its discretion.

#### SECTION 2.19. Mitigation Obligations; Replacement of Lenders.

(a) If any Lender requests compensation under Section 2.15, or if the Borrowers are required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of

such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.15 or 2.17, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If any Lender requests compensation under Section 2.15, or if the Borrowers are required to pay Indemnified Taxes or any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, or if any Lender becomes a Defaulting Lender, then the Borrowers may, at their sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights (other than its existing rights to payments pursuant to Section 2.15 or 2.17) and obligations under this Agreement and the other Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) the Borrowers shall have received the prior written consent of the Administrative Agent, which consent shall not unreasonably be withheld ~~or~~, delayed or conditioned, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts) and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.15 or payments required to be made pursuant to Section 2.17, such assignment will result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply.

SECTION 2.20. Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

~~(a) , the fees shall cease to accrue on the unfunded portion of the DDTL Commitment of such Defaulting Lender pursuant to Section 2.12(a); and~~

~~(b) the DDTL Commitments or~~ Loans of such Defaulting Lender shall not be included in determining whether the Required Lenders have taken or may take any action hereunder (including any consent to any amendment, waiver or other modification pursuant to Section 9.02) or any other Loan Document; provided, that this ~~clause (b)~~ Section 2.20 shall not apply to the vote of a Defaulting Lender in the case of an amendment, waiver or other modification requiring the consent of such Lender or each Lender affected thereby.

SECTION 2.21. Returned Payments. If after receipt of any payment which is applied to the payment of all or any part of the Obligations, the Administrative Agent or any Lender is for any reason compelled to surrender such payment or proceeds to any Person because such payment or application of proceeds is invalidated, declared fraudulent, set aside, determined to be void or voidable as a preference, impermissible setoff, or a diversion of trust funds, or for any other reason, then the Obligations or part thereof intended to be satisfied shall be revived and continued and this Agreement shall continue in full force as if such payment or proceeds had not been received by the Administrative Agent or such Lender. The provisions of this Section 2.21 shall be and remain effective notwithstanding any contrary action which may have been taken by the Administrative Agent or any Lender in reliance

upon such payment or application of proceeds. The provisions of this Section 2.21 shall survive the termination of this Agreement.

SECTION 2.22. Expansion Option.

(a) The Borrower Representative may from time to time, upon three Business Days' notice (or such shorter period as the Administrative Agent accepts in its sole discretion) to the Administrative Agent (or such lesser notice as agreed to by the Administrative Agent), add one or more additional tranches of incremental term facilities and/or increase the principal amount of the Term Loans of any existing class by requesting new term loan commitments to provide such Term Loans (any such new tranche or increase, an "Incremental Facility" and any loans made pursuant to an Incremental Facility, "Incremental Term Loans"), in each case in minimum increments of \$10,000,000, so long as, after giving effect thereto, the ~~aggregate amount of all such Incremental Term Loans does not exceed the~~ Incremental Cap ~~is not exceeded~~. The Borrower Representative may arrange for any tranche or increase, as the case may be, to be provided by one or more Lenders (each Lender so agreeing to participate in such Incremental Term Loans, an "Increasing Lender"), or by one or more new banks, financial institutions or other entities (each such new bank, financial institution or other entity, an "Augmenting Lender"); provided that (i) each Augmenting Lender, shall be subject to the approval of the Borrower Representative and the Administrative Agent (such approvals not to be unreasonably withheld or delayed) ~~and~~, (ii) the Borrower Representative shall be deemed to have reasonably withheld or delayed its approval in the event that the Borrower Representative shall have withheld or delayed its consent with respect to an Augmenting Lender which is directly engaged in the primary business of distributing food products to business establishments, such as restaurants, country clubs, hotels, caterers, culinary schools and specialty food stores, and (iii) (x) in the case of an Increasing Lender, the Borrower Representative and such Increasing Lender shall execute and deliver an agreement substantially in the form of Exhibit B hereto, and (y) in the case of an Augmenting Lender, the Borrower Representative and such Augmenting Lender shall execute and deliver an agreement substantially in the form of Exhibit C hereto. No consent of any Lender (other than the Lenders participating in such Incremental Term Loan) shall be required for any Incremental Term Loan pursuant to this Section 2.22. Incremental Term Loans created pursuant to this Section 2.22 shall become effective on the date agreed by the Borrower Representative, the Administrative Agent and the ~~relevant~~applicable Increasing Lenders ~~or~~and/or the Augmenting Lenders, and the Administrative Agent shall notify each Lender thereof.

(b) No Incremental Term Loans shall become effective under this Section unless, (i) on the proposed date of the effectiveness of such Incremental Term Loans, (x) no Event of Default shall have occurred and be continuing or, in the case of a Permitted Acquisition or similar committed investment, no Event of Default under clauses (a), (b), (h), (i) or (j) of the definition thereof shall have occurred and be continuing; provided that in the case of a Limited Condition Acquisition, at the Borrower Representative's option, such condition may be tested in accordance with Section 1.04(c) so long as at the time of the consummation of such Limited Condition Acquisition, no Event of Default under clauses (a), (b), (h), (i) or (j) of the definition thereof shall have occurred and be continuing, (y) the representations and warranties set forth in the Loan Documents shall be true and correct in all material respects (except in connection with a Permitted Acquisition or similar committed investment, which, if and only to the extent agreed by the Lenders providing such Incremental Term Loans, shall be subject to customary "SunGard" or "certain funds" conditionality), and (z) the Administrative Agent shall have received a certificate, dated such date, to the effect that the requirements of clauses (i), (x) and (i)(y) have been complied with ~~dated such date~~ and executed and delivered by a Financial Officer of the Borrower Representative and (ii) the Administrative Agent shall have received documents consistent with those

delivered on the Effective Date as to the corporate power and authority of the Borrowers to borrow hereunder after giving effect to such Incremental Term Loans.

(c) The Incremental Facilities shall be subject to the following provisions, as applicable:

(i) the Incremental Term Loans (a) shall rank *pari passu* in right of payment and may rank *pari passu* or junior with respect to security with the Secured Obligations (subject, if applicable, to an intercreditor agreement reasonably acceptable to the Administrative Agent) or be unsecured, (b) if secured, may not be secured by any assets other than Collateral and (c) if guaranteed, may not be guaranteed by any Person who is not a Loan Party. ~~Any Incremental Facility that is secured on a junior lien basis to the Secured Obligations will be documented in a separate facility and shall be subject to an intercreditor agreement reasonably acceptable to the Administrative Agent, and any Incremental Facility that is unsecured will be documented in a separate facility;~~ ;

(ii) any Incremental Term Loans (a) ranking *pari passu* with respect to security with the Secured Obligations will not have (x) a maturity date earlier than the Latest Maturity Date or (y) a shorter Average Life than the remaining Average Life of the then-existing ~~2020-Extended~~2022 Term Loans and (b) ranking junior with respect to security with Secured Obligations or which are unsecured will not have (x) a maturity date prior to the date that is 91 days after the Latest Maturity Date or (y) a shorter Average Life than the remaining Average Life of the then-existing ~~2020-Extended~~2022 Term Loans;

(iii) the All-in-Yield (and the components thereof) applicable to any Incremental Facility shall be determined by the applicable Increasing Lenders and Augmenting Lenders providing such Incremental Facility and the Borrower Representative; provided, that to the extent any Incremental Facility is entered into on or prior to the date that is the two-year anniversary of the Eighth Amendment Date, the All-in-Yield in respect of any such Incremental Facility that ranks *pari passu* in right of payment and security with the then-existing Loans shall not exceed the All-in-Yield for the ~~2020-Extended~~2022 Term Loans, as in effect on the date of the funding of such Incremental Facility, *plus* 0.50% per annum, unless the All-in-Yield then in effect for such then-existing ~~2020-Extended~~2022 New Term Loans ~~and the then-existing 2016 Term Loans, as applicable~~, is increased by an amount equal to the difference between (A) the All-in-Yield in respect of such Incremental Facility and (B) the All-in-Yield for each of such then-existing ~~2020-Extended~~2022 Term Loans, less 0.50% per annum in each case; provided that any increase in All-in-Yield of the then-existing Term Loans due to the increase in an Adjusted ~~LIBORSOFR~~ Rate or Alternate Base Rate floor on any Incremental Term Loan shall be effected solely through an increase in any Adjusted ~~LIBORSOFR~~ Rate or Alternate Base Rate floor applicable to such then-existing Term Loans;

(iv) (A) all terms (other than with respect to margin, pricing, maturity or fees) applicable to any Incremental Facility shall be no more favorable (taken as a whole) to the Lenders providing such Incremental Facility than to the Lenders providing the then-existing Loans; provided that the terms and conditions applicable to any tranche of Incremental Term Loans maturing after the Latest Maturity Date may provide for material additional or different financial or other covenants or prepayment requirements applicable only during periods after the Latest Maturity Date; and

(v) any prepayment (other than voluntary prepayments under Section 2.11(a) and scheduled amortization payments) of Incremental Term Loans that are *pari passu* in

right of payment and *pari passu* with respect to security with the then-existing Loans shall be made on a *pro rata* basis with the then-existing ~~2016~~2022 New Term ~~Loans and the then-existing 2020 Extended Term~~ Loans, except that the Borrowers and the Lenders in respect of such Incremental Term Loans shall be permitted, in their sole discretion, to elect to prepay or receive, as applicable, any prepayments on a less than *pro rata* basis (but not on a greater than *pro rata* basis).

(a) Incremental Term Loans may be made hereunder pursuant to an amendment or restatement (an “Incremental Term Loan Amendment”) of this Agreement and, as appropriate, the other Loan Documents, executed and delivered by the Borrowers, each Increasing Lender participating in such Incremental Facility, each Augmenting Lender participating in such Incremental Facility, if any, and the Administrative Agent. The Incremental Term Loan Amendment may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent, to effect the provisions of this Section 2.22. Nothing contained in this Section 2.22 shall constitute, or otherwise be deemed to be, a commitment on the part of any Lender to provide Incremental Term Loans at any time.

### ARTICLE III REPRESENTATIONS AND

#### WARRANTIES

Each Loan Party represents and warrants to the Lenders as of the Eighth Amendment Date, and on each date on which an Incremental Facility is incurred (subject to Section 1.04(c)), that:

SECTION 3.01. Organization; Powers. Each Loan Party and its Restricted Subsidiaries is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority to carry on its business as now conducted and, except where the failure to do so, individually or in the aggregate, ~~could~~would not reasonably be expected to result in a Material Adverse Effect, is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required.

SECTION 3.02. Authorization; Enforceability. The Transactions are within each Loan Party’s organizational powers and have been duly authorized by all necessary organizational actions and, if required, actions by equity holders. The Loan Documents to which ~~each~~any Loan Party is a party have been duly executed and delivered by such Loan Party and constitute a legal, valid and binding obligation of such Loan Party, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors’ rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

SECTION 3.03. Governmental Approvals; No Conflicts. The Transactions (a) do not require any material consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect and except for filings necessary to perfect Liens created pursuant to the Loan Documents, (b) will not violate any Requirement of Law applicable to any Loan Party or any of its Restricted Subsidiaries, (c) will not violate or result in a default under any indenture, agreement or other instrument binding upon any Loan Party or any of its Restricted Subsidiaries or the assets of any Loan Party or any of its Restricted Subsidiaries, or give rise to a right thereunder to require any payment to be made by any Loan Party or any of its Restricted Subsidiaries, and (d) will not result in the creation or imposition of any Lien on any asset of any Loan Party or any of its Restricted Subsidiaries, except Liens created pursuant to the Loan Documents, or subject to the Intercreditor Agreement, the ABL Loan Documents, except, in each case



referred to in clauses (b), (c) and (d), where such violation or Lien would not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.04. Financial Condition; No Material Adverse Change. (a) Holdings has heretofore furnished to the Administrative Agent and the Lenders (i) the consolidated balance sheet and statements of income, stockholders equity and cash flows of Holdings and its consolidated Subsidiaries as of and for the Fiscal Year ended December ~~2524, 20152021~~, reported on by BDO USA, LLP, independent public accountants and (ii) the unaudited interim consolidated balance sheet of Holdings and its consolidated Subsidiaries dated ~~March 25, 2016~~ June 24, 2022 and the related statements of income and cash flows for the ~~threesix (36)~~ fiscal months then ended. Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of Holdings and its consolidated Subsidiaries as of such date and for such period in accordance with GAAP, subject to year-end audit adjustments and the absence of footnotes in the case of the statements referred to in clause (ii) above.

(b) Holdings has heretofore furnished to the Administrative Agent ~~and the Lenders~~ projected balance sheets, income statements and statements of cash flows of Holdings and its Subsidiaries for Fiscal Years ~~20162023~~ through ~~20202027~~. Such projections were prepared in good faith based upon assumptions believed to be reasonable at the time delivered and, if such projected financial information was delivered prior to the ~~Effective~~ Eighth Amendment Date, as of the ~~Effective~~ Eighth Amendment Date, and Holdings is not aware of any facts or information that would lead it to believe that such projections are incorrect or misleading in any material respect.

(c) No event, change or condition has occurred that has had, or could reasonably be expected to have, a Material Adverse Effect, since December ~~2524, 20152021~~.

SECTION 3.05. Properties. (a) As of the ~~Effective~~ Eighth Amendment Date, Schedule 3.05 sets forth the address of each parcel of real property that is owned or leased by each Loan Party (and indicates whether any such real property constitutes an Excluded Asset). Each of such leases and subleases is valid and enforceable in accordance with its terms and is in full force and effect, and no default by any party to any such lease or sublease exists. Each of the Loan Parties and its Restricted Subsidiaries (other than any Immaterial Subsidiary) has good and indefeasible title to, or valid leasehold interests in, all of its real and personal property, free of all Liens (other than those permitted by Section 6.02). All such property is in good working order and condition, ordinary wear and tear and damage by casualty excepted.

(b) Each Loan Party and its Restricted Subsidiaries owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property necessary to its business as currently conducted, ~~a correct and complete list of which, as of the Effective Date, is set forth on Schedule 3.05,~~ and the use thereof by each Loan Party and its Restricted Subsidiaries does not infringe upon the rights of any other Person, except for such infringements which, individually or in the aggregate, ~~could~~ would not reasonably be expected to have a Material Adverse Effect, and, except as set forth on Schedule 3.05, each Loan Party's rights thereto are not subject to any material licensing agreement or similar arrangement (excluding commercially available software). Schedule 3.05 sets forth a complete and accurate list of all applications, registrations and material exclusive licenses of intellectual property owned by each Loan Party as of the ~~Effective~~ Eighth Amendment Date. No slogan or other advertising device, product, process, method, substance, part or other material now employed, ~~or now contemplated to be employed,~~ by any Loan Party infringes upon or conflicts with any rights owned by any other Person, and no claim or litigation regarding any of the foregoing is pending or, to the

knowledge of any Loan Party, threatened, except for such infringements and conflicts which ~~could~~would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 3.06. Litigation and Environmental Matters. (a) Except as set forth on Schedule 3.06, as of the Eighth Amendment Date, there are no actions, suits or proceedings by or before any arbitrator or Governmental Authority (including, without limitation, the FDA) pending against or, to the knowledge of any Loan Party, threatened against or affecting any Loan Party or any of its Restricted Subsidiaries (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, ~~could~~would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect or (ii) that involve the Loan Documents.

(b) Except for the matters disclosed on Schedule 3.06, as of the Eighth Amendment Date, (i) no Loan Party or any Restricted Subsidiary has received notice of any claim with respect to any Environmental Liability that, individually or in the aggregate, ~~could~~would not reasonably be expected to result in liability to the Loan Parties in excess of ~~\$10,000,000~~15,000,000 in the aggregate and (ii) except with respect to any other matters that, individually or in the aggregate, ~~could~~would not reasonably be expected to result in liability to the Loan Parties in excess of ~~\$10,000,000~~15,000,000 in the aggregate, no Loan Party nor any Restricted Subsidiary (1) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law or (2) has become subject to any Environmental Liability or knows of any basis for any Environmental Liability.

SECTION 3.07. Compliance with Laws and Agreements. Each Loan Party and its Restricted Subsidiaries is in compliance with all Requirements of Law applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, except where the failure to do so, individually or in the aggregate, ~~could~~would not reasonably be expected to result in a Material Adverse Effect. No Default has occurred and is continuing.

SECTION 3.08. Investment Company Status; Margin Stock. No Loan Party ~~or any Subsidiary is an “ is required to register as an investment company” as defined in, or subject to regulation~~ under the Investment Company Act of 1940. No Loan Party or any Restricted Subsidiary is engaged in the business of extending credit for the purpose of, and no proceeds of any Loan or other extensions of credit hereunder will be used for the purpose of, buying or carrying margin stock (within the meaning of Regulation U of the ~~Federal Reserve~~ Board) or extending credit to others for the purpose of purchasing or carrying any such margin stock, in each case in contravention of Regulation T, U or X of the ~~Federal Reserve~~ Board.

SECTION 3.09. Taxes. Each Loan Party and its Restricted Subsidiaries has timely filed or caused to be filed all Federal, state and other material Tax returns and other material reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it, except Taxes that are being contested in good faith by appropriate proceedings and for which such Loan Party or such Restricted Subsidiary, as applicable, has set aside on its books adequate reserves. No tax liens have been filed and no claims are being asserted with respect to any such taxes, other than Permitted Encumbrances.

SECTION 3.10. ERISA. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, ~~could~~would reasonably be expected to result in a Material Adverse Effect. All minimum required contributions (within the meaning of Section 430 of the Code) have been timely made with respect to each Plan. Each employee benefit pension plan (within the meaning of Section 3(2) of ERISA) maintained or sponsored by a Loan Party, or under which a Loan Party has any liability, which is



intended to be qualified under Section 401(a) of the Code, has received a favorable determination letter from the Internal Revenue Service with respect to such qualification, and, except as ~~could~~would not reasonably be expected to result in a Material Adverse Effect, no event or condition exists which ~~could~~would reasonably be expected to jeopardize such qualified status. Except as ~~could~~would not reasonably be expected to result in a Material Adverse Effect, no Loan Party has any obligation to provide post-retirement health care benefits to any individual other than as required under the Consolidated Omnibus Budget Reconciliation Act of 1985, or other similar state law.

SECTION 3.11. Disclosure. Each Loan Party has disclosed to the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Restricted Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, ~~could~~would reasonably be expected to result in a Material Adverse Effect. None of the reports, financial statements, certificates or other information furnished by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the negotiation of this Agreement or any other Loan Document (as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading in any material respect; provided that, with respect to projected financial information, the Loan Parties each represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time delivered and, if such projected financial information was delivered prior to the ~~Effective~~Eighth Amendment Date, as of the ~~Effective Date~~Eighth Amendment Date. As of the Eighth Amendment Date, the information included in the Beneficial Ownership Certification previously delivered by each Borrower to the Lenders prior to the Eighth Amendment Date, if any, is true and correct in all respects.

SECTION 3.12. Material Agreements. No Loan Party is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or contract listed on Schedule 3.12.

SECTION 3.13. Solvency. (a) Immediately after the consummation of the Transactions to occur on the ~~Effective~~Eighth Amendment Date, (i) the fair value of the assets of each Loan Party, at a fair valuation, will exceed its debts and liabilities, subordinated, contingent or otherwise; (ii) the present fair saleable value of the property of each Loan Party will be greater than the amount that will be required to pay the probable liability of its debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (iii) each Loan Party will be able to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (iv) no Loan Party will have unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted after the ~~Effective~~Eighth Amendment Date.

(b) No Loan Party intends to, or will permit any Subsidiary to, and no Loan Party believes that it or any Subsidiary will, incur debts beyond its ability to pay such debts as they mature, taking into account the timing of and amounts of cash to be received by it or any such Subsidiary and the timing of the amounts of cash to be payable on or in respect of its Indebtedness or the Indebtedness of any such Subsidiary.

SECTION 3.14. Insurance. As of the ~~Effective~~Eighth Amendment Date, Schedule 3.14 sets forth a description of all insurance maintained by or on behalf of the Loan Parties and the Restricted Subsidiaries (other than any Immaterial Subsidiary), and all premiums due and owing

in respect of such insurance have been paid. ~~The Borrowers and Holdings believe that the insurance maintained by or on behalf of Holdings and its Subsidiaries is accurate.~~

SECTION 3.15. Capitalization and Subsidiaries. Schedule 3.15 sets forth, as of the Eighth Amendment Date, (a) a true and complete listing of each class of each Loan Party's (other than Holdings) and Subsidiary's authorized Equity Interests and the holders thereof; ~~provided that with respect to Holdings, Schedule 3.15 only lists those holders owning at least 5% of the Equity Interests of Holdings as of the Effective Date~~, and (b) the type of entity and jurisdiction of organization of Holdings and each of its Subsidiaries. All of the issued and outstanding Equity Interests of each Loan Party and the Subsidiaries have been duly authorized and issued and are fully paid and non-assessable and, except as set forth on Schedule 3.15, as of the Eighth Amendment Date, no holder of such Equity Interest is entitled to any preemptive, first refusal or other similar rights.

SECTION 3.16. Security Interest in Collateral. The provisions of this Agreement and the other Loan Documents create legal and valid Liens on all the Collateral in favor of the Collateral Agent, for the benefit of the Collateral Agent and the Secured Parties, and such Liens constitute perfected and continuing Liens on the Collateral, securing the Secured Obligations, enforceable against the applicable Loan Party and all third parties, and having priority over all other Liens on the Collateral except in the case of (a) Liens permitted by Section 6.02, to the extent any such Liens (to the extent permitted by Section 6.02) would have priority over the Liens in favor of the Collateral Agent pursuant to any applicable law or agreement (including any Liens securing the ABL Obligations in accordance with the Intercreditor Agreement), (b) Liens perfected only by possession (including possession of any certificate of title) to the extent the Collateral Agent has not obtained or does not maintain possession of such Collateral, (c) Liens on intellectual property perfected only by making filings with the applicable Governmental Authority to the extent such filings have not been made, (d) assets subject to certificates of title, (e) Excluded Assets, (f) letter-of-credit rights with respect to letters of credit in an amount, ~~in each case,~~ of less than ~~\$1,000,000~~ \$5,000,000 in the aggregate and (g) commercial tort claims having a value, ~~in each case,~~ of less than ~~\$1,000,000~~ \$5,000,000 in the aggregate.

SECTION 3.17. Employment Matters. As of the ~~Effective~~ Eighth Amendment Date, there are no strikes, lockouts or slowdowns against any Loan Party or any Restricted Subsidiary pending or, to the knowledge of the Borrowers, threatened. The hours worked by and payments made to employees of the Loan Parties and the Restricted Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Federal, state, local or foreign law dealing with such matters, except to the extent the failure to so comply with such acts and laws could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. All payments due from any Loan Party or any Restricted Subsidiary, or for which any claim may be made against any Loan Party or any Restricted Subsidiary, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of the Loan Party or such Restricted Subsidiary.

SECTION 3.18. Nature of Business; Permits and Licenses; Tradenames. (a) No Loan Party or Restricted Subsidiary is engaged in any business other than those engaged in on the ~~Effective~~ Eighth Amendment Date and those reasonably related, complementary or ancillary thereto or a logical extension thereof (including, without limitation, food and beverage service, distribution, wholesale and retail).

(b) Each Loan Party has, and is in compliance with, all Governmental Permits and all permits, licenses, authorizations, approvals, entitlements and accreditations required for such Person lawfully to own, lease, manage or operate, or to acquire, each business currently owned, leased, managed or operated, or to be acquired, by such Person, except to the extent that the failure to have or be in

compliance with all such Governmental Permits, permits, licenses, authorizations, approvals, entitlements and accreditations ~~could~~would not reasonably be expected to result in a Material Adverse Effect. No condition exists or event has occurred which, in itself or with the giving of notice or lapse of time or both, would result in the suspension, revocation, impairment, forfeiture or non-renewal of any such permit, license, authorization, approval, entitlement or accreditation, except that ~~could~~would not reasonably be expected to result in a Material Adverse Effect, and there is no claim that any thereof is not in full force and effect.

(c) As of the ~~Effective~~Eighth Amendment Date, Schedule 3.18 hereto sets forth a complete and accurate list of all trade names, business names or similar appellations used by each Loan Party or Restricted Subsidiary or any of their divisions or other business units during the past five years.

SECTION 3.19. Location of Bank Accounts. As of the ~~Effective~~Eighth Amendment Date, Schedule 3.19 sets forth a complete and accurate list of all deposit, checking and other bank accounts, all securities and other accounts maintained with any broker dealer and all other similar accounts maintained by or for the benefit of each Loan Party and Restricted Subsidiary, in each case with an average balance in excess of \$2,500,000 at any time on an individual account basis, together with a description thereof (i.e., the bank or broker dealer at which such deposit or other account is maintained and the account number and the purpose thereof).

SECTION 3.20. [Intentionally Omitted].

SECTION 3.21. Customers and Suppliers. There exists no actual or, to the knowledge of any Loan Party, threatened termination, cancellation or limitation of, or modification to or change in, the business relationship between (1) any Loan Party, on the one hand, and any customer or any group thereof, on the other hand, whose agreements with any Loan Party are individually or in the aggregate material to the business or operations of such Loan Party, or (2) any Loan Party, on the one hand, and any material supplier thereof, on the other hand, except, under clauses (i1) or (ii2), as ~~could~~would not reasonably be expected to have a Material Adverse Effect; and, to the knowledge of each Loan Party, there exists no present state of facts or circumstances that could give rise to or result in any such termination, cancellation, limitation, modification or change, except, in each case, as ~~could~~would not reasonably be expected to have a Material Adverse Effect.

SECTION 3.22. Affiliate Transactions. Except as set forth on Schedule 3.22, as of the ~~Effective~~Eighth Amendment Date, there are no existing or proposed agreements, arrangements, understandings, or transactions between any Loan Party and any of the officers, members, managers, directors, stockholders, parents, other interest holders, employees, or Affiliates (other than Restricted Subsidiaries) of any Loan Party or any members of their respective immediate families, and none of the foregoing Persons are directly or indirectly indebted to or have any direct or indirect ownership, partnership, or voting interest in any Affiliate of any Loan Party or any Person with which any Loan Party has a business relationship or which competes with any Loan Party (except that any such Persons may own stock in (but not exceeding ~~2.04.0~~% of the outstanding Equity Interests of) any publicly traded company that may compete with a Loan Party.

SECTION 3.23. Common Enterprise. The successful operation and condition of each of the Loan Parties is dependent on the continued successful performance of the functions of the group of the Loan Parties as a whole and the successful operation of each of the Loan Parties is dependent on the successful performance and operation of each other Loan Party. Each Loan Party expects to derive benefit (and its board of directors or other governing body has determined that it may reasonably be expected to derive benefit), directly and indirectly, from (i) successful operations of each of the other Loan Parties and (ii) the credit extended by the Lenders to the Borrowers hereunder, both in their

separate capacities and as members of the group of companies. Each Loan Party has determined that execution, delivery, and performance of this Agreement and any other Loan Documents to be executed **and delivered** by such Loan Party is within its purpose, in furtherance of its direct and/or indirect business interests, will be of direct and/or indirect benefit to such Loan Party, and is in its best interest.

SECTION 3.24. Foreign Assets Control Regulations and Anti-Money Laundering. Each Loan Party and **Restricted** Subsidiary is and will remain in compliance in all material respects with all U.S. economic sanctions laws, executive orders and implementing regulations as promulgated by the U.S. Treasury Department's Office of Foreign Assets Control (~~"OFAC"~~), and all applicable anti-money laundering and counter-terrorism financing provisions of the Bank Secrecy Act and all regulations issued pursuant to it. No Loan Party and no **Restricted** Subsidiary or Affiliate of a Loan Party (i) is a Person designated by the U.S. government on the list of the Specially Designated Nationals and Blocked Persons (the "SDN List") with which a U.S. Person cannot deal with or otherwise engage in business transactions, (ii) is a Person who is otherwise the **targetsubject** of U.S. economic sanctions laws such that a U.S. Person cannot deal or otherwise engage in business transactions with such Person or (iii) is controlled by (including without limitation by virtue of such person being a director or owning voting shares or interests), or acts, directly or indirectly, for or on behalf of, any person or entity on the SDN List or a foreign government that is the **targetsubject** of U.S. economic sanctions prohibitions such that the entry into, or performance under, this Agreement or any other Loan Document would be prohibited under U.S. law.

SECTION 3.25. Patriot Act and Beneficial Ownership Regulation. The Loan Parties, the **Restricted** Subsidiaries and each of their Affiliates are in compliance with (a) the Trading with the Enemy Act, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B Chapter V, as amended) and any other enabling legislation or executive order relating thereto, (b) the Act and (c) other federal or state laws relating to "*know your customer*" and anti-money laundering rules and regulations, including the Patriot Act and the Beneficial Ownership Regulation. No part of the proceeds of any Loan will be used directly or indirectly for any payments to any government official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977.

SECTION 3.26. FDA Matters.

(a) Except as noted in paragraph (b), Borrowers, their **Restricted** Subsidiaries and the operation of their respective food facilities in the United States are in compliance with and are not in violation of all applicable Requirements of Law (including the FDC Act), regulations, rules, standards, guidelines, policies, and orders administered or issued by the FDA or any comparable Governmental Authority (including, without limitation, as applicable, the Bioterrorism Act (21 CFR 1.326-1.368), prohibited cattle materials (21 CFR 189.5), import notification requirements (21 CFR 1.276-1.285)), except for failures to comply or violations that, individually or in the aggregate, **couldwould** not reasonably be expected to result in a Material Adverse Effect.

(b) Since December ~~2524, 2015~~**2021**, no Governmental Authority has served notice on any Loan Party or its Subsidiaries that the business or the assets of the Loan Parties or their **Restricted** Subsidiaries, may be, or are in material violation of any Requirement of Law or the subject of any material investigation, except for violations or investigations that, individually or in the aggregate, **couldwould** not reasonably be expected to result in a Material Adverse Effect.

(c) Since December ~~2524, 2015~~**2021**, no Loan Party or its **Restricted** Subsidiaries has received notice from any Governmental Authority nor does any Loan Party have any knowledge that

there are any circumstances currently existing which would be reasonably likely to lead to any loss of or refusal to renew any material governmental licenses, permits, registrations, product registrations, Governmental Permits, approvals, authorizations related to the business and that the terms of all such licenses, permits, registrations, product registrations, governmental permits, approvals, and authorizations currently in force, except for any notice or circumstance that, individually or in the aggregate, ~~could~~would not reasonably be expected to result in a Material Adverse Effect.

(d) The Loan Parties have no knowledge of any acts with respect to their food business or products that furnish a reasonable basis for a warning letter, untitled letter, Section 305 notice, or other similar communication from FDA or any Governmental Authority, except for any acts that, individually or in the aggregate, ~~could~~would not reasonably be expected to result in a Material Adverse Effect.

(e) The Loan Parties have no knowledge of any existing obligation of a Loan Party arising under any administrative or regulatory action, FDA inspection, FDA warning letter, FDA notice of violation letter, or other notice, response or commitment made to or with FDA or any Governmental Authority with respect to their food and food product business, except for any acts that, individually or in the aggregate, ~~could~~would not reasonably be expected to result a Material Adverse Effect.

**SECTION 3.27. Affected Financial Institutions. No Loan Party is an Affected Financial Institution.**

ARTICLE IV CONDITIONS

SECTION 4.01. Effective Date. The obligations of the Lenders to make the initial Loans hereunder prior to the Eighth Amendment Date shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 9.02):

(a) The Administrative Agent (or its counsel) shall have received (i) from each party hereto either (A) a counterpart of this Agreement signed on behalf of such party or (B) written evidence satisfactory to the Administrative Agent (which may include telecopy or electronic transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement and (ii) duly executed copies of the other Loan Documents and such other legal opinions, certificates, documents, instruments and agreements as the Administrative Agent shall reasonably request in connection with the Transactions, all in form and substance satisfactory to the Administrative Agent and its counsel and as further described in the list of closing documents attached as Exhibit D.

(b) The Administrative Agent shall have received a favorable written opinion (addressed to the Administrative Agent and the Lenders and dated the Effective Date) of Shearman & Sterling LLP and other applicable local counsel for the Loan Parties in form and substance reasonably acceptable to the Administrative Agent. The Borrowers hereby request such counsel to deliver such opinion.

(c) The Administrative Agent shall have received such documents and certificates as the Administrative Agent or its counsel may reasonably request relating to the organization, existence and good standing of the initial Loan Parties, the authorization of the Transactions and any other legal matters relating to such Loan Parties, the Loan Documents or the Transactions, all in form and substance

satisfactory to the Administrative Agent and its counsel and as further described in the list of closing documents attached as Exhibit D.

(d) The Administrative Agent shall have received a certificate, dated the Effective Date and signed by the President, a Vice President or a Financial Officer of the Borrower Representative, certifying (i) that the representations and warranties contained in the Loan Documents are true and correct in all material respects (provided that any representation or warranty that is qualified by materiality or Material Adverse Effect shall be true and correct in all respects) as of such date except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in all material respects (or, in the case of any representation or warranty qualified by materiality or Material Adverse Effect, in all respects) as of such earlier date; and (ii) that no Default or Event of Default has occurred and is continuing as of such date.

(e) The Administrative Agent shall have (i) entered into the Intercreditor Agreement with the ABL Agent and the Loan Parties and (ii) received evidence reasonably satisfactory to it that (x) each of the conditions precedent (other than the effectiveness of this Agreement) for the effectiveness of the ABL Loan Documents has been satisfied and (y) the lenders under the ABL Loan Documents have committed to provide Holdings and/or its Subsidiaries with loans in an aggregate gross principal amount equal to \$75,000,000 pursuant to the asset-based lending facility evidenced by the ABL Loan Documents. Each such ABL Loan Document shall be in form and substance reasonably satisfactory to the Administrative Agent.

~~(f) The Administrative Agent shall have received pay-off letters in form and substance reasonably satisfactory to the Administrative Agent in respect of (i) the Amended and Restated Credit Agreement dated as of April 17, 2013, by and among Dairyland USA Corporation, The Chefs' Warehouse Mid-Atlantic, LLC, Bel Canto Foods, LLC, The Chefs' Warehouse West Coast, LLC, and The Chefs' Warehouse of Florida, LLC, as borrowers, the other loan parties thereto, the lenders party thereto, and J PMorgan Chase Bank, N.A., as Administrative Agent and Collateral Agent, as amended, and (ii) that certain Note Purchase and Guarantee Agreement dated as of April 17, 2013 by and among the Loan Parties party thereto and the purchasers named therein, in each case, confirming that all Liens upon any of the property of the Loan Parties constituting Collateral will be terminated concurrently with the payment of existing Indebtedness thereunder from the proceeds of the initial Borrowing and the initial borrowing under the ABL Facility on the Effective Date.~~

~~(f) [Reserved].~~

(g) The Administrative Agent shall have received all fees and other amounts due and payable on or prior to the Effective Date, including, to the extent invoiced at least one (1) Business Day prior to the Effective Date, reimbursement or payment of all out-of-pocket expenses required to be reimbursed or paid by the Borrowers hereunder.

The Administrative Agent shall notify the Borrower Representative and the Lenders of the Effective Date, and such notice shall be conclusive and binding.

SECTION 4.02. Each Credit Event. The obligation of each Lender to make a Loan on the occasion of any Borrowing is subject to the satisfaction of the following conditions (unless waived or otherwise agreed by each such Lender):

(a) Except as otherwise expressly contemplated by Sections 1.04(c) and 2.20, the representations and warranties of the Loan Parties contained in the Loan Documents are true and correct



in all material respects (provided that any representation or warranty that is qualified by materiality or Material Adverse Effect shall be true and correct in all respects) on and as of the date of such Borrowing, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in all material respects (or, in the case of any representation or warranty qualified by materiality or Material Adverse Effect, in all respects) as of such earlier date.

(b) Except as otherwise expressly contemplated by Sections 1.04(c) and 2.20, at the time of and immediately after giving effect to such Borrowing, no Default shall have occurred and be continuing.

The request for and acceptance of each Borrowing shall be deemed to constitute a representation and warranty by the Borrowers on the date thereof as to the matters specified in paragraphs (a) and (b) of this Section.

~~SECTION 4.03. Delayed Draw Term Loans. The obligation of each DDTL Lender to make a Delayed Draw Term Loan is subject to the satisfaction of the following conditions (in addition to those set forth in Section 4.02 above) (unless waived by the Required DDTL Lenders and the Required Lenders):~~

~~(a) (i) the Total Leverage Ratio would not exceed 4.90: 1.00 calculated on a pro forma basis (including the application of the proceeds of any Delayed Draw Term Loans) as of the last day of the most recent Fiscal Quarter for which financial statements shall have been delivered pursuant to Section 5.01(a) or 5.01(b) (or , prior to the delivery of any such financial statements, as of the last Fiscal Quarter included in the financial statements referred to in Section 3.04(a)) and (ii) the Borrower Representative shall have delivered to the Administrative Agent a certificate of a Financial Officer of Holdings, setting forth reasonably detailed calculations demonstrating the satisfaction of the condition appearing in clause (i) above; and~~

~~(b) the Administrative Agent shall have received a certificate, dated the date of the applicable Borrowing and signed by the President, a Vice President or a Financial Officer of the Borrower Representative, certifying (i) that, except as otherwise expressly contemplated by Sections 1.04(c), the representations and warranties contained in the Loan Documents are true and correct in all material respects (provided that any representation or warranty that is qualified by materiality or Material Adverse Effect shall be true and correct in all respects) as of such date except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in all material respects (or , in the case of any representation or warranty qualified by materiality or Material Adverse Effect, in all respects) as of such earlier date, (ii) that, except as otherwise expressly contemplated by Sections 1.04(c), no Default or Event of Default has occurred and is continuing as of such date, (iii) that the proceeds from the applicable Borrowing shall be used in accordance with the terms of Section 5.08 and (iv) if applicable, as to the name of the target of, or the seller of the assets that are being acquired in connection with, the Permitted Acquisition being funded by such Delayed Draw Term Loans; and~~

~~The request for and acceptance of each Delayed Draw Term Loan Borrowing shall be deemed to constitute a representation and warranty by the Borrowers on the date thereof as to the matters specified in this Section.~~

## ARTICLE V AFFIRMATIVE

### COVENANTS



Until the ~~DDTL Commitments have expired or been terminated and the~~ principal of and interest on each Loan and all fees payable hereunder have been paid in full (other than contingent indemnification obligations for which no claim has been made), in any case, in a manner acceptable to Administrative Agent in its **sole commercially reasonable** discretion, each Loan Party executing **and deliver ing** this Agreement covenants and agrees, jointly and severally with all of the other Loan Parties, with the Lenders that:

SECTION 5.01. Financial Statements and Other Information. The Borrowers will furnish to the Administrative Agent and each Lender:

(a) within ninety (90) days after the end of each Fiscal Year of Holdings and its Subsidiaries, ~~its (commencing with the Fiscal Year ending on or about December 31, 2022), the~~ audited consolidated balance sheet and related statements of operations, stockholders' equity and cash flows **of Holdings and its Subsidiaries** as of the end of and for Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, all reported on by independent public accountants of recognized national standing selected by Holdings and reasonably satisfactory to the Administrative Agent (without a "going concern" or like qualification ~~or exception, exception or explanatory paragraph (other than any such qualification, exception or explanatory paragraph that results solely from a maturity date on Indebtedness occurring within one year of the date of such audit or a breach or anticipated breach of any financial covenants under any Indebtedness)~~ and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of Holdings and its Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, accompanied by any management letter prepared by said accountants; **provided, that the foregoing financial statements shall be accompanied by consolidating information that explains in reasonable detail the differences between the information relating to Holdings and its Subsidiaries, on the one hand, and the information relating to Holdings and its Restricted Subsidiaries on a standalone basis, on the other hand;**

(b) within forty-five (45) days after the end of each of the first three Fiscal Quarters of each Fiscal Year, ~~its (commencing with the Fiscal Quarter ending on or about September 30, 2022), the~~ consolidated balance sheet and related statements of operations and consolidated statements of cash flows **of Holdings and its Subsidiaries** as of the end of and for such Fiscal Quarter and the then elapsed portion of such Fiscal Year, setting forth in comparative form the actual figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous Fiscal Year; **provided, that the foregoing financial statements shall be accompanied by consolidating information that explains in reasonable detail the differences between the information relating to Holdings and its Subsidiaries, on the one hand, and the information relating to Holdings and its Restricted Subsidiaries on a standalone basis, on the other hand;**

(c) concurrently with any delivery of financial statements under clause (a) or (b) above, **(1)** a Financials Certificate (i) certifying, in the case of the financial statements delivered under clause (b), as presenting fairly in all material respects the financial condition and results of operations of Holdings and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes, (ii) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (iii) stating whether any change in GAAP or in the application thereof has occurred since the date of the audited financial statements referred to in Section 3.04 and, if any such change has occurred, specifying the effect of such change on the financial

statements accompanying such certificate ~~and~~, (iv) that is accompanied by updated versions of the Schedules to the Security Agreement, as required under Section 4.16 of the Security Agreement;

provided that, if there have been no changes to any such Schedules since the previous updating thereof, it shall be indicated that there has been “no change” to the applicable Schedule(s); **and (v) listing each Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary and as a Loan Party or a non-Loan Party as of the date of delivery of such Financials Certificate, and (2) the related consolidated financial statements reflecting the adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) (which may be in footnote form only) from such consolidated financial statements;**

**(d) ~~with respect to each Fiscal Month that ends on or after the First Amendment Date and prior to the Closing Date Leverage Restoration Date, within thirty (30) days after the end of each of the first two Fiscal Months of each Fiscal Quarter, Holdings’ consolidated balance sheet and related statements of operations and consolidated statements of cash flows in the form prepared by management of Holdings as of the end of and for such Fiscal Month and the then elapsed portion of such Fiscal Year, setting forth in comparative form the actual figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous Fiscal Year;~~**

**(d) [reserved];**

(e) as soon as available but in any event no later than 30 days after the commencement of each Fiscal Year of Holdings **(commencing with the Fiscal Year ending on or about December 31, 2022)**, a copy of the plan and forecast (including a projected consolidated balance sheet, income statement and funds flow statement) of **Holdings and its Subsidiaries** **the Restricted Group** for each Fiscal Quarter of such Fiscal Year (the “Projections”) in form reasonably satisfactory to the Administrative Agent (including the Fiscal Month end dates for such Fiscal Year);

**(f) ~~on the first Business Day after the end of each Fiscal Quarter of Holdings and its Subsidiaries (commencing with the Fiscal Quarter ending June 30, 2020), the Borrower Representative will deliver a report of Liquidity to the Administrative Agent (which report shall be promptly distributed by the Administrative Agent to the Lenders) consisting of a compliance certificate as to Liquidity, attaching reasonably detailed calculations with respect thereto, as of the last day of such Fiscal Quarter (each such date, a “Testing Date”); provided, however, if (i) Availability (as defined in the ABL Facility) on such Testing Date shall equal or exceed the Minimum Liquidity Requirement Amount or (ii) EBITDA for the Fiscal Quarter ending on such Testing Date shall equal or exceed \$10,000,000, a compliance certificate shall not be required to be delivered for such Fiscal Quarter;~~**

**(f) [reserved];**

(g) (i) promptly after the same become publicly available (but in no event later than one (1) Business Day after filing any quarterly reports), notice that any periodic and other reports, proxy statements and other materials have been filed by any Loan Party or any **Restricted** Subsidiary with the SEC, or any Governmental Authority succeeding to any or all of the functions of the SEC, or with any national securities exchange, or copies of any materials otherwise distributed by any Loan Party to its shareholders generally, as the case may be and (ii) promptly after the sending thereof, a copy of each financial statement, report, notice or proxy statement sent by any Loan Party or any **Restricted** Subsidiary to the ABL Agent under the ABL Facility;

(h) promptly after submission to any Governmental Authority, all documents and information furnished to such Governmental Authority in connection with any investigation of any Loan Party other than routine inquiries by such Governmental Authority, except to the extent any such



documents or information are subject to attorney-client privilege or attorney work-product privilege; provided, however, for the sake of clarity, it is the intent of the Loan Parties that the disclosure of such documents or information to the Administrative Agent or any Lender shall not, to the fullest extent permitted by law, be deemed to waive any attorney-client privilege, attorney work-product or other applicable legal privilege or immunity that could otherwise be asserted against any third parties that are not parties to this Agreement;

(i) promptly upon receipt thereof, copies of all financial reports (including, without limitation, management letters), if any, submitted to any Loan Party by its auditors in connection with any annual or interim audit of the books thereof;

(j) promptly following any reasonable request therefor, such other information regarding the operations, business affairs and financial condition of the Loan Parties or any **Restricted** Subsidiary, or compliance with the terms of this Agreement, as the Administrative Agent or any Lender may reasonably request; and

(k) promptly following any request therefor, information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable “know your customer” requirements under the PATRIOT Act, the Beneficial Ownership Regulation or other applicable anti-money laundering laws.

Documents required to be delivered pursuant to clauses (a), (b) and (g) of this Section 5.01 may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which such documents are filed for public availability on the SEC’ s Electronic Data Gathering and Retrieval System; ~~provided that the Borrower Representative shall notify (which may be by facsimile or electronic mail) the Administrative Agent of the filing of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Notwithstanding anything contained herein, in every instance the Borrower Representative shall be required to provide paper copies of the Financials Certificates required by clause (c) of this Section 5.01 to the Administrative Agent.~~

SECTION 5.02. Notices of Material Events. The Loan Parties will furnish to the Administrative Agent and each Lender prompt (but in any event within any time period that may be specified below) written notice of the following:

(a) within ~~three~~**five (35)** Business Days after any Authorized Officer of a Loan Party knows of the occurrence of a Default, the occurrence of ~~any such~~ Default if and to the extent then continuing;

(b) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting any Loan Party or any Affiliate thereof in which the amount involved (not covered by an unaffiliated insurance carrier that has not denied coverage) is greater than ~~\$5,000,000~~**10,000,000** and that, if adversely determined, ~~could~~**would** reasonably be expected to result in a Material Adverse Effect;

(c) ~~any Lien (other than Liens permitted by Section 6.02) or claim made or asserted against any of the Collateral~~**[reserved]**;

(d) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, ~~could~~would reasonably be expected to result in a Material Adverse Effect; and

(e) within ten (10) days after receipt thereof, copies of any Form FDA-483 and all responses to Form FDA-483 observations; ~~and~~.

(f) ~~any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.~~

Each notice delivered under this Section shall be accompanied by a statement of a Financial Officer or other executive officer of the Borrower Representative setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

SECTION 5.03. Existence; Conduct of Business. Each Loan Party will, and will cause each Restricted Subsidiary to, (a) do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, qualifications, licenses, permits, franchises, governmental authorizations, intellectual property rights, licenses and permits, in each case, material to the conduct of its business, and maintain all requisite authority to conduct its business in each jurisdiction in which its business is conducted, in each case, except where the failure to do so ~~could~~would not reasonably be expected to result in a Material Adverse Effect; provided that the foregoing shall not prohibit any ~~merger, consolidation, liquidation or dissolution~~transaction permitted under Section 6.03, and (b) carry on and conduct its business in substantially the same manner and in substantially the same fields of enterprise (including, without limitation, food and beverage service, distribution, wholesale or retail) as it is on the ~~Effective Date~~Eighth Amendment Date and those reasonably related, complementary or ancillary thereto or a logical extension thereof (including, without limitation, food and beverage service, distribution, wholesale and retail).

SECTION 5.04. Payment of ObligationsMaterial Taxes. Each Loan Party will, and will cause each Restricted Subsidiary to, pay or discharge all ~~Material Indebtedness and all other~~ material ~~liabilities and obligations, including~~ Taxes, before the same shall become delinquent or in default, except ~~(a)~~ where (i) the validity or amount thereof is being contested in good faith by appropriate proceedings, (ii) such Loan Party or such Restricted Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (iii) the failure to make payment pending such contest ~~could~~would not reasonably be expected to result in a Material Adverse Effect ~~or (b) with respect to Restricted Payments~~.

SECTION 5.05. Maintenance of Properties. Each Loan Party will, and will cause each Restricted Subsidiary to, keep and maintain all tangible property material to the conduct of its business in good working order and condition, ordinary wear and tear and casualty excepted, except where failure to do so would not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.06. Books and Records; Inspection Rights. Each Loan Party will, and will cause each Restricted Subsidiary to, (a) keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities and (b) permit any representatives designated by either Agent or ~~any Lender~~ the Required Lenders (including employees of either Agent, any Lender or any consultants, accountants, lawyers and appraisers retained by either Agent), upon reasonable prior notice, and without unreasonable disruption to the business of the Loan Parties, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and ~~as often as reasonably requested~~no more than one time

per Fiscal Year ; provided that, (i) notwithstanding anything herein to the contrary, ~~unless the inspection rights set forth herein may be exercised at any time, without any limitation on the number or frequency of inspections, while~~ an Event of Default has occurred and is continuing, and (ii) the Loan Parties shall ~~not be required~~ be obligated to reimburse the ~~Agents for more than two (2)~~ reasonable and documented out-of-pocket expenses incurred in connection with all such visits and inspections ~~per calendar year~~ permitted hereunder . Each Loan Party acknowledges that either Agent, after exercising its rights of inspection, may prepare and distribute to the Lenders certain reports pertaining to Holdings and its Restricted Subsidiaries' assets for internal use by the Agents and the Lenders.

SECTION 5.07. Compliance with Laws. Each Loan Party will, and will cause each Restricted Subsidiary to, comply with all Requirements of Law applicable to it or its property, except where the failure to do so, individually or in the aggregate, ~~could~~ would not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.08. Use of Proceeds. The proceeds of the ~~initial~~ Term Loans (other than any Incremental Term Loans) will be used only to repay ~~existing~~ Indebtedness, ~~pay existing at the time of incurrence of such Term Loans, to pay~~ transaction costs, fees and expenses associated with this Agreement and the Transactions, to pay for Capital Expenditures and Permitted Acquisitions and to fund the working capital needs, and for general corporate purposes of the Borrowers and their Restricted Subsidiaries in the ordinary course of business, in all instances as permitted by this Agreement. The proceeds of the ~~Delayed Draw~~ Incremental Term Loans will be used to ~~pay for~~ repay Indebtedness existing at the time of incurrence of such Incremental Term Loans, to pay for Capital Expenditures and Permitted Acquisitions (including to repay existing Indebtedness in connection therewith). ~~The proceeds of the Incremental Term Loans will be used to pay for Permitted Acquisitions (including to repay existing Indebtedness in connection therewith) and to fund the working capital needs,~~ and for general corporate purposes of the Borrowers and their Restricted Subsidiaries in the ordinary course of business. No part of the proceeds of any Loan will be used, whether directly or indirectly, for any purpose that entails a violation of ~~any of the Regulations of the Board, including~~ Regulations T, U and X of the Board.

SECTION 5.09. Insurance. Each Loan Party will, and will cause each Restricted Subsidiary (other than any Immaterial Subsidiary) to, maintain with financially sound and reputable third-party carriers having a financial strength rating of at least A- by A.M. Best Company (a) insurance in such amounts and against such risks (including loss or damage by fire and loss in transit; theft, burglary, pilferage, larceny, embezzlement, and other criminal activities; business interruption; and general liability) and such other hazards, in each case, after giving effect to any self-insurance programs, as is customarily maintained by companies of established repute engaged in the same or similar businesses operating in the same or similar locations and (b) all insurance required pursuant to the Collateral Documents; provided that Holdings, the Borrowers and their Restricted Subsidiaries may self-insure to the extent consistent with prudent business practice. The Borrowers will furnish to the Lenders, upon written request of either Agent, information in reasonable detail as to the insurance so maintained and, on or prior to the ~~Effective~~ Eighth Amendment Date, certificates of insurance summarizing the insurance policies of the Loan Parties. Each such policy of insurance shall (i) in the case of each liability policy, name Collateral Agent on behalf of the Secured Parties as an additional insured thereunder as its interests may appear and (ii) in the case of each casualty insurance policy contain a loss payable clause or endorsement that names Collateral Agent, on behalf of the Secured Parties, as the loss payee thereunder and, to the extent available, provide for at least thirty (30) days' prior written notice to Administrative Agent of any cancellation of such policy (or ten (10) days' prior written notice in the case of cancellation for the failure to pay any premiums thereunder) provided that to the extent that the requirements of this sentence are not satisfied on the ~~Effective~~ Eighth Amendment Date, the Loan Parties may satisfy such requirements within ninety (90) days ~~of~~ following the

**Effective Eighth Amendment** Date (or such later date as the Administrative Agent may agree in its sole discretion). The Borrower Representative will furnish to the Administrative Agent and the Lenders prompt written notice of any casualty or other insured damage to any material portion of the Collateral or the commencement of any action or proceeding for the taking of any material portion of the Collateral or interest therein under power of eminent domain or by condemnation or similar proceeding.

SECTION 5.10. Casualty and Condemnation. The Borrowers will (a) furnish to the Agents and the Lenders prompt written notice of any casualty or other insured damage to any material portion of the Collateral or the commencement of any action or proceeding for the taking of any material portion of the Collateral or interest therein under power of eminent domain or by condemnation or similar proceeding and (b) ensure that the Net Proceeds of any such event (whether in the form of insurance proceeds, condemnation awards or otherwise) are collected and applied in accordance with the applicable provisions of this Agreement and the Collateral Documents.

SECTION 5.11. ~~Intentionally Omitted~~ Designation of Subsidiaries. (a) The Borrower Representative may at any time and from time to time after the Eighth Amendment Date designate any Restricted Subsidiary of the Borrowers as an Unrestricted Subsidiary and re-designate any Unrestricted Subsidiary as a Restricted Subsidiary; provided that (i) immediately before and immediately after giving effect to any such designation or re-designation, no Default or Event of Default shall have occurred and be continuing or would result therefrom (including after giving effect to the reclassification of investments in, Indebtedness of and Liens on the assets of, the applicable Restricted Subsidiary or Unrestricted Subsidiary), (ii) no Subsidiary may be designated as an Unrestricted Subsidiary or continue as an Unrestricted Subsidiary if it is a “ Restricted Subsidiary” for the purpose of (x) any Subordinated Indebtedness, Incremental Equivalent Debt, Permitted Ratio Debt or Indebtedness incurred under Section 6.01(n), each, in an aggregate principal amount exceeding \$10,000,000, or (y) the ABL Facility, (iii) as of the date of the designation thereof, no Unrestricted Subsidiary owns any Equity Interests in any Restricted Subsidiary of any Borrower or holds any Indebtedness of or any Lien on any property of any Borrower or any Restricted Subsidiary (unless such Borrower or such Restricted Subsidiary is permitted to incur such Indebtedness or grant such Lien in favor of such Unrestricted Subsidiary pursuant to Sections 6.01 and 6.02 and the relevant transaction with such Person is permitted pursuant to Section 6.09) and (iv) no Unrestricted Subsidiary may own (or be licensee of) any material intellectual property or other material assets, or own the Equity Interests of any Subsidiary that owns (or is the licensee of) material intellectual property or other material assets, at any time. The designation of any Subsidiary as an Unrestricted Subsidiary on any date after the Eighth Amendment Date shall constitute an investment by the Borrowers therein on the date of designation in an amount equal to the fair market value of the aggregate investment therein of the Borrowers and their Restricted Subsidiaries (as applicable) on such date. The re-designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute (i) the incurrence at the time of re-designation of any investment, Indebtedness or Liens of such Subsidiary existing at such time and (ii) a return on any investment by the Borrowers in Unrestricted Subsidiaries pursuant to the preceding sentence in an amount equal to the lesser of (x) the fair market value at the date of such re-designation of the Borrowers or their Restricted Subsidiaries’ (as applicable) Investment in such Subsidiary and (y) the amount of the investment originally made in respect of the designation of such Subsidiary as an Unrestricted Subsidiary.

SECTION 5.12. ~~Intentionally Omitted~~

SECTION 5.13. Additional Collateral; Further Assurances. (a) Each ~~Borrower and each Subsidiary that is a~~ Loan Party will cause each of its Domestic Subsidiaries (other than any Immaterial Subsidiary) that is not a FSHCO formed or acquired after the **Effective Eighth**





**Amendment** Date and any Excluded Subsidiary at such time as it no longer constitutes an Excluded Subsidiary to become a Loan Party by executing **and delivering** a Joinder Agreement within ~~thirtysixty (3060)~~ days (or such later date as may from time to time be approved by the Administrative Agent in its sole discretion, but in no event later than the date such Domestic Subsidiary becomes an obligor or guarantor in respect of the ABL Facility) of such formation, acquisition or disqualification as an Excluded Subsidiary (to the extent such Domestic Subsidiary remains in existence as of such ~~thirtieth60th~~ day), such Joinder Agreement to be accompanied by appropriate corporate resolutions, other corporate organizational and authorization documentation and legal opinions in form and substance reasonably satisfactory to the Agents; **provided, that notwithstanding the foregoing, the requirements and timeframes specified in this Section 5.13 shall not apply to Restricted Subsidiaries formed after the Eighth Amendment Date in anticipation of a Permitted Acquisition until such Permitted Acquisition is actually consummated so long as such Restricted Subsidiary (x) is not required to be joined as an obligor to the ABL Facility and (y) at no time holds any assets or liabilities other than any merger or acquisition consideration contributed to it contemporaneously with the closing of such Permitted Acquisition.** Upon execution and delivery thereof, each such Person (i) shall automatically become a Loan Guarantor hereunder and thereupon shall have all of the rights, benefits, duties, and obligations in such capacity under the Loan Documents and (ii) will grant Liens to the Collateral Agent, for the benefit of the Collateral Agent and the other Secured Parties, in any property of such Loan Party which constitutes Collateral, including any real property owned by any Loan Party (other than Excluded Assets). Nothing in this Section 5.13 shall be construed as a consent to form or acquire any Subsidiary after the **EffectiveEighth Amendment** Date that is not otherwise expressly permitted herein. Notwithstanding anything herein to the contrary, no Foreign Subsidiary of any Loan Party and no FSHCO shall be required to become a Loan Party.

(b) Without limiting the generality of the foregoing, each Borrower and each **Subsidiary that is ~~another~~** Loan Party will (i) cause 100% of the issued and outstanding non-voting Equity Interests and the Applicable Pledge Percentage of the issued and outstanding **voting** Equity Interests of each Pledge Subsidiary to be subject at all times to a first priority, perfected Lien in favor of the Collateral Agent for the benefit of the Secured Parties, to secure the Secured Obligations in accordance with the terms and conditions of the Collateral Documents or such other security documents as the Collateral Agent shall reasonably request and (ii) deliver Mortgages and Mortgage Instruments with respect to real property owned by such Loan Party with a fair market value in excess of ~~\$5,000,000~~**10,000,000** (other than with respect to Excluded Assets) to the extent reasonably required by the Collateral Agent, (x) with respect to such real property owned on the **EffectiveEighth Amendment** Date, within ninety (90) days after the **EffectiveEight Amendment** Date and (y) with respect to such real property acquired after the **EffectiveEighth Amendment** Date, within ninety (90) days after the date such real property is acquired by a Loan Party.

(c) Without limiting the foregoing, each Loan Party will, and will cause each **Restricted** Subsidiary to, execute and deliver, or cause to be executed and delivered, to the Collateral Agent such documents, agreements and instruments, and will take or cause to be taken such further actions (including the filing and recording of financing statements, fixture filings, mortgages, deeds of trust and other documents and such other actions or deliveries which may be required by any Requirement of Law or which the Collateral Agent may, from time to time, reasonably request ~~to carry out the terms and conditions of this Agreement and the other Loan Documents and~~) to ensure perfection and priority of the Liens created or intended to be created by the Collateral Documents, all in form reasonably satisfactory to the Administrative Agent and at the expense of the Loan Parties.

(d) If any material assets are acquired by any Loan Party after the **EffectiveEighth Amendment** Date (other than Excluded Assets or assets constituting Collateral under the Security Agreement that become subject to the Lien under the Security Agreement upon the acquisition thereof),

the Borrower Representative will take, and cause each Subsidiary that is a Loan Party to take within sixty (60) days (or such later date as may from time to time be approved by the Administrative Agent in its reasonable discretion but in no event later than the date such assets constitute Collateral securing the ABL Facility), such actions as shall be necessary or reasonably requested by the Collateral Agent to grant and perfect such Liens, including actions described in paragraph (c) of this Section, all at the expense of the Loan Parties.

(e) If, at any time after the Effective Eighth Amendment Date, any Restricted Subsidiary of Holdings that is not a Loan Party shall become party to a guaranty of, or grant a Lien on any assets (other than Excluded Assets) to secure, ~~(x)~~ the ABL Obligations, or (y) any Subordinated Indebtedness ~~or any other Material, Incremental Equivalent Debt, Permitted Ratio Debt or~~ Indebtedness ~~of Holdings or a Domestic Subsidiary~~ incurred under Section 6.01(n), each, in an aggregate principal amount exceeding \$25,000,000, the Borrower Representative shall promptly notify the Administrative Agent thereof and, within ten (10) days thereof (or such later date as may be agreed upon by the Collateral Agent) cause such Restricted Subsidiary to comply with Section 5.13(a) and (b). ~~(but without giving effect to the 30-day grace period provided in Section 5.13(a) and provided, that the grace period in Section 5.13(b)(ii) shall apply).~~

(f) Notwithstanding anything to the contrary in this Agreement or any other Loan Document, the Collateral Agent may grant extensions of time for, or waive the requirements to obtain, the creation or perfection of security interests in, or the obtaining of title insurance and surveys with respect to, particular assets (including extensions beyond the Effective Eighth Amendment Date for the perfection of security interests in the assets of the Loan Parties on such date) where it reasonably determines, in consultation with the Borrowers, that the cost, burden or consequence (including adverse Tax consequences) thereof is excessive in relation to the practical benefit afforded to the Lenders thereby.

SECTION 5.14. Compliance with Certain Laws. Each Loan Party shall, and each Loan Party shall cause each of its Restricted Subsidiaries to, comply with the laws, regulations and executive orders referred to in Section 3.24 and 3.25.

#### ARTICLE VI NEGATIVE COVENANTS

Until the ~~DDFL Commitments have expired or been terminated and the~~ principal of and interest on each Loan and all fees, expenses and other amounts payable under any Loan Document have been paid in full (other than contingent indemnification obligations for which no claim has been made), in any case, in a manner acceptable to Administrative Agent in its ~~sole~~ commercially reasonable discretion, each Loan Party executing and delivering this Agreement covenants and agrees, jointly and severally with all of the other Loan Parties, with the Lenders that:

SECTION 6.01. Indebtedness. No Loan Party will, nor will it permit any Restricted Subsidiary to, create, incur, assume or suffer to exist any Indebtedness, except:

(a) the Secured Obligations;

(b) Indebtedness existing on the Effective Eighth Amendment Date and set forth in Schedule 6.01 and extensions, renewals and replacements of any such Indebtedness in accordance with clause (f) hereof;

(c) Indebtedness of any Loan Party owing to any Restricted Subsidiary and of any Restricted Subsidiary owing to any Loan Party; provided that, (i) if such Indebtedness is owing by any Restricted Subsidiary to any Loan Party and the principal amount of such Indebtedness exceeds \$5,000,000, such Indebtedness shall be evidenced by promissory notes or other instruments and such promissory notes or other instruments shall be pledged to the Collateral Agent, for the benefit of the Secured Parties, and have subordination terms satisfactory to the Collateral Agent and (ii) Indebtedness owing by any Restricted Subsidiary that is not a Loan Party to any Loan Party shall be subject to the limitations set forth in Section 6.04(d);

(d) Guarantees by any Loan Party (other than Holdings) of Indebtedness of any other Loan Party (other than Holdings); provided that (i) the Indebtedness so Guaranteed is permitted by this Section 6.01, and (ii) Guarantees permitted under this clause (d) shall be subordinated to the Secured Obligations on the same terms as, and to the extent that, the Indebtedness so Guaranteed is subordinated to the Secured Obligations;

(e) Indebtedness of any Borrower or any Restricted Subsidiary incurred to finance the acquisition, construction or improvement of any fixed or capital assets (whether or not constituting purchase money Indebtedness), including Capital Lease Obligations and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, and extensions, renewals and replacements of any such Indebtedness in accordance with clause (f) hereof; ~~provided that (i) such Indebtedness is incurred prior to or within ninety (90) days after such acquisition or the completion of such construction or improvement and (ii) the aggregate principal amount of Indebtedness permitted by this clause (e) shall not exceed \$10,000,000 at any time outstanding;~~

(f) Indebtedness which represents an extension, refinancing or renewal (such Indebtedness being referred to herein as the "Refinancing Indebtedness") of any of the Indebtedness described in clauses (b), (e) and (j), (n) and (o) hereof (such Indebtedness being so extended, refinanced or renewed being referred to herein as the "Refinanced Indebtedness"); provided that (i) such Refinancing Indebtedness does not increase the principal amount or interest rate of the Refinanced Indebtedness, (ii) any Liens securing such Refinanced Indebtedness are not extended to any additional property of any Loan Party, (iii) no Loan Party that is not obligated with respect to repayment of such Refinanced Indebtedness is required to become obligated with respect to such Refinancing Indebtedness, (iv) such Refinancing Indebtedness does not result in a shortening of the average weighted maturity of such Refinanced Indebtedness, (v) the maturity date of such Refinancing Indebtedness is no earlier than the maturity date of such Refinanced Indebtedness, (vi) the terms of such Refinancing Indebtedness are not less favorable to the obligor thereunder than the original terms of such Refinanced Indebtedness and (vii) if such Refinanced Indebtedness was subordinated in right of payment to the Secured Obligations, then the terms and conditions of such Refinancing Indebtedness must include subordination terms and conditions that are at least as favorable to the Administrative Agent and the Lenders as those that were applicable to such Refinanced Indebtedness;

(g) Indebtedness (i) owed to any Person providing workers' compensation, health, disability or other employee benefits or property, casualty or liability insurance, pursuant to reimbursement or indemnification obligations to such Person, and (ii) consisting of the financing of insurance premiums, in each case incurred in the ordinary course of business;

(h) Indebtedness of any Borrower or any Restricted Subsidiary in respect of performance bonds, bid bonds, statutory bonds, appeal bonds, surety bonds and similar obligations, in each case provided in the ordinary course of business;

(i) Indebtedness of any Borrower or any Restricted Subsidiary in respect of netting services, overdraft protections and otherwise in connection with deposit accounts, so long as such Indebtedness is incurred in the ordinary course of business ~~and is not outstanding for more than three (3) Business Days;~~

(j) ~~(i)~~ unsecured Subordinated Indebtedness under any Permitted Convertible Seller Notes in an aggregate principal amount not to exceed ~~\$36,750,000 at any time outstanding and (ii)~~ **other unsecured or Subordinated Indebtedness of the Borrowers or Holdings in an aggregate principal amount not exceeding (A) \$80,000,000 at any time outstanding plus (B) an unlimited amount so long as (x) the Total Leverage Ratio would not exceed 4.90: 1.00 calculated on a pro forma basis (including the application of the proceeds of any such Indebtedness) as of the last day of the most recent Fiscal Quarter for which financial statements shall have been delivered pursuant to Section 5.01(a) or 5.01(b) (or , prior to the delivery of any such financial statements, as of the last Fiscal Quarter included in the financial statements referred to in Section 3.04(a)) and (y) the Borrower Representative shall have delivered to the Administrative Agent a certificate of a Financial Officer of Holdings, setting forth reasonably detailed calculations demonstrating the satisfaction of the condition appearing in clause (x) above; provided that such Indebtedness shall satisfy each of the following requirements: (1) such Indebtedness matures after , and does not require any scheduled amortization or other scheduled payments of principal prior to, (A) with respect to such Indebtedness incurred prior to the Sixth Amendment Date, the date that is 91 days after June 22, 2022, (B) with respect to any 1.875% Convertible Notes, November 30, 2024 and (C) with respect to such Indebtedness incurred on or after the Sixth Amendment Date (other than any 1.875% Convertible Notes), the date that is 91 days after the Latest Maturity Date (it being understood that, in each case, neither (x) any provision requiring an offer to purchase such Indebtedness as a result of change of control or asset sale or other fundamental change nor (y) any early conversion of any Permitted Convertible Notes in accordance with the terms thereof shall violate the foregoing restriction), (2) such Indebtedness is not guaranteed by any Subsidiary of Holdings other than the Loan Guarantors (which guarantees, if such Indebtedness is subordinated, shall be expressly subordinated to the Secured Obligations on terms not less favorable to the Lenders than the subordination terms of such Subordinated Indebtedness), (3) to the extent any such Indebtedness constitutes Subordinated Indebtedness, such Indebtedness shall be subject to the terms of a customary subordination agreement (and if such Indebtedness is secured, an intercreditor agreement) in form and substance reasonably acceptable to the Administrative Agent, and (4) to the extent any such Subordinated Indebtedness is secured by the Collateral, the Liens securing such Subordinated Indebtedness shall rank junior to the Liens securing the Secured Obligations; provided further that, for the avoidance of doubt, the amount available to the Borrowers or Holdings pursuant to clause (A) above shall be available at all times and shall not be subject to the ratio test described in clause (B) above and the Borrowers or Holdings may incur such Indebtedness under either clause (A) or (B) above in such order as they may elect in their sole discretion; the amount outstanding thereunder on the Eighth Amendment Date;**

(k) the Dairyland HP Indebtedness;

(l) Indebtedness consisting of ABL Obligations to the extent such Indebtedness is in compliance with the Intercreditor Agreement; provided that in no event shall any obligor with respect to such Indebtedness not be a Loan Party hereunder;

(m) Subordinated Indebtedness under Permitted Convertible Notes ~~(other than Permitted Convertible Seller Notes)~~ in an aggregate principal amount not exceeding ~~\$150,000,000~~ 200,000,000 at any time outstanding;

(n) Indebtedness incurred to finance Permitted Acquisitions after the **Effective Eighth Amendment** Date in an aggregate principal amount not exceeding at any time outstanding the aggregate principal amount set forth under clause (a) of the Incremental Cap (less the aggregate principal amount of any Incremental Term Loans or Incremental Equivalent Debt incurred in reliance on clause (a) of the Incremental Cap); provided that (i) no Event of Default exists (or would result therefrom), (ii) if such Indebtedness is borrowed or issued by any Loan Party, it shall not be guaranteed by any Person that is not a Loan Party or secured by any assets other than the Collateral, (iii) such Indebtedness shall not have a shorter Average Life than the remaining Average Life of the then-existing Loans or a maturity date earlier than ~~(A) with respect to such Indebtedness incurred prior to the Sixth Amendment Date, June 22, 2022 and (B) with respect to such Indebtedness incurred on or after the Sixth Amendment Date,~~ the Latest Maturity Date, (iv) such Indebtedness shall rank *pari passu* in right of payment with the Secured Obligations, (v) in the case of such Indebtedness of the Loan Parties that is secured on a *pari passu* basis with or junior basis to the Secured Obligations, (x) such Indebtedness shall be subject to an intercreditor agreement reasonably acceptable to the Administrative Agent and (y) in the case of such Indebtedness that is in the form of loans that are secured on a *pari passu* basis with the Secured Obligations and is incurred on or prior to the date that is the two-year anniversary of the Eighth Amendment Date, the All-in-Yield for such loans shall be subject to the “most favored nation” requirements set forth in Section 2.22(bc)(iii), as applicable; provided, further, that in the case of any such Indebtedness of the Loan Parties that is secured on a junior basis to the Secured Obligations, (i) such Indebtedness shall not have a shorter Average Life than the remaining Average Life of the Loans or a maturity date prior to, ~~(A) with respect to such Indebtedness incurred prior to the Sixth Amendment Date, the date that is 91 days after June 22, 2022 and (B) with respect to such Indebtedness incurred on or after the Sixth Amendment Date,~~ the date that is 91 days after the Latest Maturity Date and (ii) such Indebtedness shall not be guaranteed by any Person that is not a Loan Party and shall not be secured by any assets other than the Collateral unless, in each case, such Indebtedness was incurred in order to finance the acquisition of (x) a target that becomes a Subsidiary but not a Loan Party hereunder (in which case such target may guarantee such Indebtedness but not the Secured Obligations) or (y) assets that are “Excluded Assets” (in which case such assets may secure such Indebtedness but not the Secured Obligations); provided, further, that if such Indebtedness is unsecured, such Indebtedness shall not mature or require any scheduled amortization or scheduled payments of principal or be subject to any mandatory redemption, repurchase, repayment or sinking fund obligation (other than ~~(x)~~ payments as part of an “applicable high yield discount obligation” ~~catch up~~ catch-up payment, ~~(y)~~ customary offers to repurchase in connection with any change of control, asset disposition or casualty event and ~~(z)~~ customary acceleration rights after an event of default), in each case, prior to, ~~(A) with respect to such Indebtedness incurred prior to the Sixth Amendment Date, the date that is 91 days after June 22, 2022 and (B) with respect to such Indebtedness incurred on or after the Sixth Amendment Date,~~ the date that is 91 days after the Latest Maturity Date (for the avoidance of doubt, in the case of such Indebtedness that is unsecured, (x) scheduled payments of interest and (y) conversion into common Equity Interests shall be permitted);

(o) Indebtedness of any Person that becomes a Restricted Subsidiary, or is merged into or consolidated with a Restricted Subsidiary or Indebtedness assumed in connection with a Permitted Acquisition after the **Effective Eighth Amendment** Date, but only to the extent that (A) such Indebtedness existed at the time such Person became a Restricted Subsidiary or the assets subject to such Indebtedness were acquired, (B) such Indebtedness was not incurred in contemplation thereof and (C)(i) no Event of Default exists or would result from the consummation of such acquisition and (ii) (x)

(1) if such Indebtedness ranks *pari passu* in right of security on the Collateral with the Obligations (other than any Obligations in respect of Incremental Term Loans secured on a junior lien basis to other Obligations), the First Lien Leverage Ratio does not exceed 2.75: 1.00, (2) if such Indebtedness ranks junior in right of security on the Collateral to the Obligations, the Secured Leverage Ratio does not exceed 3.25: 1.00, and (3) if such Indebtedness is unsecured, the Total



Leverage Ratio ~~would~~does not exceed ~~4.90~~5.00:1.00, in each case in this clause (ii)(x), calculated on a pro forma basis (as if such acquisition and related incurrence of Indebtedness had occurred on the first day of the relevant period and being deemed to be amortized over the applicable testing period in accordance with its terms) as of the last day of the most recent ~~Fiscal Quarter for which financial statements shall have been delivered pursuant to Section 5.01(a) or 5.01(b) (or, prior to the delivery of any such financial statements, as of the last Fiscal Quarter included in the financial statements referred to in Section 3.04(a))~~ Test Period and (y) with respect to any Permitted Acquisition for which the Acquisition Consideration is at least \$25,000,000, the Borrower Representative shall have delivered to the Administrative Agent a certificate of a Financial Officer of Holdings, setting forth reasonably detailed calculations demonstrating the satisfaction of the ~~condition~~applicable leverage ratio appearing in clause (x) above;

(p) Guarantees entered into in the ordinary course of business of a Loan Party and not in respect of Indebtedness for borrowed money;

(q) Indebtedness representing deferred compensation to employees, directors or consultants incurred in the ordinary course of business;

(r) to the extent constituting Indebtedness, Indebtedness of any Loan Party or any Restricted Subsidiary in respect of any Swap Agreements permitted under Section 6.07; ~~and~~

(s) Permitted Ratio Debt of a Loan Party so long as (i) no Event of Default shall have occurred and be continuing at the time of the incurrence of such Indebtedness or would result therefrom, (ii) immediately after giving effect to the incurrence of such Permitted Ratio Debt, on a pro forma basis (including the application of the proceeds of any Permitted Ratio Debt) as of the last day of the most recent Test Period, (A) if such Permitted Ratio Debt ranks pari passu in right of security on the Collateral with the Obligations (other than any Obligations in respect of other Incremental Term Loans secured on a junior lien basis to the Obligations), the First Lien Leverage Ratio does not exceed 2.75: 1.00, (B) if such Permitted Ratio Debt ranks junior in right of security on the Collateral to the Obligations, the Secured Leverage Ratio does not exceed 3.25: 1.00, and (C) if such Permitted Ratio Debt is unsecured, the Total Leverage Ratio does not exceed 5.00: 1.00, in each case, calculated on a pro forma basis, and (iii) the Borrower Representative shall have delivered to the Administrative Agent a certificate of a Financial Officer of the Borrower Representative, setting forth reasonably detailed calculations demonstrating the satisfaction of any applicable First Lien Leverage Ratio, Secured Leverage Ratio or Total Leverage Ratio test applicable to such incurrence of the Permitted Ratio Debt;

(t) Indebtedness incurred by the Borrowers (which may be unsecured or secured on a junior lien basis or a pari passu basis with the Secured Obligations) (the "Incremental Equivalent Debt"); provided that (i) on the date of incurrence of such Indebtedness, no Event of Default shall have occurred and be continuing or would result therefrom, (i) such Incremental Equivalent Debt shall be subject to (and comply with) the provisions of Section 2.22(c); provided that the All-in-Yield for such Incremental Equivalent Debt shall be subject to the "most favored nation" requirements set forth in Section 2.22(c)(iii) only to the extent that such Incremental Equivalent Debt is incurred on or prior to the date that is the two-year anniversary of the Eighth Amendment Date, (ii) immediately after giving effect to the incurrence of such Incremental Equivalent Debt, the Incremental Cap is not exceeded, and (iii) the Borrower Representative shall have delivered to the Administrative Agent a certificate of a Financial Officer of the Borrower Representative, setting forth reasonably detailed calculations demonstrating the satisfaction of any



applicable First Lien Leverage Ratio, Secured Leverage Ratio, or Total Leverage Ratio test applicable to such to the incurrence of the Incremental Equivalent Debt;

(u) Indebtedness consisting of the financing of insurance premiums or take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(v) Indebtedness consisting of obligations of the Borrowers or any of their Restricted Subsidiaries under deferred compensation or other similar arrangements (including earn-outs, indemnifications, incentive non-competes and other contingent obligations and agreements consisting of the adjustment of purchase price or similar adjustments) incurred by such Person in connection with Permitted Acquisitions, permitted dispositions, or any investment expressly permitted hereunder ;

(w) Indebtedness incurred by the Borrowers or any of their Restricted Subsidiaries in respect of bank guarantees, warehouse receipts, bankers' acceptances or similar instruments (other than letters of credit) issued or created in the ordinary course of business;

(x) Indebtedness consisting of obligations of the Borrowers or any of their Restricted Subsidiaries arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds in the ordinary course of business;

(y) Indebtedness incurred by the Borrowers or any of their Restricted Subsidiaries in respect of commercial letters of credit issued or created in the ordinary course of business;

(z) Indebtedness in an amount not to exceed the greater of \$5,000,000 and 4% of EBITDA on a pro forma basis for the most recent Test Period consisting of unsecured promissory notes issued by any Loan Party to current or former officers, managers, consultants, directors and employees, their respective estates, heirs, family members, spouses or former spouses to finance the purchase or redemption of Equity Interests of any Loan Party;

(aa) Indebtedness incurred by Restricted Subsidiaries that are not Loan Parties in an aggregate principal amount not exceeding, at any time outstanding, the greater of \$30,000,000 and 25% of EBITDA on a pro forma basis for the most recent Test Period ; and

(bb) ~~(s)~~ other Indebtedness in an aggregate principal amount not exceeding ~~\$20,000,000~~, at any time outstanding, the greater of \$40,000,000 and 35% of EBITDA on a pro forma basis for the most recent Test Period.

For purposes of determining compliance with Section 6.01, in the event that an item of Indebtedness (or any portion thereof) at any time meets the criteria of more than one of the categories of permitted Indebtedness described in this Section 6.01, the Borrowers, in their sole discretion, may classify, and may from time to time subsequently reclassify, such item of Indebtedness (or any portion thereof) in any one or more of the types of Indebtedness described in this Section 6.01 (in the case of reclassification, so long as such Indebtedness is permitted at the time of reclassification to be incurred pursuant to the applicable provision). Notwithstanding the foregoing or anything to the contrary contained in this Agreement, Indebtedness incurred under the Loan Documents, any Incremental Commitments and any Incremental Term Loans shall only

be classified as incurred under Section 6.01(a).

SECTION 6.02. Liens. No Loan Party will, nor will it permit any Restricted Subsidiary to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, except:

(a) Liens created pursuant to any Loan Document;

(b) Permitted Encumbrances;

(c) any Lien on any property or asset of any Borrower or any Restricted Subsidiary existing on the Effective Eighth Amendment Date and set forth in Schedule 6.02 (including any extensions of any such Liens to the extent the Indebtedness is extended in accordance with Section 6.01); provided that (i) such Lien shall not apply to any other property or asset of such Borrower or Restricted Subsidiary and (ii) such Lien shall secure only those obligations which it secures on the Effective Eighth Amendment Date;

(d) Liens on fixed or capital assets acquired, constructed or improved by any Borrower or any Restricted Subsidiary; provided that (i) such security interests secure Indebtedness permitted by Section 6.01(e), (ii) ~~such security interests and the Indebtedness secured thereby are incurred prior to or within ninety (90) days after such acquisition or the completion of such construction or improvement,~~ (iii) the Indebtedness secured thereby does not exceed 100% of the cost of acquiring, constructing or improving such fixed or capital assets, and (iv) such security interests shall not apply to any other property or assets of such Borrower or Restricted Subsidiary or any other Borrower or Restricted Subsidiary;

(e) any Lien existing on any property or asset (~~other than Accounts and Inventory~~) prior to the acquisition thereof by any Borrower or any Restricted Subsidiary or existing on any property or asset (~~other than Accounts and Inventory~~) of any Person that becomes a Loan Party after the Effective Eighth Amendment Date prior to the time such Person becomes a Loan Party; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Loan Party, as the case may be, (ii) such Lien shall not apply to any other property or assets of the Loan Party and (iii) the obligation secured by such Lien is permitted by Section 6.01 and such Lien shall secure only those obligations which it secures on the date of such acquisition (including any extensions or modifications of any such obligations permitted by Section 6.01) or the date such Person becomes a Loan Party, as the case may be;

(f) Liens of a collecting bank arising in the ordinary course of business under Section 4-208 of the Uniform Commercial Code in effect in the relevant jurisdiction covering only the items being collected upon;

(g) Liens arising out of Sale and Leaseback Transactions permitted by Section 6.06;

(h) Liens granted by a Restricted Subsidiary that is not a Loan Party in favor of any Borrower or another Loan Party in respect of Indebtedness owed by such Restricted Subsidiary;

(i) precautionary UCC financing statements filed in connection with operating leases or consignments;

(j) non-exclusive licenses and sublicenses of intellectual property or leases or subleases of real property, in each case, granted to third parties in the ordinary course of business not

interfering with or adversely affecting the business of the Loan Parties or their **Restricted** Subsidiaries **taken as a whole**;

(k) Liens attaching solely to cash earnest money deposits in connection with any letter of intent or purchase agreement in connection with a Permitted Investment or Permitted Acquisition;

(l) Liens in favor of customs and revenue authorities which secure payments of customs duties in connection with the importation of goods;

(m) Liens (including the right of set-off) in favor of a bank or other depository institution arising as a matter of law encumbering deposits;

(n) Liens **incurred in the ordinary course of business** on property ~~with an aggregate value not exceeding \$5,000,000~~ that is subject to conditional sale, title retention, consignment or similar arrangements;

(o) Liens on the Dairyland HP Facility and any other assets of Dairyland HP that secure the Dairyland HP Indebtedness and related obligations under the New Markets Tax Credit Financing;

(p) the Liens created pursuant to the ABL Loan Documents securing the ABL Obligations, so long as such Liens are subject to the Intercreditor Agreement and that any grantor of such Liens is a Loan Party hereunder;

(q) Liens representing any interest of a sublessee arising by virtue of being granted a sublease permitted by Section 6.05(i);

(r) Liens securing Indebtedness permitted by Section 6.01(n) or any Indebtedness incurred in connection with a permitted refinancing thereof, in each case so long as such Liens do not have priority to the corresponding Liens that secure the Secured Obligations;

(s) Liens on the Collateral securing Permitted Ratio Debt incurred pursuant to Section 6.01(s); provided that such Liens shall be subject to an intercreditor agreement reasonably acceptable to the Administrative Agent;

(t) Liens on the Collateral securing Incremental Equivalent Debt incurred pursuant to Section 6.01(t); provided that such Liens shall be subject to an intercreditor agreement reasonably acceptable to the Administrative Agent;

(u) Liens for taxes, assessments or governmental charges that are not overdue for a period of more than 30 days and are not otherwise delinquent or that are being diligently contested in good faith and by appropriate actions, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(v) Liens on property of any Restricted Subsidiary that is not a Loan Party securing Indebtedness of such Restricted Subsidiary permitted under Section 6.01;

(w) Liens on specific items of inventory or other goods and proceeds thereof of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or such other goods;

(x) Liens (i) of a collection bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection, (ii) attaching to commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business, and (iii) in favor of a banking or other financial institution arising as a matter of law or under customary general terms and conditions encumbering deposits or other funds maintained with a financial institution (including the right of set-off) and that are within the general parameters customary in the banking industry;

(y) Liens that are customary contractual rights of set-off (i) relating to the establishment of depository relations with banks or other financial institutions and not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of Holdings or any of the Restricted Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of Holdings or any of the Restricted Subsidiaries or (iii) relating to purchase orders and other agreements entered into with customers of Holdings or any of the Restricted Subsidiaries in the ordinary course of business;

(z) Liens on cash and cash equivalents in an aggregate amount not to exceed the greater of \$15,000,000 and 12.5% of EBITDA on a pro forma basis for the most recent Test Period to secure obligations of the Loan Parties or any Restricted Subsidiaries in respect of ordinary course cash management arrangements and under Swap Agreements that do not constitute Obligations;

(aa) Liens on the Equity Interests of any joint venture securing the obligations of such joint venture, it being understood that such Liens shall include, for the avoidance of doubt, transfer restrictions, purchase options, call or similar rights of a third-party joint venture partner ;

(bb) ~~(s)~~ Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto; and

(cc) ~~(t)~~ other Liens securing obligations in an aggregate principal amount at any time outstanding not to exceed the greater of \$5,000,000; provided that in each case, if such Liens secure Indebtedness for borrowed money that is to be secured by the Collateral on a pari passu basis with, or junior basis to, the Liens that secure the Secured Obligations, the agent or other representative for the lenders or holders of any Indebtedness secured under this clause shall have become a party to the Intercreditor Agreement and/or another intercreditor agreement reasonably acceptable to the Administrative Agent. ~~10,000,000 and 7.5% of EBITDA on a pro forma basis for the most recent Test Period.~~

For purposes of determining compliance with this Section 6.02, in the event that any Lien (or any portion thereof) at any time meets the criteria of more than one of the categories of permitted Liens described herein, the Borrowers, in their sole discretion, may classify, and may from time to time subsequently reclassify, such Lien (or any portion thereof) among one or more of such categories or clauses in any manner (in the case of reclassification, so long as such Lien is permitted at the time of reclassification to be incurred pursuant to the applicable provision). Notwithstanding the foregoing or anything to the contrary contained in this Agreement, Liens incurred under the Loan Documents shall only be classified as incurred under Section 6.02(a).

SECTION 6.03. Fundamental Changes. (a) No Loan Party will, nor will it permit any Restricted Subsidiary to, merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or liquidate or dissolve, except that, if at the time thereof and immediately after giving effect thereto no Event of Default shall have occurred or be continuing, (i) any

Loan Party (other than Holdings) or any Restricted Subsidiary ~~thereof~~ may merge into or consolidate with a Loan Party (other than Holdings) (so long as in the case of a merger or consolidation involving a Loan Party, a Loan Party shall be the surviving entity of such merger or consolidation); (ii) any Loan Party (other than Holdings or any Borrower) or any Restricted Subsidiary ~~of the Borrowers~~ may liquidate or dissolve into a Loan Party; (iii) any Restricted Subsidiary ~~of a Loan Party~~ may merge into or consolidate with a Person that is not a Loan Party (so long as in the case of a merger or consolidation involving a Loan Party, a Loan Party shall be the surviving entity of such merger or consolidation); and (iv) any Restricted Subsidiary that is not a Loan Party may liquidate or dissolve if the Loan Party which owns such Restricted Subsidiary determines in good faith that such liquidation or dissolution is in the best interest of the Loan Party and is not materially disadvantageous to the Lenders; provided, that (x) any such merger or consolidation hereunder involving a Person that is not a wholly owned Restricted Subsidiary immediately prior to such merger or consolidation shall not be permitted unless also permitted by Section 6.04, (y) any such merger or consolidation hereunder involving a Borrower in respect of which such Borrower is not the surviving entity shall not be permitted unless (1) the surviving entity is another Borrower or (2) the surviving entity shall have (A) executed and delivered to the Administrative Agent its assumption of the due and punctual performance and observance of each covenant and condition of this Agreement and each other Loan Document to which any Borrower not surviving such transaction was a party and (B) caused to be delivered to the Administrative Agent an opinion of nationally recognized independent counsel, or other independent counsel reasonably satisfactory to the Administrative Agent, to the effect that all agreements or instruments effecting such assumption are enforceable in accordance with their terms and comply with the terms hereof, and (z) immediately after giving effect to any such merger, consolidation or other transaction hereunder, at least one (1) Borrower shall continue to remain in existence.

(b) No Loan Party will, nor will it permit any Restricted Subsidiary to, engage in any business other than businesses of the type conducted by the ~~Borrowers~~ Loan Parties and their Restricted Subsidiaries on the ~~Effective~~ Eighth Amendment Date and ~~businesses~~ those reasonably related, complementary or ancillary thereto ~~and/or a logical extensions~~ extension thereof (including, without limitation, food and beverage service, distribution, wholesale and retail).

(c) The Loan Parties will not change the method of determining the Fiscal Year of Holdings and its Restricted Subsidiaries, unless Borrower Representative shall have given the Administrative Agent at least ~~180~~ 90 days' prior notice thereof and the parties hereto shall have made appropriate changes to this Agreement (it being acknowledged and agreed that the date of the Fiscal Year end may change by up to ten (10) days from year to year).

(d) Holdings shall not engage in any business activities or own any property other than (i) ownership of the Equity Interests of the Borrowers, (ii) activities and contractual rights incidental to maintenance of its corporate or organizational existence and status as a public company, (iii) undertaking any activities, exercising any of its contractual rights and performing any of its contractual obligations in connection with the incurrence by Holdings of Indebtedness that is permitted under this Agreement, ~~and~~ (iv) activities relating to the performance of its obligations under the Loan Documents and ABL Loan Documents to which it is a party. and (v) entering into any agreements or arrangements with any Persons (including, without limitation, any agreements or arrangements with vendors, suppliers, group purchase organizations and/or other customers) for the purpose of facilitating group purchases for or on behalf of the Borrowers or any of their Subsidiaries and engaging in other administrative activities in connection thereto.

SECTION 6.04. Investments, Loans, Advances, Guarantees and Acquisitions. No Loan Party will form any subsidiary after the ~~Effective~~ Eighth Amendment Date, or purchase, hold or acquire (including pursuant to any merger with any Person that was not a Loan Party and a wholly owned

Subsidiary prior to such merger) any evidences of indebtedness or Equity Interest of, make or permit to exist any loans or advances to, Guarantee any obligations of, or make or permit to exist any investment or any other interest in, any other Person, or purchase or otherwise acquire (in one transaction or a series of transactions) any assets of any other Person constituting a business unit (whether through purchase of assets, merger or otherwise), or permit any **Restricted** Subsidiary to do any of the foregoing, except:

(a) Permitted Investments, subject, to the extent required by the Security Agreement, to control agreements in favor of the Administrative Agent or otherwise subject to a perfected security interest in favor of the Administrative Agent for the benefit of the Lenders and the other Secured Parties (subject to any grace periods in the Security Agreement for delivering such control agreements or otherwise perfecting such security interest);

(b) ~~investments in existence on the Effective Date and described in **Section 6.04**~~[reserved];

(c) investments by Holdings in the Borrowers and investments by the Borrowers and the **Restricted** Subsidiaries in Equity Interests in their respective Subsidiaries that are Loan Parties; provided that any such Equity Interests shall be pledged in accordance with the Security Agreement (subject to any grace periods therein for perfecting such security interest);

(d) loans or advances made by any Loan Party to any **Restricted** Subsidiary and made by any **Restricted** Subsidiary to any Loan Party; provided that, ~~not more than an aggregate~~ principal ~~amount of \$6,000,000~~ ~~in amounts of~~ loans and advances by Loan Parties to Restricted Subsidiaries which are not Loan Parties may not be made and remain outstanding, at any time, in an aggregate principal amount that exceeds an amount equal to (i) the greater of \$50,000,000 and 40% of EBITDA on a pro forma basis for the most recent Test Period minus (ii) the amount of all investments made by Loan Parties to Restricted Subsidiaries which are not Loan Parties in reliance on Section 6.04(f);

(e) Guarantees constituting Indebtedness permitted by Section 6.01;

(f) loans or advances ~~made by a Loan Party to its employees on an arms-length basis in the ordinary course of business consistent with past practices for travel and entertainment expenses, relocation costs and similar purposes~~ up to a maximum of \$2,500,000 in the aggregate at any one time outstanding made by a Loan Party to its officers, directors, consultants, and employees on an arms-length basis to finance such Person's purchase of equity interest in Holdings;

(g) subject to Sections 4.2(a) and 4.4 of the Security Agreement, notes payable, or stock or other securities issued by Account Debtors to a Loan Party pursuant to negotiated agreements with respect to settlement of such Account Debtor's Accounts in the ordinary course of business, consistent with past practices;

(h) investments in the form of Swap Agreements permitted by Section 6.07;

(i) investments of any Person existing at the time such Person becomes a **Restricted** Subsidiary of a Borrower or consolidates or merges with a Borrower or any of the **Restricted** Subsidiaries, in either case, in accordance with the terms hereof (including in connection with a Permitted Acquisition) so long as such investments were not made in contemplation of such Person becoming a **Restricted** Subsidiary or of such merger;

- (j) investments received in connection with the dispositions of assets permitted by Section 6.05;
- (k) investments constituting deposits described in clauses (c) and (d) of the definition of the term “Permitted Encumbrances”;
- (l) Permitted Acquisitions;
- (m) Indebtedness permitted pursuant to Section 6.01 or any Restricted Payment permitted pursuant to Section 6.08, in each case, to the extent such Indebtedness or Restricted Payment constitutes an investment;
- (n) any investments received in compromise or resolution of (x) obligations of trade creditors or customers incurred in the ordinary course of business of the Borrowers, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer or (y) litigation, arbitration or other disputes with persons who are not Affiliates; provided, that any such investments shall be pledged in accordance with the Security Agreement (subject to any grace periods therein for perfecting such security interest);
- (o) receivables owing to the Borrowers or any of their respective Restricted Subsidiaries created in the ordinary course of business and payable or in accordance with customary trade terms;
- (p) to the extent the same constitute investments, inventory of non-Loan Parties held by the Borrowers for sale subject to consignment or similar arrangements;
- (q) investments in wholly-owned Domestic Subsidiaries that become Loan Parties in accordance with Section 5.13;
- (r) other investments and other acquisitions; provided that at the time any such investment or other acquisition is made, the aggregate outstanding amount of all investments made in reliance on this clause (r) together with the aggregate amount of all consideration paid in connection with all other acquisitions made in reliance on this clause (r) (including the aggregate principal amount of all Indebtedness assumed in connection with any such other acquisition), shall not exceed the sum of (A) the greater of \$5,000,000, plus the Cumulative Retained Excess Cash Flow Amount that is in effect immediately prior to the time of making of such investment or acquisition (provided that the use of the Cumulative Retained Excess Cash Flow Amount to make investments and acquisitions under this clause (r) shall be subject to (i) 40,000,000 and 35% of EBITDA on a pro forma basis for the most recent Test Period, plus (B) so long as no Default or Event of Default has occurred and is continuing or would be caused by the making of such investment and (ii) (x) both prior to and after giving effect to or acquisition, the Available Amount that is in effect immediately prior to the time of making of such investment or acquisition plus (C) so long as no Default or Event of Default has occurred and is continuing or would be caused by the making of such investment or acquisition, an additional unlimited amount if, both immediately before and immediately after making such investment or acquisition, the Senior Secured Total Leverage Ratio shall not exceed 4.204.00:1.00 as of the last day of the most recent Fiscal Quarter for which financial statements shall have been delivered pursuant to Section 5.01(a) or 5.01(b) (or, prior to the delivery of any such financial statements, as of the last Fiscal Quarter included in the financial statements referred to in Section 3.04(a)) and (y) on a pro forma basis, so long as the Borrower Representative shall have delivered to the Administrative Agent a certificate of a Financial Officer of Holdings, setting forth reasonably detailed

calculations demonstrating the satisfaction of ~~the condition appearing in clause (x) above~~ any Total Leverage Ratio test applicable to such investment or acquisition;

(s) (i) any investment in fixed income or other assets by any Restricted Subsidiary (other than any Immaterial Subsidiary) that is a so-called “captive” insurance company (each, an “Insurance Subsidiary”) in connection with its provision of insurance to Holdings, the Borrowers or any of their Restricted Subsidiaries, which investment is made in the ordinary course of business or consistent with industry practice of such Insurance Subsidiary or by reason of applicable law, rule, regulation or order, or that is required or approved by any regulatory authority having jurisdiction over such Insurance Subsidiary or its business, as applicable (including, without limitation, any such investments held by a trust established by such Insurance Subsidiary as grantor pursuant to applicable insurance regulations), (ii) to the extent the same constitutes investments, insurance arrangements provided by any Insurance Subsidiary (including any trust established by any such Insurance Subsidiary as grantor pursuant to applicable insurance regulations) to Holdings or any of its Subsidiaries and (iii) investments by any Insurance Subsidiary in any trust established by such Insurance Subsidiary as grantor pursuant to applicable insurance regulations; **and**

(t) (i) investments in Insurance Subsidiaries in an aggregate amount not to exceed the greater of \$~~11,750,000~~15,000,000 and 12.5% of EBITDA on a pro forma basis for the most recent Test Period (as valued at cost at the time each such investment is made) and (ii) additional investments in Insurance Subsidiaries to the extent (x) reasonably necessary (as determined in good faith by the Borrower Representative) in connection with the Insurance Subsidiaries’ providing self-insurance to the Borrowers and their Subsidiaries or (y) required by Requirements of Law in connection with the provision of such insurance; provided that the aggregate amount of any investments described in clause (ii) of this Section 6.04(t) that shall have been made in any applicable fiscal period shall be disclosed in the Financials Certificate delivered pursuant to Section 5.01(c) in respect of such fiscal period.;

(u) investments in Unrestricted Subsidiaries and joint ventures in an aggregate amount not to exceed the greater of \$25,000,000 and 20% of EBITDA on a pro forma basis for the most recent Test Period at any time outstanding;

(v) investments consisting of extensions of trade credit in the ordinary course of business and investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors in the ordinary course of business;

(w) to the extent constituting investments, transactions expressly permitted under Section 6.03 and Section 6.08(b);

(x) investments (i) existing on, or contemplated by a legally binding written commitment existing on, the Eighth Amendment Date and set forth on Schedule 6.04 and any modification, replacement, renewal, refinancing, reinvestment or extension thereof; provided that the amount of any such investment may not be increased except as otherwise permitted by this Section 6.04 (and in such case made in reliance on another paragraph of this Section 6.04 so permitting such modification, replacement, renewal or extension thereof);

(y) investments in the form of promissory notes and other non-cash consideration received in connection with the dispositions of assets permitted by Section 6.05;

(z) investments (including debt obligations and Equity Interests) received in connection with the bankruptcy or reorganization of suppliers and customers or in settlement of delinquent obligations of, or other disputes with, customers and suppliers arising in the ordinary



course of business or upon the foreclosure with respect to any secured investment or other transfer of title with respect to any secured investment;

(aa) investments to the extent that payment for such investments is made solely with Equity Interests of Holdings;

(bb) advances of payroll payments to employees or other advances of salaries or compensation to employees in the ordinary course of business;

(cc) investments consisting of the licensing or contribution of intellectual property (other than exclusive licenses and exclusive sublicenses of material intellectual property) pursuant to joint marketing, collaborations or other similar arrangements with other Persons, in each case in the ordinary course of business;

(dd) to the extent the same constitute investments, purchases and acquisitions of inventory, supplies, materials or equipment or purchases, acquisitions, licenses for Holdings and the Restricted Subsidiaries to use (or other grants to or rights of Holdings and the Restricted Subsidiaries to use or exploit) or leases for Holdings and the Restricted Subsidiaries to use other assets, intellectual property or other rights, in each case in the ordinary course of business;

(ee) investments made by any Restricted Subsidiary that is not a Loan Party in any other Restricted Subsidiary that is not a Loan Party; and

(ff) investments made by Loan Parties in Restricted Subsidiaries that are not Loan Parties in an aggregate amount not to exceed an amount equal to (i) the greater of \$50,000,000 and 40% of EBITDA on a pro forma basis for the most recent Test Period *minus* (ii) the amount of all investments made by Loan Parties in Restricted Subsidiaries that are not Loan Parties in reliance of Section 6.04(d).

For purposes of determining compliance with Section 6.04, in the event that any investment (or any portion thereof) at any time meets the criteria of more than one of the categories of permitted investments described in this Section 6.04, the Borrowers, in their sole discretion, may classify, and may from time to time subsequently reclassify, such investment (or any portion thereof) in any one or more of the types of investment described in this Section 6.04 (in the case of reclassification, so long as such investment is permitted at the time of reclassification to be incurred pursuant to the applicable provision).

SECTION 6.05. Asset Sales. No Loan Party will, nor will it permit any **Restricted** Subsidiary to, sell, transfer, lease or otherwise dispose of any asset, including any Equity Interest owned by it or income or revenues (including accounts receivable) or rights in respect of any thereof, nor will any Borrower or any **Restricted** Subsidiary issue any additional Equity Interest (other than to another Borrower or another **Restricted** Subsidiary in compliance with Section 6.04), except:

(a) sales, transfers and dispositions of (i) inventory in the ordinary course of business (including inventory held for sale pursuant to Section 6.04(p)), (ii) used, obsolete, worn out or surplus equipment or property in the ordinary course of business, (iii) securities of trade creditors or customers received pursuant to any dispute settlement, plan of reorganization or similar arrangement following the bankruptcy or insolvency of such trade creditor or customer and (iv) intellectual property that is no longer material to the conduct of the business of the Loan Parties;

Party;  
(b)

sales, transfers and dispositions of assets to any  
Borrower or any other Loan

(c) sales, transfers and dispositions of accounts receivable  
in connection with the

compromise, settlement or collection thereof;

(d) sales, transfers and dispositions of Permitted Investments and other investments permitted by clauses (i) and (k) of Section 6.04;

(e) Sale and Leaseback Transactions in the amounts permitted by Section 6.06;

(f) dispositions resulting from any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of any Borrower or any Subsidiary;

(g) licenses and sublicenses of intellectual property granted in the ordinary course of business;

(h) sales, transfers and other dispositions of assets (other than Equity Interests in a Restricted Subsidiary unless all Equity Interests in such Restricted Subsidiary are sold) that are not permitted by any other paragraph of this Section; ~~and~~ in an aggregate amount not to exceed the greater of \$15,000,000 and 10% of EBITDA on a pro forma basis for the most recent Test Period;

(i) subleases entered into in the ordinary course of business, to the extent that they do not materially interfere with the business of Holdings and its Subsidiaries taken as a whole;

(j) dispositions of property not otherwise permitted under this Section 6.05; provided that (i) at the time of such disposition, no Default or Event of Default shall exist or would result from such disposition, (ii) the proceeds of such disposition will be subject to Section 2.11(c) and (iii) with respect to any disposition, the Loan Parties and their Restricted Subsidiaries shall receive not less than 75% of the consideration therefor in the form of cash; provided, however, that solely for the purposes of this Section 6.05(j), the following shall be deemed to be "cash": (A) the assumption, cancellation, extinguishment or termination of Indebtedness or other liabilities (as reflected on the Restricted Group's most recent consolidated balance sheet or in the footnotes thereto, or if incurred or accrued subsequent to the date of such balance sheet, such liabilities that would have been reflected on the Restricted Group's consolidated balance sheet or in the footnotes thereto if such incurrence or accrual had taken place on or prior to the date of such balance sheet, as determined in good faith by the Borrower Representative) contingent or otherwise, in each case of the Restricted Group and, in the case of any such assumption of Indebtedness, the release of the Restricted Group from all liability on such Indebtedness or other liability in connection with such disposition, (B) securities, notes or other obligations received by the Restricted Group from the transferee that are converted by the Restricted Group into cash or cash equivalents within 180 days following the closing of such disposition, (C) Indebtedness of any Restricted Subsidiary that is no longer a Restricted Subsidiary as a result of such disposition, to the extent that the Restricted Group is released from any Guarantee of payment of such Indebtedness in connection with such disposition, and (D) any Designated Non-Cash Consideration received by the Restricted Group in such disposition or dispositions having an aggregate fair market value (with the fair market value of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value), taken together with all other Designated Non-Cash Consideration received pursuant to this clause (D) that is at that time outstanding, not to

exceed the greater of \$15,000,000 and 12.5% of EBITDA on a pro forma basis for the most recent Test Period;

(k) dispositions by the Borrowers and their Restricted Subsidiaries of property acquired after the Eighth Amendment Date pursuant to a Permitted Acquisition, (i) so long as such property is identified by the Borrowers in reasonable detail in writing to the Administrative Agent within 180 days following the closing of such Permitted Acquisition and (ii) the fair market value of the assets to be so disposed of following the consummation of any Permitted Acquisition does not exceed the greater of \$10,000,000 and 7.5% of EBITDA on a pro forma basis for the most recent Test Period in the aggregate;

(l) dispositions of investments (including Equity Interests) in joint ventures to the extent required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

(m) the unwinding of any Swap Agreement in accordance with its terms;

(n) dispositions of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such disposition are promptly applied to the purchase price of such replacement property; and

(o) dispositions of investment securities and cash equivalents in the ordinary course of business;

provided that all sales, transfers, leases and other dispositions permitted hereby (other than those permitted by paragraphs (b) and (f) above and abandonment of intellectual property no longer material to the business of the Loan Parties) shall be made for fair value ~~and for all cash consideration.~~

SECTION 6.06. Sale and Leaseback Transactions. No Loan Party will, nor will it permit any Restricted Subsidiary to, enter into any arrangement, directly or indirectly, whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property sold or transferred (a "Sale and Leaseback Transaction"), ~~except for any such sale of any fixed or capital assets by the Borrowers or any Subsidiary that is approved by the Required Lenders, made for cash consideration in an amount not less than the fair value of such fixed or capital asset and consummated within ninety (90) days after the Borrowers or such Subsidiary acquire or complete the construction of such fixed or capital asset.~~ unless (i) after giving effect to such Sale and Leaseback Transaction, the aggregate fair value of all assets disposed of pursuant to Sale and Leaseback Transactions permitted hereunder does not exceed the greater of \$30,000,000 and 22.5% of EBITDA on a pro forma basis for the most recent Test Period, (ii) the disposition of assets in connection with such Sale and Leaseback Transaction is otherwise permitted by Section 6.05 and the proceeds thereof will be subject to Section 2.11(c), (iii) the incurrence of indebtedness in connection with such Sale and Leaseback Transaction is otherwise permitted by Section 6.01, and (iv) after giving pro forma effect to such Sale and Leaseback Transaction, the Total Leverage Ratio shall not exceed 4.00: 1.00.

SECTION 6.07. Swap Agreements. No Loan Party will, nor will it permit any Restricted Subsidiary to, enter into any Swap Agreement, except (a) Swap Agreements entered into to hedge or mitigate risks to which any Borrower or any Restricted Subsidiary has actual exposure (other than those in respect of Equity Interests of any Borrower or any of its Restricted Subsidiaries), (b) Swap Agreements entered into in order to effectively cap, collar or exchange interest rates (from floating to

fixed rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of any Borrower or any **Restricted** Subsidiary and (c) Permitted Call Spread Swap Agreements.

SECTION 6.08. Restricted Payments; Certain Payments of Indebtedness. (a) No Loan Party will, nor will it permit any **Restricted** Subsidiary to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except, ~~(x) any Loan Party may make a Permitted Holdings Dividend and~~

(i) [reserved],

(ii) ~~(y)~~ so long as no Event of Default shall have occurred and be continuing or would result therefrom (including after giving effect thereto on a pro forma basis),

(A) ~~(i)~~ each of Holdings and the Borrowers may declare and pay dividends with respect to its common stock payable solely in additional shares of its common stock, and, with respect to its preferred stock, payable solely in additional shares of such preferred stock or in shares of its common stock, ~~(ii) Subsidiaries may declare and pay dividends to the Borrowers,~~

(B) Restricted Subsidiaries may declare and pay dividends to the Borrowers,

(C) ~~(iii)~~ the Loan Parties and their **Restricted** Subsidiaries may make Restricted Payments payable solely in the form of their Equity Interests pursuant to and in accordance with employment agreements, bonus plans, stock option plans, or other benefit plans for existing, new and former management, directors, employees and consultants of the Loan Parties and their **Restricted** Subsidiaries,

(D) ~~(iv) Holdings and its~~ the Loan Parties and their Restricted Subsidiaries may make any other Restricted Payment, so long as the aggregate amount of all such Restricted Payments made pursuant to this clause ~~(ivD) during any Fiscal Year~~ does not exceed the sum of ~~(1) the greater of \$5,000,000 plus the Cumulative Retained Excess Cash Flow 20,000,000 and 15% of EBITDA on a pro forma basis for the most recent Test Period plus (2) the Available~~ Amount that is in effect immediately prior to the time of making of such Restricted Payment ~~(provided that the use of the Cumulative Retained Excess Cash Flow Amount to make Restricted Payments shall be subject to (A) no Default or Event of Default has occurred and is continuing or would be caused by the making of such Restricted Payment and (B) (x) both if, both immediately~~ prior to and immediately after giving effect to such Restricted Payment, the **Senior Secured Total** Leverage Ratio shall not exceed 3.25:1.00 as of the last day of the most recent **Fiscal Quarter for which financial statements shall have been delivered pursuant to Section 5.01(a) or 5.01(b) (or, prior to the delivery of any such financial statements, as of the last Fiscal Quarter included in the financial statements referred to in Section 3.04(a))** ~~and (y) Test Period on a pro forma basis, plus (3) an additional unlimited amount, if, both immediately prior to and immediately after giving effect to such Restricted Payment, the Total Leverage Ratio does not exceed 2.75: 1.00 as of the last day of the most recent Test Period on a pro forma basis, and so long as~~ the Borrower Representative shall have delivered to the Administrative Agent a certificate of a Financial Officer of Holdings, setting forth reasonably detailed calculations demonstrating the satisfaction

of ~~the condition appearing in clause~~ any Total Leverage Ratio test applicable to such Restricted Payment,

(E) ~~(x) above) and (v)~~ Holdings may enter into, exercise its rights and perform its obligations under, Permitted Call Spread Swap Agreements.,

(F) the Restricted Group may make Restricted Payments in an amount not to exceed the greater of \$15,000,000 and 10% of EBITDA on a pro forma basis for the most recent Test Period pursuant to and in accordance with any employee or director equity plan, employee or director stock option plan or any other employee or director benefit plan or any agreement (including any stock subscription or shareholder agreement) with any employee, director, officer or consultant of any member of the Restricted Group, in each case as adopted or implemented in the ordinary course of business,

(G) the Borrowers may make non-cash repurchases of Equity Interests of Holdings deemed to occur upon the non-cash exercise of stock options or warrants or the settlement or vesting of other equity awards, or in connection with the withholding of a portion of the Equity Interests granted or awarded to a director or an employee to pay for the taxes payable by such director or employee upon such grant or award shall be permitted,

(H) the Restricted Group may pay cash in lieu of fractional shares in connection with any dividend, split or combination thereof or any Permitted Acquisition, or honor any conversion request by a holder of convertible Indebtedness and make cash payments in lieu of fractional shares in connection with any such conversion,

(I) the Restricted Group may make payments or distributions of a Restricted Payment within thirty (30) days after the date of declaration thereof if at the date of declaration such Restricted Payment would have been permitted hereunder ,

(J) the Restricted Group may make Restricted Payments to Holdings (1) to pay Holdings' operating expenses incurred in the ordinary course of business and other corporate overhead costs and expenses (including administrative, legal, filing, accounting and similar expenses provided by third parties), which are reasonable and customary and incurred in the ordinary course of business and directly attributable to the ownership or operations of the Restricted Group, (2) the proceeds of which are used by Holdings to pay franchise taxes and other fees, taxes and expenses required to maintain its corporate or other organizational existence, in each instance which are reasonable and customary and incurred in the ordinary course of business and directly attributable to the ownership or operations of the Restricted Group, (3) in connection with any Permitted Investments and other investments expressly permitted to be made by Holdings under this Agreement so long as Holdings owns no Equity Interests other than Equity Interests of the Borrowers, (4) the proceeds of which shall be used to pay customary salary, bonus and other benefits payable to officers and employees of Holdings to the extent such salaries, bonuses and other benefits are directly attributable to the ownership or operation of the Restricted Group, (5) in amounts necessary to enable (i) Holdings to repurchase or redeem its Equity Interests or (ii) Holdings or the holders of Holdings' Equity Interests to pay withholding taxes due as a result of its ownership of Equity Interests of Holdings or any other Loan Party; provided, that (x) the aggregate amount of such dividends shall not exceed \$2,500,000 in any period of twelve consecutive months and (y) such dividend shall be actually

*used for a purpose set forth above substantially concurrently with the making of such dividend, (6) to the extent necessary to permit, and actually used substantially concurrently by, Holdings to discharge the consolidated Tax liabilities of the Loan Parties and (7) to the extent used substantially concurrently by Holdings to make payments in respect of Indebtedness permitted to be incurred by Holdings hereunder, which payments are permitted under Section 6.08(b), and*

**(K) the Restricted Group may make Restricted Payments, in an aggregate amount which, when taken together with all other Restricted Payments made pursuant to this clause (K), will not exceed the cumulative amount of the cash proceeds received by Holdings from the sale of Equity Interests of Holdings after the Eighth Amendment Date and on or prior to such time (including upon exercise of warrants or options) which proceeds (i) have been contributed to the Borrowers and (ii) shall not have been, and shall not be, included in the calculation of “ Available Amount”.**

(b) No Loan Party will, nor will it permit any **Restricted** Subsidiary to, make or agree to pay or make, directly or indirectly, any payment or other distribution (whether in cash, securities or other property) of or in respect of principal of or interest on any Indebtedness, or any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Indebtedness, except:

(iii) payment of Indebtedness created under the Loan Documents;

(iv) payment of regularly scheduled interest and principal payments as and when due in respect of any Indebtedness permitted under this Agreement, other than payments in respect of the Subordinated Indebtedness prohibited by the subordination provisions thereof;

(v) payment of intercompany Indebtedness incurred in accordance with Section 6.01;

(vi) refinancings of Indebtedness to the extent permitted by Section 6.01;

(vii) payment of secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness so long as the proceeds of such sale are sufficient to repay such Indebtedness in full;

(viii) payments made in respect of the sinking fund requirement under the New Markets Tax Credit Financing, so long as (i) after giving effect to such payment, the aggregate amount of all such payments does not exceed the then outstanding principal amount of the Dairyland HP Indebtedness, and (ii) no Default or Event of Default has occurred and is continuing or would be caused by such payment;

(ix) prepayments or repayments with respect to the Dairyland HP Indebtedness, so long as no Default or Event of Default has occurred and is continuing or would be caused by such payment;

(x) mandatory prepayments and voluntary repayments of Indebtedness under the ABL Facility to the extent not prohibited by the Intercreditor Agreement;

(xi) issuance of Equity Interests, or making cash payments ~~(in the case of any cash payments in respect of Permitted Convertible Seller Notes, so long as no Default or Event of Default has occurred and is continuing or would be caused by such payment)~~, in connection with or as part of the conversion, redemption, retirement, prepayment or cancellation of any Permitted Convertible Notes;

(xii) payment of regularly scheduled interest payments in respect of Permitted Convertible ~~Seller~~ Notes permitted pursuant to ~~clause (i) of Section 6.01(j)~~ hereof Section 6.01(m), so long as no Default or Event of Default has occurred and is continuing or would be caused by such payment; and

(xiii) any other payments in respect of Subordinated Indebtedness, so long as (i) the aggregate amount of all payments made pursuant to this clause (xi) does not exceed the Cumulative Retained Excess Cash Flow sum of (A) the greater of \$10,000,000 and 7.5% of EBITDA on a pro forma basis for the most recent Test Period plus (B) Available Amount that is in effect immediately prior to the time of making such payment if both prior to and after giving effect to such payment, the Total Leverage Ratio does not exceed 3.75: 1.00 as of the last day of the most recent Test Period on a pro forma basis plus (C) and additional unlimited amount if both immediately prior to and immediately after giving effect to such payment, the Total Leverage Ratio shall not exceed 3.25: 1.00 as of the last day of the most recent Test Period on a pro forma basis, (ii) no Default or Event of Default has occurred and is continuing or would be caused by such payment, and (iii) (x) both prior to and after giving effect to such payment, the Senior Secured Leverage Ratio shall not exceed 3.25: 1.00 as of the last day of the most recent Fiscal Quarter for which financial statements shall have been delivered pursuant to Section 5.01(a) or 5.01(b) (or , prior to the delivery of any such financial statements, as of the last Fiscal Quarter included in the financial statements referred to in Section 3.04(a)) and (y) the Borrower Representative shall have delivered to the Administrative Agent a certificate of a Financial Officer of Holdings, setting forth reasonably detailed calculations demonstrating the satisfaction of the condition appearing in clause (x) above any Total Leverage Ratio test applicable to such Restricted Payment;

provided, however, that no such payment or distribution shall be made in respect of the ABL Obligations in violation of the Intercreditor Agreement or in respect of any Subordinated Indebtedness in violation of the subordination provisions applicable thereto.

~~(e) No Loan Party will, nor will it permit any Subsidiary to, make, directly or indirectly, any Specified Earn-Out Payment, unless no Default or Event of Default has occurred and is continuing or would be caused by such Specified Earn-Out Payment.~~

~~(d) Notwithstanding the foregoing provisions of this Section 6.08, from the First Amendment Date through the Closing Date Leverage Restoration Date,~~

~~(xiii) no Loan Party will, nor will it permit any Subsidiary to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, that otherwise would be permitted under clauses (x) (solely in respect of Permitted Holdings Dividends described in clause (ii) of the definition thereof) or (y)(iv) of Section 6.08(a); and~~

~~(xiv) no Loan Party will, nor will it permit any Subsidiary to, make or agree to pay or make, directly or indirectly, any payment or other distribution (whether in cash, securities or other property) of or in respect of principal of or interest on any Indebtedness, or any payment or other distribution (whether in cash, securities or~~



other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any ~~Indebtedness, that otherwise would be permitted under clauses (iv) (other than with respect to any refinancing of the NMTC Financing), (vii) (with respect to prepayments only), (ix) (other than with respect to the issuance of Equity Interests or the making of cash payments, in each case, upon conversion of the Permitted Convertible Seller Notes), and (xi) of Section 6.08(b).~~

SECTION 6.09. Transactions with Affiliates. No Loan Party will, nor will it permit any Restricted Subsidiary to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, (other than any such transactions having an aggregate value (whether in the form of disposition of assets, payments or otherwise) that do not exceed the greater of \$10,000,000 and 7.5% of EBITDA on a pro forma basis for the most recent Test Period) except:

(a) ~~(a)~~ transactions that ~~(i) are in the ordinary course of business and (ii)~~ are at prices and on terms and conditions not less favorable to such Loan Party or such Restricted Subsidiary than could be obtained on an arm' s-length basis from unrelated third parties~~;~~;

(b) ~~(b)~~ transactions between or among any Borrower and any Subsidiary that is a Loan Party, or between or among any Restricted Subsidiaries that are not Loan Parties, in each instance not involving any other Affiliate~~;~~;

(c) ~~(c)~~ (i) transactions involving Insurance Subsidiaries and/or trusts established by Insurance Subsidiaries, including, without limitation, investments in Insurance Subsidiaries and/or trusts established by Insurance Subsidiaries, that are not prohibited by the terms of this Agreement and the other Loan Documents and (ii) other transactions that are expressly permitted by the terms of this Agreement and the other Loan Documents~~;~~;

(d) ~~(d)~~ transactions set forth on Schedule 3.22 or any amendment thereto to the extent such an amendment is not adverse to the Lenders in any material respect; provided that any renewal or extension of the leases set forth on such schedule shall be, in the Borrower Representative' s reasonable discretion, on terms no less favorable to the Loan Parties than could be obtained on an arm' s-length basis from unrelated parties ~~and;~~

(e) ~~(e)~~ the Master Operating Sublease, dated on April 26, 2012, between Dairyland and Dairyland HP, relating to the Dairyland HP Facility, as the same may be amended from time to time~~.~~;

(f) the payment of customary fees and compensation (including equity compensation) to and insurance provided on behalf of, the payment and reimbursement of out-of-pocket expenses to or on behalf of, and the payment of customary indemnities provided on behalf of current and former, directors, officers, consultants or employees of Holdings, the Borrower or any Restricted Subsidiary;

(g) customary employment, consulting, retention and severance arrangements between the Restricted Group and their respective current, former and future officers and employees in the ordinary course of business and transactions pursuant to stock option plans and employee benefit plans and similar arrangements in the ordinary course of business;

(h) Restricted Payments permitted by Section 6.08;

(i) any transactions permitted by Section 6.04; and

(j) transactions between or among Loan Parties and Restricted Subsidiaries who are not Loan Parties, so long as any such transaction (i) does not adversely impact the Liens on the Collateral securing the Obligations or the Guarantees of the Obligations, (ii) does not impair the rights of, or benefits or remedies available to, the secured parties under any Loan Document, (iii) does not result in (and could not be reasonably expected to result in) a Material Adverse Effect, and (iv) is entered into in the ordinary course of business.

SECTION 6.10. Restrictive Agreements. No Loan Party will, nor will it permit any Restricted Subsidiary (other than any Immaterial Subsidiary) to, directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of such Loan Party or Restricted Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets, or (b) the ability of any Restricted Subsidiary to pay dividends or other distributions with respect to any Equity Interests or to make or repay loans or advances to any other Loan Party or Restricted Subsidiary or to Guarantee Indebtedness of any other Loan Party or Restricted Subsidiary; provided that (i) the foregoing shall not apply to restrictions and conditions imposed by law or by any Loan Document, (ii) the foregoing shall not apply to restrictions and conditions existing on the Effective Eighth Amendment Date identified on Schedule 6.10 (but shall apply to any extension or renewal of, or any amendment or modification expanding the scope of, any such restriction or condition), (iii) the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale of a Restricted Subsidiary pending such sale, provided such restrictions and conditions apply only to the Restricted Subsidiary that is to be sold and such sale is permitted hereunder, (iv) clause (a) of the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness as permitted by this Agreement, (v) clause (a) of the foregoing shall not apply to Excluded Assets and customary provisions in leases or licenses restricting the assignment thereof or the grant of a security interest therein, in each case, to the extent such provisions are required by the parties thereto and not bargained for by any Loan Party or Restricted Subsidiary, (vi) the foregoing shall not apply to restrictions and conditions contained in agreements relating to Permitted Convertible Notes (excluding Permitted Convertible Seller Notes), and (vii) the foregoing shall not apply to the ABL Loan Documents.

SECTION 6.11. Amendment of Material Documents. No Loan Party will, nor will it permit any Restricted Subsidiary to, amend, modify or waive any of its rights under (a) any agreement relating to any Subordinated Indebtedness, except as not prohibited by the intercreditor or subordination agreement between the Administrative Agent and the holders of such Indebtedness, (b) its charter, articles or certificate of incorporation or organization, by-laws, operating, management or partnership agreement or other organizational or governing documents, in each case, to the extent any such amendment, modification or waiver would be materially adverse to the Lenders or (c) any ABL Loan Document, except to the extent not prohibited by the Intercreditor Agreement.

~~SECTION 6.12. Compliance with Certain Laws. No Loan Party shall, and no Loan Party shall permit any of its Subsidiaries to fail to, comply with the laws, regulations and executive orders referred to in Section 3.24 and 3.25.~~

~~SECTION 6.13. Minimum Liquidity. No Loan Party will permit Liquidity to be less than \$35,000,000 (the "Minimum Liquidity Requirement Amount") as of the last day of any Fiscal Quarter ending after the Sixth Amendment Date for which EBITDA is less than \$10,000,000 (the "Minimum Liquidity Requirement").~~

## ARTICLE VII EVENTS OF

### DEFAULT

If any of the following events (collectively, “Events of Default,” and, each, an “Event of Default”) shall occur:

(a) the Borrowers shall fail to pay any principal of any Loan when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) the Borrowers shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) of this Article) payable under this Agreement, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three (3) Business Days;

(c) any representation or warranty made or deemed made by or on behalf of any Loan Party or any Restricted Subsidiary in, or in connection with, this Agreement or any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder, shall prove to have been incorrect in any material respect when made or deemed made;

(d) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in ~~(i) Section 5.02(a), 5.03~~ (with respect to a Loan Party’s existence), 5.11 or in Article VI of this Agreement ~~or (ii) Article IV or VII of the Security Agreement; provided that a failure to comply with any Minimum Liquidity Requirement in Section 6.13 shall be subject to cure pursuant to the last paragraph of this Article VII;~~ ;

(e) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained (i) in Section 5.08 or 5.10 of this Agreement, and such failure, if capable of being remedied, shall continue unremedied for a period of five (5) ~~days~~Business Days, (ii) in Section 5.02 (other than clause (a)) of this Agreement, and such failure, if capable of being remedied, shall continue unremedied for a period of ten (10) ~~days~~Business Days or (iii) in this Agreement (other than those specified in clause (a), (b), (d) or (e)(i) of this Article) or in ~~the Security Agreement (other than those specified in clause (d) of this Article), and such~~ any other Loan Document, and such failure in either case shall continue unremedied for a period of 30 days after the earlier of (x) an Authorized Officer of any Loan Party obtaining actual knowledge of such default and (y) notice thereof from the Administrative Agent to the Borrower Representative;

(f) any Loan Party or any Restricted Subsidiary shall fail to make any payment (whether of principal, or interest, fees or any other amount and regardless of amount) in respect of the ABL Facility or any other Material Indebtedness, when and as the same shall become due and payable (after giving effect to any applicable grace periods);

(g) after giving effect to any applicable grace periods with respect thereto, any event or condition occurs that results in the ABL Facility or any other Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits the holder or holders of the ABL Facility or any Material

Indebtedness or any trustee or agent on its or their behalf to cause any of the ABL Obligations or any Material Indebtedness, as applicable, to become due, or to require the prepayment, repurchase,

redemption or defeasance thereof, prior to its scheduled maturity; provided that this clause (g) shall not apply to (x) secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness in accordance with the terms hereof so long as the proceeds of such sale are sufficient to repay such Indebtedness in full, (y) any redemption, repurchase, conversion or settlement with respect to any Permitted Convertible Notes pursuant to their terms unless such redemption, repurchase, conversion or settlement results from a default thereunder or an event of the type that constitutes an Event of Default or (z) any early payment requirement or unwinding or termination with respect to any Permitted Call Spread Swap Agreement;

(h) (A) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of a Loan Party or any Restricted Subsidiary (other than any Immaterial Subsidiaries) of any Loan Party or its debts, or of a substantial part of its assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Loan Party or any Restricted Subsidiary (other than any Immaterial Subsidiary) of any Loan Party or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered or (B) the occurrence of the event described in clause (h) of Article ~~VH~~VII of the ABL Facility (as in effect on the date hereof);

(i) (A) any Loan Party or any Restricted Subsidiary (other than any Immaterial Subsidiary) of any Loan Party shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (h) of this Article, ~~(xiv)~~ apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for such Loan Party or Restricted Subsidiary (other than any Immaterial Subsidiary) of any Loan Party or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing or (B) the occurrence of the event described in clause (i) of Article ~~VH~~VII of the ABL Facility (as in effect on the date hereof);

(j) any Loan Party or any Restricted Subsidiary (other than any Immaterial Subsidiary) of any Loan Party shall become unable, admit in writing its inability or fail generally to pay its debts as they become due;

(k) (i) one or more judgments for the payment of money in an aggregate amount in excess of ~~\$25,000,000~~40,000,000, including, without limitation, any such final order enforcing a binding arbitration decision, shall be rendered against any Loan Party, any Restricted Subsidiary of any Loan Party or any combination thereof and the same shall remain undischarged for a period of ~~forty-fivesixty~~ (4560) consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of any Loan Party or any Restricted Subsidiary of any Loan Party to enforce any such judgment; or (ii) any Loan Party or Restricted Subsidiary shall fail within ~~forty-fivesixty~~ (4560) days to discharge one or more non-monetary judgments or orders which, individually or in the aggregate, ~~could~~would reasonably be expected to have a Material Adverse Effect, which judgments or orders, in any such case, are not stayed on appeal or otherwise being appropriately contested in good faith by proper proceedings diligently pursued; provided, however, that no Event of Default shall occur under this clause (k) if and for so long as (i) the full amount of such judgment, order or award is covered by a valid and binding policy of insurance and (ii) such insurer has been notified of such judgment, and the amount thereof, and has not

disputed or contested the claim made for payment of the full amount of such judgment, order or award under such policy;

(l) an ERISA Event shall have occurred that when taken together with all other ERISA Events that have occurred, ~~could~~would reasonably be expected to have a Material Adverse Effect;

(m) a Change in Control shall occur;

(n) the Loan Guaranty shall fail to remain in full force or effect or any action shall be taken to discontinue or to assert the invalidity or unenforceability of the Loan Guaranty, or any Loan Guarantor shall fail to comply with any of the terms or provisions of the Loan Guaranty to which it is a party, or any Loan Guarantor shall deny that it has any further liability under the Loan Guaranty to which it is a party, or shall give notice to such effect;

(o) except as permitted by the terms of any Collateral Document, the Intercreditor Agreement or this Agreement, (i) any Collateral Document shall for any reason fail to create or keep created a valid security interest in any material portion of the Collateral purported to be covered thereby, or (ii) other than as a result of the failure of any Agent to take any action within its control to maintain perfection of the Liens created in favor of the Collateral Agent for the benefit of the Secured Parties pursuant to the Loan Documents (excluding any action based on facts or circumstances for which the applicable Agent has not been notified in accordance with the provisions of the Loan Documents), any Lien securing any material portion of the Secured Obligations shall cease to be a perfected Lien having the priority required by the Loan Documents;

(p) except as permitted by the terms of any Collateral Document, any action shall be taken by the Loan Parties to discontinue or to assert the invalidity or unenforceability of any Collateral Document; or

(q) (i) any material provision of any Loan Document for any reason ceases to be valid, binding and enforceable in accordance with its terms or (ii) any Loan Party shall challenge the enforceability of any Loan Document or shall assert in writing, or engage in any action or inaction based on any such assertion, that any provision of any of the Loan Documents has ceased to be or otherwise is not valid, binding and enforceable in accordance with its terms;

then, and in every such event (other than an event with respect to the Loan Parties described in clause (h) or (i) of this Article), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower Representative, ~~take either or both of the following actions, at the same or different times: (i) terminate the DDTL Commitments, whereupon the DDTL Commitments shall terminate immediately, and (ii)~~ declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrowers accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrowers; and in case of any event with respect to the Loan Parties described in clause

(h) or (i) of this Article, the ~~DDTL Commitments shall automatically terminate and the~~ principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Loan Parties accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Loan Parties. Upon the occurrence and the continuance of an Event of Default, any Agent may, in accordance with and

subject to the terms of the Intercreditor Agreement, and at the request of the Required Lenders shall, exercise any rights and remedies provided to the Collateral Agent under the Loan Documents or at law or equity, including all remedies provided under the UCC.

~~Notwithstanding anything to the contrary contained herein (including in the immediately preceding paragraph), if the Loan Parties shall fail to be in compliance with the Minimum Liquidity Requirement as of any Testing Date pursuant to Section 6.13, Holdings shall have the right (the “Liquidity Cure Right”) at any time on or prior to the fifteenth day after the applicable Testing Date (the “Liquidity Cure Deadline”) to issue Equity Interests (in the form of common stock of Holdings) for cash (any such cash amount so received, a “Liquidity Cure Amount”) and to distribute such Liquidity Cure Amount to the Borrowers in exchange for common stock of the Borrowers, and thereupon (a) the sum of all unrestricted (other than Liens granted under the ABL Loan Documents and the Loan Documents) cash and cash equivalents of the Loan Parties as of the applicable Testing Date shall be recalculated to reflect and include the Liquidity Cure Amount solely for purposes of determining compliance with the Minimum Liquidity Requirement pursuant to Section 6.13 and (b) Liquidity as of such Testing Date shall be recalculated giving effect to such increased amount. If after giving effect to the foregoing recalculation the Minimum Liquidity Requirement as of the applicable Testing Date pursuant to Section 6.13 would be satisfied, the Minimum Liquidity Requirement shall be deemed satisfied as of the applicable Testing Date with the same effect as though there had been no failure to comply therewith as of such date, and the applicable breach thereof (and purported or actual Event of Default or Default as a result of such breach) shall be deemed automatically waived and cured for such Testing Date. Notwithstanding anything herein to the contrary, (x) neither the Administrative Agent nor any Lender may exercise any rights or remedies on the basis of any actual or purported Event of Default under Section 6.13 (or any other Default as a result thereof) unless and until the Liquidity Cure Deadline has occurred without the Liquidity Cure Right having been exercised in accordance with the terms of this paragraph and (y) (i) the cash represented by the Liquidity Cure Amount must otherwise constitute unrestricted (other than Liens granted under the ABL Loan Documents and the Loan Documents) cash and cash equivalents of the Loan Parties and (ii) Holdings shall not exercise the Liquidity Cure Right more than five (5) times after the Sixth Amendment Date.~~

## ARTICLE VIII

### THE ADMINISTRATIVE AGENT AND THE COLLATERAL AGENT

Each of the Lenders hereby irrevocably appoints Jefferies Finance LLC as Administrative Agent and Collateral Agent hereunder and under each other Loan Document, and each of the Lenders authorizes each of the Agents to enter into the Intercreditor Agreement, on behalf of such Lender (each Lender hereby agreeing to be bound by the terms of the Intercreditor Agreement, as if it were a party thereto) and to take such actions on its behalf, including execution of the other Loan Documents, and on behalf of the Secured Parties and to exercise such powers as are delegated to the Agents by the terms hereof and the terms of the other Loan Documents, together with such actions and powers as are reasonably incidental thereto.

The financial institution serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent, and such institution and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Loan Parties or any Subsidiary or other Affiliate thereof as if it were not the Administrative Agent hereunder.

No Agent shall have any duties or obligations except those expressly set forth herein. Without limiting the generality of the foregoing, (a) no Agent shall be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) no Agent shall have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby that such Agent is required to exercise in writing as directed by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02) or as otherwise set forth in the Intercreditor Agreement,

**and**

(c) except as expressly set forth herein, no Agent shall have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Loan Party or any of its Subsidiaries that is communicated to or obtained by the financial institution serving as either Agent or any of its Affiliates in any capacity and (d) no Agent shall be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral. No Agent shall be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02) or in the absence of its own gross negligence or willful misconduct. No Agent shall be deemed to have knowledge of any Default unless and until written notice thereof is given to such Agent by the Borrower Representative or a Lender, and neither Agent shall be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement (including, without limitation, any representation or warranty regarding the existence, value or collectability of the Collateral or the existence, priority or perfection of any Agent's Lien thereon),

(ii) the contents of any certificate, report or other document delivered hereunder or in connection herewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document (other than the Intercreditor Agreement) or other instrument or document, (v) the creation, perfection or priority of Liens on the Collateral or the existence of the Collateral, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to such Agent.

The Agents shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper Person. The Agents also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon. The Agents may consult with legal counsel (who may be counsel for the Borrowers), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Either Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-agents appointed by such Agent. The Agents and any such sub-agent may perform any and all its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions of the preceding **paragraphs** shall apply to any such sub-agent and to the Related Parties of the Agents and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as an Agent.

To the extent required by any Requirement of Law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any withholding tax applicable to such payment. If the IRS or any other Governmental Authority asserts a claim that the Administrative Agent did not properly withhold tax from amounts paid to or for the account of any Lender for any reason, or the Administrative Agent has paid over to the IRS or other Governmental Authority applicable withholding tax relating to a payment to a Lender but no deduction has been made from such payment, such Lender



shall indemnify the Administrative Agent fully for all amounts paid, directly or indirectly, by the Administrative Agent as a Tax or otherwise, including any penalties, additions to tax or interest and together with any and all expenses incurred; ~~unless such amounts have been indemnified by the Borrowers or another Loan Party. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error.~~ Each Lender hereby authorizes the Administrative Agent to set off *and apply any and all amounts at any time owing to such Lender* under this Agreement or any other Loan Document against any ~~amount due the Administrative Agent under this Article VIII~~ in a manner consistent with Section 2.17(e). The agreements in this paragraph shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, the repayment of the Loans, ~~the expiration or termination of the DDTL Commitments~~ or the termination of this Agreement or any provision hereof.

The Administrative Agent may resign at any time by notifying the Lenders and the Borrower Representative. Upon any such resignation, the Required Lenders shall have the right, in consultation with the Borrowers, to appoint a successor. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent. Upon the acceptance of its appointment as Administrative Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder. The fees payable by the Borrowers to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrowers and such successor. After the Administrative Agent's resignation hereunder, the provisions of this Article, Section 2.17(d) and Section 9.03, as well as any exculpatory, reimbursement and indemnification provisions set forth in any other Loan Document, shall continue in effect for the benefit of such retiring Administrative Agent, its sub agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while it was acting as Administrative Agent. If no successor Administrative Agent has been appointed by the 30th day after the date such notice of resignation was given by the Administrative Agent, the Administrative Agent's resignation shall become effective and the Required Lenders shall thereafter perform all the duties of the Administrative Agent hereunder and/or under any other Loan Document until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided above. Upon the acceptance of its appointment as Administrative Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring (or retired) Administrative Agent shall be discharged from its duties and obligations under the Loan Documents. The fees payable by any Loan Party to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between such Loan Party and such successor. The retiring (or retired) Administrative Agent shall remain indemnified to the extent provided in this Agreement and the other Loan Documents shall continue in effect for the benefit of the retiring (or retired) Administrative Agent for all of its actions and inactions while serving as the Administrative Agent.

Each Lender acknowledges that it has, independently and without reliance upon either Agent, any Arranger or any other Lender or any of their respective Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon either Agent, any Arranger or any other Lender or any of their respective Related Parties and based on such documents and information as it shall from time to time deem appropriate,

continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or related agreement or any document furnished hereunder or thereunder.

The Lenders are not partners or co-venturers, and no Lender shall be liable for the acts or omissions of, or (except as otherwise set forth herein in case of the Agents) authorized to act for, any other Lender. The Administrative Agent shall have the exclusive right on behalf of the Lenders to enforce the payment of the principal of and interest on any Loan after the date such principal or interest has become due and payable pursuant to the terms of this Agreement; provided that, the foregoing shall not limit or otherwise restrict the rights of the Lenders or any of their Affiliates pursuant to Section 9.08.

In its capacity, the Collateral Agent is a “representative” of the Secured Parties within the meaning of the term “secured party” as defined in the New York Uniform Commercial Code. Each Lender and the Administrative Agent authorizes the Collateral Agent to enter into each of the Collateral Documents to which it is a party and to take all action contemplated by such documents. Each Lender agrees that no Secured Party (other than the Collateral Agent) shall have the right individually to seek to realize upon the security granted by any Collateral Document, it being understood and agreed that such rights and remedies may be exercised solely by the Collateral Agent for the benefit of the Secured Parties upon the terms of the Collateral Documents. In the event that any Collateral is hereafter pledged by any Person as collateral security for the Secured Obligations, the Collateral Agent is hereby authorized, and hereby granted a power of attorney, to execute and deliver on behalf of the Secured Parties any Loan Documents necessary or appropriate to grant and perfect a Lien on such Collateral in favor of the Collateral Agent on behalf of the Secured Parties. The Lenders and the Administrative Agent hereby authorize the Collateral Agent to release any Lien granted to or held by the Collateral Agent upon any Collateral (i) as described in Section 9.02(d); (ii) as permitted by, but only in accordance with, the terms of the applicable Loan Document; or (iii) if approved, authorized or ratified in writing by the Required Lenders, unless such release is required to be approved by all of the Lenders hereunder. Upon request by the Collateral Agent at any time, the Lenders and the Administrative Agent will confirm in writing the Collateral Agent’s authority to release particular types or items of Collateral pursuant hereto. Upon any sale or transfer of assets constituting Collateral which is permitted pursuant to the terms of any Loan Document, or consented to in writing by the Required Lenders or all of the Lenders, as applicable, and upon at least five (5) Business Days’ prior written request by the Borrower Representative to the Collateral Agent, the Collateral Agent shall (and is hereby irrevocably authorized by the Lenders and the Administrative Agent to) execute such documents as may be necessary to evidence the release of the Liens granted to the Collateral Agent for the benefit of the Secured Parties herein or pursuant hereto upon the Collateral that was sold or transferred; provided, however, that (i) the Collateral Agent shall not be required to execute any such document on terms which, in the Collateral Agent’s opinion, would expose the Collateral Agent to liability or create any obligation or entail any consequence other than the release of such Liens without recourse or warranty, and (ii) such release shall not in any manner discharge, affect or impair the Secured Obligations or any Liens upon (or obligations of any Loan Party in respect of) all interests retained by any Loan Party, including (without limitation) the proceeds of the sale, all of which shall continue to constitute part of the Collateral.

#### ARTICLE IX MISCELLANEOUS

SECTION 9.01. Notices. (a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand

or overnight courier service, mailed by certified or registered mail or sent by facsimile or e-mail, as follows:

(xv) if to any Loan Party, to the Borrower Representative at:

The Chefs' Warehouse, Inc. 100 East Ridge  
Road  
Ridgefield, CT 06877 Attention: Alexandros  
Aldous  
Telephone: (203) 894-1345, Ext. 10211  
Facsimile: (203) 894-9108  
E-mail: aaldous@chefswarehouse.com

With a copy to (which, for the avoidance of doubt and notwithstanding anything herein to the contrary, shall not constitute notice for any purpose under this Agreement or any other Loan Document):

Shearman & Sterling LLP 599 Lexington  
Avenue New York, NY 10022 Attention:  
Gus Atiyah  
Telephone: (212) 848-5227  
Facsimile: (646) 848-5227  
E-mail: Gus.Atiyah@Shearman.com

(xvi) if to the Administrative Agent or the Collateral Agent, to Jefferies Finance LLC ~~via e-~~

~~mail to at:~~

Jefferies Finance LLC 520 Madison  
Avenue New York, NY 10022  
Attention: Account Manager – The Chefs' Warehouse, Inc.

~~(ii) Email: JFIN.Admin@Jefferies.com; and and~~

(iii) if to any Lender, to it at its address or facsimile number set forth in its Administrative Questionnaire.

All such notices and other communications (i) sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received or (ii) sent by facsimile or e-mail shall be deemed to have been given when sent; provided that if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient.

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications (including use of a Platform, e-mail and internet or intranet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Article II or to compliance and no Default certificates delivered pursuant to Section 5.01(c) unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent or the Borrower Representative (on behalf of the Loan Parties) may,

in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. All such notices and other communications (a) sent to an e mail address shall be deemed received upon the sender' s receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e mail or other written acknowledgement); provided that if not given during the normal business hours of the recipient, such notice or communication shall be deemed to have been given at the opening of business on the next Business Day for the recipient, and (b) posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e mail address as described in the foregoing clause (b)(i) of notification that such notice or communication is available and identifying the website address therefor.

(c) The Loan Parties and each Lender acknowledge that certain of the Lenders may be Public Lenders and, if documents or notices required to be delivered pursuant to Section 5.02 or otherwise are being distributed through a Platform, any document or notice that the Borrower has indicated contains Non-Public Information shall not be posted on that portion of the Platform designated for Public Lenders. The Borrower agrees to clearly designate all information provided to the Administrative Agent by or on behalf of the Loan Parties which is suitable to make available to Public Lenders. If the Borrower has not indicated whether a document or notice delivered pursuant to Section 5.02 or otherwise contains Non-Public Information, the Administrative Agent reserves the right to post such document or notice solely on that portion of the Platform designated for Lenders who wish to receive material non-public information with respect to Holdings, its Subsidiaries and their respective securities.

(d) Public Side Information Contacts. Each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender' s compliance procedures and applicable Requirements of Law, including the U.S. Federal and state securities laws, to make reference to electronic communications that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of the U.S. Federal or state securities laws. In the event that any Public Lender has elected for itself to not access any information disclosed through the Platform or otherwise, such Public Lender acknowledges that (i) the Agents and other Lenders may have access to such information and (ii) neither the Borrower nor any Agent or other Lender with access to such information shall have

(x) any responsibility for such Public Lender' s decision to limit the scope of information it has obtained in connection with this Agreement and the other Loan Documents or (y) any duty to disclose such information to such electing Lender or to use such information on behalf of such electing Lender, and shall not be liable for the failure to so disclose or use such information.

(e) Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto.

SECTION 9.02. Waivers; Amendments. (a) No failure or delay by the Administrative Agent or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent and the Lenders hereunder and under any other Loan Document are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by any Loan Party therefrom shall in any event be

effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent or any Lender may have had notice or knowledge of such Default at the time.

(b) Except as provided in Section 2.22 with respect to an Incremental Term Loan Amendment, neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrowers and the Required Lenders or by the Borrowers and the Administrative Agent with the consent of the Required Lenders; provided that no such agreement shall (i) increase the Commitment of any Lender without the written consent of such Lender (including any such Lender that is a Defaulting Lender), (ii) reduce or forgive the principal amount of any Loan or reduce the rate of interest thereon (it being agreed that the waiver of the default interest margin referred to in Section 2.13(d) shall only require the consent of Required Lenders), or reduce or forgive any interest or fees payable hereunder, without the written consent of each Lender (including any such Lender that is a Defaulting Lender) directly affected thereby, (iii) postpone any scheduled date of payment of the principal amount of any Loan (other than mandatory prepayments pursuant to Section 2.11), or any date for the payment of any interest or fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender (including any such Lender that is a Defaulting Lender) directly affected thereby, (iv) change Section 2.18(b) or (d) in a manner that would alter the pro rata sharing of payments required thereby, without the written consent of each Lender directly and adversely affected thereby, (v) change any of the provisions of this Section or the definition of “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders (or Lenders of any class) required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender, (vi) release all or substantially all of the Loan Guarantors from their obligations under the Loan Guaranty without the written consent of each Lender, ~~or~~ (vii) except as provided in clause (d) of this Section or in any Collateral Document, release all or substantially all of the Collateral, without the written consent of each Lender, or (viii) except as expressly permitted in this Agreement, (a) subordinate the Secured Obligations hereunder in right of payment to any other Indebtedness or (b) subordinate the Liens on a material portion of the Collateral securing the Secured Obligations to the Liens securing any other Indebtedness, in the case of either clause (a) and (b), without the written consent of each Lender directly and adversely affected thereby; provided, further, that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent or the Collateral Agent, hereunder without the prior written consent of the Administrative Agent or the Collateral Agent, as the case may be.

(c) Notwithstanding the foregoing, this Agreement and any other Loan Document may be amended (or amended and restated):

(xvii) with the written consent of the Required Lenders, the Administrative Agent and the Borrowers (x) to add one or more credit facilities (in addition to the Incremental Term Loans pursuant to an Incremental Term Loan Amendment) to this Agreement and to permit extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the ~~2016 Term Loans, 2020 Extended Term Loans, Delayed Draw~~ 2022 Term Loans, Incremental Term Loans and the accrued interest and fees in respect thereof and (y) to include appropriately the Lenders

holding such credit facilities in any determination of the Required Lenders and Lenders.  
; or

(xviii) with the written consent of the Administrative Agent, the Borrowers and the Lenders providing the relevant Replacement Term Loans (as defined below) to permit the refinancing of all or any portion of the outstanding Term Loans of any class (“ Replaced Term Loans”) with a replacement term loan tranche hereunder (“ Replacement Term Loans”); provided that:

(1) the aggregate principal amount of such Replacement Term Loans does not exceed the aggregate principal amount of such Replaced Term Loans except by an amount equal to the aggregate amount of all fees, underwriting discounts, premiums and other costs and expenses reasonably incurred in connection with such refinancing, and the net cash proceeds of such Replacement Term Loans shall be applied, substantially concurrently with the incurrence thereof, to the pro rata prepayment of the Replaced Term Loans being so refinanced (it being understood and agreed that such refinancing shall be accompanied by accrued interest to the extent required by Section 2.13, amounts due under Section 2.16 (if any), the prepayment premiums referred to in Section 2.12(e) (if and to the extent applicable) and any amounts due under Section 9.02(e) (if any));

(2)(x) such Replacement Term Loans shall have a final maturity date equal to or later than the earlier of the Latest Maturity Date of such Replaced Term Loans and the Latest Maturity Date of any other outstanding class of Term Loans and (y) the Average Life of such Replacement Term Loans shall not be shorter than the Average Life of such Replaced Term Loans at the time of the refinancing;

(3) such Replacement Term Loans shall rank *pari passu* or junior in right of payment and *pari passu* or junior in right of security with the remaining portion of the Term Loans;

(4) such Replacement Term Loans shall not at any time be guaranteed by any Person that is not a Loan Party or secured by any assets other than the Collateral;

(5) if secured on a junior basis with the remaining portion of the Term Loans, such Replacement Term Loans shall be subject to an intercreditor agreement reasonably acceptable to the Administrative Agent;

(6) any Replacement Term Loans that are *pari passu* in respect of payment and security may participate on the same terms as (but not more favorable terms than) any existing class of Term Loans in any mandatory prepayments in respect of the Term Loans, in each case

to the extent agreed by the Borrowers and the Lenders providing the relevant Replacement Term Loans;

(7) such Replacement Term Loans shall have pricing (including interest, fees, premiums and any “most favored nation” provisions) and optional prepayment and redemption terms as may be agreed by the Borrowers and the Lenders providing the relevant Replacement Term Loans; and

(8) the other terms and conditions of such Replacement Term Loans (excluding currency, pricing, interest, fees, rate floors, premiums, optional prepayment or redemption terms, collateral, guarantees, and maturity date, subject to the preceding clauses (2) through (7)), shall be (x) substantially identical to, or (taken as a whole) no more favorable (as reasonably determined by the Borrower Representative acting in good faith) to the Lenders providing such Replacement Term Loans than those applicable to the Lenders providing the Replaced Term Loans (other than any covenants or other provisions applicable only to periods after the Latest Maturity Date (in each case, as of the date of incurrence of such Replacement Term Loans)), (y) on then current market terms for such type of Indebtedness (as reasonably determined by the Borrower Representative) or (z) reasonably acceptable to the Administrative Agent (it being agreed that terms and conditions of any Replacement Term Loans that are more favorable to the lenders or the agent of such Replacement Term Loans than those contained in the Loan Documents and are then conformed (or added) to the Loan Documents for the benefit of the applicable remaining Lenders and, as applicable, the Administrative Agent, pursuant to the applicable amendments to give effect to such Replacement Term Loans shall be deemed satisfactory to the Administrative Agent).

(d) The Lenders hereby irrevocably authorize the Administrative Agent, at its option and in its sole discretion, to release any Liens granted to the Administrative Agent by the Loan Parties on any Collateral (i) upon the termination of the Commitments, payment and satisfaction in full in cash of all Secured Obligations (other than Unliquidated Obligations), and the cash collateralization of all Unliquidated Obligations in a manner satisfactory to each affected Lender, (ii) constituting property being sold or disposed of if the Loan Party disposing of such property certifies to the Administrative Agent that the sale or disposition is made in compliance with the terms of this Agreement (and the Administrative Agent may rely conclusively on any such certificate, without further inquiry), and to the extent that the property being sold or disposed of constitutes 100% of the Equity Interest of a Subsidiary, the Administrative Agent is authorized to release any Loan Guaranty provided by such Subsidiary,

(i) constituting property leased to a Loan Party under a lease which has expired or been terminated in a transaction permitted under this Agreement, or (iv) as required to effect any sale or other disposition of such Collateral in connection with any exercise of remedies of the Administrative Agent and the Lenders pursuant to Article VII. Except as provided in the preceding sentence, the Administrative Agent will not release any Liens on Collateral without the prior written authorization of the Required Lenders. Any such release shall not in any manner discharge, affect or impair the Obligations or any Liens (other than those expressly being released) upon (or obligations of the Loan Parties in respect of) all interests retained by the Loan Parties, including the proceeds of any sale, all of which shall continue to constitute





part of the Collateral. If the Administrative Agent releases any Collateral in accordance with the foregoing, Administrative Agent agrees, at Borrowers' sole expense, to prepare and deliver such documents as Borrower Representative may reasonably request to evidence such release.

(e) If, in connection with any proposed amendment, waiver or consent requiring the consent of "each Lender", "each Lender directly and adversely affected thereby" or "each Lender directly affected thereby," the consent of the Required Lenders is obtained, but the consent of other necessary Lenders is not obtained (any such Lender whose consent is necessary but not obtained being referred to herein as a "Non-Consenting Lender"), then the Borrowers may elect to replace a Non-Consenting Lender as a Lender party to this Agreement; provided that, concurrently with such replacement, (i) another bank or other entity which is reasonably satisfactory to the Borrowers and the Administrative Agent shall agree, as of such date, to purchase for cash the Loans and other Obligations due to the Non-Consenting Lender pursuant to an Assignment and Assumption (or such other documentation reasonably acceptable to the Borrowers and the Administrative Agent) and to become a Lender for all purposes under this Agreement and to assume all obligations of the Non-Consenting Lender to be terminated as of such date and to comply with the requirements of clause (b) of Section 9.04 (provided that so long as the other requirements of this Section 9.02(e) are satisfied, the failure of any Non-Consenting Lender to execute an Assignment and Assumption (or such other documentation reasonably acceptable to the Borrowers and the Administrative Agent) shall not render such assignment and assumption invalid and the assignment effected thereby shall be in full force and effect and shall be recorded in the Register), and (ii) the Borrowers shall pay to such Non-Consenting Lender in same day funds on the day of such replacement (1) all interest, fees and other amounts then accrued but unpaid to such Non-Consenting Lender by the Borrowers hereunder to and including the date of termination, including without limitation payments due to such Non-Consenting Lender under Sections 2.15 and 2.17, and (2) an amount, if any, equal to the payment which would have been due to such Lender on the day of such replacement under Section 2.16 had the Loans of such Non-Consenting Lender been prepaid on such date rather than sold to the replacement Lender.

(f) Notwithstanding anything to the contrary herein, the Administrative Agent may, with the consent of the Borrower Representative only, amend, modify or supplement this Agreement or any of the other Loan Documents to cure any ambiguity, omission, mistake, defect or inconsistency.

SECTION 9.03. Expenses; Indemnity; Damage Waiver. (a) The Borrowers shall pay (i) all reasonable documented out-of-pocket expenses incurred by the Agents and their Affiliates, including the reasonable and documented fees, charges and disbursements of one primary counsel and one additional counsel in each applicable jurisdiction for the Agents, in connection with the syndication and distribution (including, without limitation, via the internet or through a service such as Intralinks) of the credit facilities provided for herein, the preparation and administration of the Loan Documents or any amendments, modifications or waivers of the provisions of the Loan Documents (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all documented out-of-pocket expenses incurred by the Agents or any Lender, including the fees, charges and disbursements of (x) one primary counsel and one additional counsel in each applicable jurisdiction for the Agents, (y) one additional counsel for all Lenders (other than the Agents) and (z) additional counsel in light of actual or potential conflicts of interest or the availability of different claims or defenses for the Administrative Agent or any Lender, in connection with the enforcement, collection or protection of its rights in connection with the Loan Documents, including its rights under this Section, or in connection with the Loans made hereunder, including all such documented out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans.

(b) The Borrowers shall, jointly and severally, indemnify the Agents, the Arrangers and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called

an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, penalties, incremental taxes, liabilities and related expenses, including the fees, charges and disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the negotiation, preparation, execution or delivery of the Loan Documents or any agreement or instrument contemplated thereby, the performance by the parties hereto of their respective obligations thereunder or the consummation of the Transactions or any other transactions contemplated hereby, (ii) any Loan or the use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Borrower or any of their Subsidiaries, or any Environmental Liability related in any way to any Borrower or any of its Subsidiaries, (iv) the failure of the Borrowers to deliver to the Administrative Agent the required receipts or other required documentary evidence with respect to a payment made by the Borrowers for Taxes pursuant to Section 2.17(c), or (v) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, penalties, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee. This Section 9.03(b) shall not apply with respect to Taxes other than any Taxes that represent losses or damages arising from any non-Tax claim.

(c) To the extent that the Borrowers fail to pay any amount required to be paid by it to any Agent under paragraph (a) or (b) of this Section, each Lender severally agrees to pay to such Agent such Lender’s Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount (it being understood that the Borrowers’ failure to pay any such amount shall not relieve the Borrowers of any default in the payment thereof); provided that the unreimbursed expense or indemnified loss, claim, damage, penalty, liability or related expense, as the case may be, was incurred by or asserted against such Agent in its capacity as such.

(d) To the extent permitted by applicable law, no Loan Party shall assert, and each hereby waives, any claim against any Indemnitee (i) for any damages arising from the use by others of information or other material obtained through telecommunications, electronic or other information transmission systems (including the Internet), or (ii) on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the Transactions, any Loan or the use of the proceeds thereof.

(e) All amounts due under this Section shall be payable not later than fifteen (15) days after the Borrower Representative’s receipt of written demand therefor.

SECTION 9.04. Successors and Assigns. (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by any Loan Party without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants (to the extent provided in paragraph (c) of this Section) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of ~~its DDTL Commitment and~~ the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld, conditioned or delayed) of:

(A) the Borrower Representative; provided that (x) the Borrower Representative shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within ten (10) Business Days after having received notice thereof, (y) it shall not be unreasonable for the Borrower Representative to withhold its consent for assignments to any Person that is directly engaged in the primary business of distributing food products to business establishments, such as restaurants, country clubs, hotels, caterers, culinary schools and specialty food stores and (z) no consent of the Borrower Representative shall be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund or, if an Event of Default has occurred and is continuing, any other Person; and

(B) the Administrative Agent.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's ~~DDTL Commitment or~~ Loans of any class, the amount of the ~~DDTL Commitment or~~ Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$1,000,000 unless each of the Borrower Representative and the Administrative Agent otherwise consent; provided that no such consent of the Borrower Representative shall be required if an Event of Default has occurred and is continuing;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement; provided that this clause shall not be construed to prohibit the assignment of a proportionate part of all the assigning Lender's rights and obligations in respect of ~~its DDTL Commitment or~~ a class of Loans;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption (unless otherwise provided in Section 9.02(e) with respect to the replacement of a Non-Consenting Lender), together with a processing and recordation fee of \$3,500; provided that the Administrative Agent may, in its sole discretion, elect to waive or reduce such processing fee in the case of any assignment; and

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire in which the assignee designates one or more credit contacts to whom all the syndicate-level information (which may contain material non-public information about Loan Parties and their Related Parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including Federal and state securities laws; and

(E) In no event shall any Loan Party, any Affiliate of the Loan Parties or any natural person become a Lender hereunder.

For the purposes of this Section 9.04(b), the term “Approved Fund” has the following meaning: “Approved Fund”

means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender’s rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.15, 2.16, 2.17 and 9.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section.

(iv) The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrowers, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, ~~and the DDTL Commitment of~~, and principal amount of (and stated interest on) the Loans owing to, each Lender pursuant to the terms hereof from time to time (the “Register”). The entries in the Register shall be conclusive, and the Borrowers, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrowers and each Lender (with respect to any entry relating to such Lender’s Loans), at any reasonable time and from time to time upon reasonable prior notice. Notwithstanding anything in this Agreement to the contrary, the Loans are intended to be treated as registered obligations for ~~tax~~ Tax purposes and the right, title and interest of the Lenders in and to such Loans shall be transferable only in accordance with the terms hereof. This Section 9.04(b)(iv) shall be construed so that the Loans are at all times maintained in “registered form” within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code.

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee’s completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register; provided that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to Sections 2.07, 2.18(d) or 9.03(c), the Administrative Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with

all accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(c) Any Lender may, without the consent of the Borrowers, the Borrower Representative or the Administrative Agent, sell participations to one or more banks or other entities (a “Participant”) in all or a portion of such Lender’s rights and obligations under this Agreement (including all or a portion of ~~its DDTL Commitment and~~ the Loans owing to it); provided that (A) such Lender’s obligations under this Agreement shall remain unchanged; (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations; (C) the Borrowers, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement and (D) no Affiliate of any Loan Party shall become a Participant. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 9.02(b) that affects such Participant. The Borrowers agree that each Participant shall be entitled to the benefits of Section 2.15, 2.16 and 2.17 (subject to the requirements and limitations therein, including the requirements under Section 2.17(f) (it being understood that the documentation required under Section 2.17(f) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Section 2.18 and 2.19 as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under Section 2.15 or 2.17, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation.

To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender; provided such Participant agrees to be subject to Section 2.18(c) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant’s interest in the Loans or other obligations under this Agreement (the “Participant Register”); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any Participant or any information relating to a Participant’s interest in any ~~DDTL Commitments~~, Loans or its other obligations under any Loan Document) except to the extent that such disclosure is necessary to establish that such ~~DDTL Commitment~~, Loan or other obligation is in registered form under Section 5f. ~~103-103-1~~(c) of the United States Treasury Regulations and Proposed Treasury Regulations Section 1.163-5(b)(and, in each case, any amended or successor version). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledge or assignee for such Lender as a party hereto.

SECTION 9.05. Survival. All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid ~~and so long as the DDTL Commitments have not expired or terminated~~. The provisions of Section 2.15, 2.16, 2.17 and 9.03 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, ~~the expiration or termination of the DDTL Commitments~~ or the termination of this Agreement or any other Loan Document or any provision hereof or thereof.

SECTION 9.06. Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. This Agreement shall become effective on the Effective Date. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by telecopy, e-mailed .pdf or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement. The words “execution,” “signed,” “signature,” “delivery,” and words of like import in or relating to any document to be signed in connection with this Agreement and the transactions contemplated hereby shall be deemed to include Electronic Signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that nothing herein shall require the Administrative Agent to accept electronic signatures in any form or format without its prior written consent.

SECTION 9.07. Severability. Any provision of any Loan Document held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions thereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 9.08. Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of the Borrowers or any Loan Guarantor against any of and all

the Secured Obligations held by such Lender, irrespective of whether or not such Lender shall have made any demand under the Loan Documents and although such obligations may be unmatured. No Lender shall exercise any such right of setoff without the prior consent of the Administrative Agent or the Required Lenders. The applicable Lender shall notify the Borrower Representative and the Administrative Agent of such set-off or application; provided that any failure to give or any delay in giving such notice shall not affect the validity of any such set-off or application under this Section. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

SECTION 9.09. Governing Law; Jurisdiction; Consent to Service of Process. (a) This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York without regard to conflict of law principles (other than sections 5-1401 and 5-1402 of the New York General Obligations Law).

(b) To the fullest extent permitted by applicable law, each Loan Party hereby irrevocably submit to the exclusive jurisdiction of any New York State court or federal court sitting in the County of New York and the Borough of Manhattan in respect of any claim, suit, action or proceeding arising out of or relating to the provisions of this Agreement and the other Loan Documents and irrevocably agree that all claims in respect of any such claim, suit, action or proceeding may be heard and determined in any such court and that service of process therein may be made by certified mail, postage prepaid, to your address set forth above. Each Loan Party hereby waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of venue of any such claim, suit, action or proceeding brought in any such court, and any claim that any such claim, suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document shall affect any right that the Administrative Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Loan Party or its properties in the courts of any jurisdiction.

(c) Each Loan Party hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 9.10. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES





THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 9.11. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 9.12. Confidentiality. Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees and agents, including affiliates, accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority, (c) to the extent required by Requirement of Law or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies under this Agreement or any other Loan Document or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (1) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (2) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Loan Parties and their obligations, (g) on a confidential basis to (1) any rating agency in connection with rating Holdings or any of its Subsidiaries or the credit facility provided for herein or (2) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the credit facility provided for herein, (h) with the consent of the Borrower Representative or (i) to the extent such Information becomes (1) publicly available other than as a result of a breach of this Section or (2) available to the Administrative Agent or any Lender on a non-confidential basis from a source other than the Borrowers. For the purposes of this Section, "Information" means all information received from the Borrowers relating to the Borrowers or their business, other than any such information that is available to the Administrative Agent or any Lender on a non-confidential basis prior to disclosure by the Borrowers and other than information pertaining to this Agreement routinely provided by arrangers to data service providers, including league table providers, that serve the lending industry; provided that, in the case of information received from the Borrowers after the Effective Date, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

EACH LENDER ACKNOWLEDGES THAT INFORMATION (AS DEFINED IN SECTION 9.12) FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING THE LOAN PARTIES, AND THEIR AFFILIATES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS, FURNISHED BY THE BORROWERS OR THE ADMINISTRATIVE AGENT PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT



LOAN PARTIES, THE LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES. ACCORDINGLY , EACH LENDER REPRESENTS TO THE BORROWERS AND THE ADMINISTRATIVE AGENT THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CREDIT CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

SECTION 9.13. Several Obligations; Nonreliance; Violation of Law. The respective obligations of the Lenders hereunder are several and not joint and the failure of any Lender to make any Loan or perform any of its obligations hereunder shall not relieve any other Lender from any of its obligations hereunder. Each Lender hereby represents that it is not relying on or looking to any margin stock (as defined in Regulation U of the Board) for the repayment of the Borrowings provided for herein. Anything contained in this Agreement to the contrary notwithstanding, no Lender shall be obligated to extend credit to the Borrowers in violation of any Requirement of Law.

SECTION 9.14. USA PATRIOT Act and Beneficial Ownership Regulation. Each Lender that is subject to the requirements of the USA Patriot Act (Title III of Pub. L. 107 56 (signed into law October 26, 2001)) (the “Act”) and the Beneficial Ownership Regulation hereby notifies the Borrowers that pursuant to the requirements of the Act and the Beneficial Ownership Regulation, it is required to obtain, verify and record information that identifies the Borrowers, which information includes the names and addresses of the Borrowers and other information that will allow such Lender to identify the Borrowers in accordance with the Act and the Beneficial Ownership Regulation. The Borrowers agree to cooperate with each Lender and provide true, accurate and complete information to such Lender in response to any such request.

SECTION 9.15. Disclosure. Each Loan Party and each Lender hereby acknowledges and agrees that the Administrative Agent and/or its Affiliates from time to time may hold investments in, make other loans to or have other relationships with any of the Loan Parties and their respective Affiliates.

SECTION 9.16. Appointment for Perfection. Each Lender (in its capacity as Lender and as a holder of any other Secured Obligations) hereby appoints each other Lender as its agent for the purpose of perfecting Liens, for the benefit of the Collateral Agent, the Administrative Agent, the Lenders and the other holders of Secured Obligations, in assets which, in accordance with Article 9 of the UCC or any other applicable law can be perfected only by possession or control. Should any Lender (other than the Collateral Agent) obtain possession or control of any such Collateral, such Lender shall notify the Collateral Agent thereof and, promptly upon the Collateral Agent’ s request therefor, shall deliver such Collateral to the Collateral Agent or otherwise deal with such Collateral in accordance with the Collateral Agent’ s instructions.

SECTION 9.17. Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively the “Charges”), shall exceed the maximum lawful rate (the “Maximum Rate”) which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount,

together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

SECTION 9.18. No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each Loan Party acknowledges and agrees that: (i) (A) no fiduciary, advisory or agency relationship between the Loan Parties and their Subsidiaries and any Arranger, any Agent or any Lender is intended to be or has been created in respect of the transactions contemplated hereby or by the other Loan Documents, irrespective of whether any Arranger, any Agent or any Lender has advised or is advising any Loan Party or any Subsidiary on other matters, (B) the arranging and other services regarding this Agreement provided by the Arrangers, Agents and Lenders are arm's-length commercial transactions between the Loan Parties and their Affiliates Subsidiaries, on the one hand, and the Arrangers, Agents, Lenders and their respective Affiliates, on the other hand, (BC) the Loan Parties have consulted their own legal, accounting, regulatory and tax advisors to the extent ~~it~~ has they have deemed appropriate and (CD) the Loan Parties are capable of evaluating, and each understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) each of the Arrangers, Agents, Lenders and their respective Affiliates is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Loan Parties or any of their Affiliates Subsidiaries, or any other Person and (B) ~~no Lender~~ none of the Agents, Arrangers, Lenders or any of ~~its~~ their respective Affiliates has any obligation to the Loan Parties or any of their Affiliates Subsidiaries with respect to the transactions contemplated hereby except, in the case of a Lender, those obligations expressly set forth herein and in the other Loan Documents; and (iii) each of the Arrangers, Agents, Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their ~~Affiliates, and no Lender or any of its Subsidiaries, and none of the Arrangers, Agents, Lenders or any of their respective~~ Affiliates has any obligation to disclose any of such interests to the Loan Parties or their Affiliates Subsidiaries. To the fullest extent permitted by law, each Loan Party hereby waives and releases any claims that it may have against each of the Agents, Arrangers, Lenders and their respective Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

SECTION 9.19. Intercreditor Agreement. Each of the Lenders hereby acknowledges that it has received and reviewed the Intercreditor Agreement and agrees to be bound by the terms thereof as if such Lender was a signatory thereto. Each Lender (and each Person that becomes a Lender hereunder pursuant to Section 9.04) hereby (a) acknowledges that Jefferies Finance LLC is acting under the Intercreditor Agreement as the Term Loan Representative and Jefferies Finance LLC and its Affiliates is or may be a Lender hereunder and/or under the ABL Loan Documents and (b) waives any conflict of interest, now contemplated or arising hereafter, in connection therewith and agrees not to assert against the Administrative Agent any claims, cause of action, damages or liabilities of whatever kind or nature relating thereto. Each Lender (and each Person that becomes a Lender hereunder pursuant to Section 9.04) hereby authorizes and directs the Administrative Agent to enter into the Intercreditor Agreement on behalf of such Lender and agrees that the Administrative Agent may take such actions on its behalf as is contemplated by the terms of the Intercreditor Agreement.

SECTION 9.20. Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is

unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority.

SECTION 9.21. Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Agreements or any other agreement or instrument that is a QFC (such support “QFC Credit Support” and each such QFC a “Supported QFC”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

SECTION 9.22. Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrowers or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender’ s entrance into, participation in, administration of and performance of the Loans, the Commitments or this Agreement,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’ s entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’ s entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrowers or any other Loan Party, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender’ s entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

**SECTION 9.23. Erroneous Payments.**

(a) If the Administrative Agent (x) notifies a Lender, Secured Party, or any Person who has received funds on behalf of a Lender or Secured Party (any such Lender, Secured Party or other recipient (and each of their respective successors and assigns), a “ Payment Recipient”) that the Administrative Agent has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds (as set forth in such notice from the Administrative Agent) received by such Payment Recipient from the Administrative Agent or any of its Affiliates were erroneously or mistakenly transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, Secured Party or other Payment Recipient on its behalf) (any such funds, whether transmitted or received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an “ Erroneous Payment”) and (y) demands in writing the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Administrative Agent pending its return or repayment as contemplated below in this Section 9.23 and held in trust for the benefit of the Administrative Agent, and such Lender or Secured Party shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two Business Days thereafter (or such later date as the Administrative Agent may, in its sole discretion, specify in writing), return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon (except to the extent waived in writing by the Administrative Agent) in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent in same day funds at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Administrative Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error .

(b) Without limiting immediately preceding clause (a), each Lender, Secured Party or any Person who has received funds on behalf of a Lender or Secured Party (and each of their respective successors and assigns), agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in this Agreement or in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates), or (z) that such Lender, Secured Party, or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), then in each such case:

(i) it acknowledges and agrees that (A) in the case of immediately preceding clauses (x) or (y), an error and mistake shall be presumed to have been made (absent written confirmation from the Administrative Agent to the contrary) or (B) an error and mistake has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and

(ii) such Lender or Secured Party shall cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one Business Day of its knowledge of the occurrence of any of the circumstances described in

immediately preceding clauses (x), (y) and (z) notify the Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent pursuant to this Section 9.23(b).

For the avoidance of doubt, the failure to deliver a notice to the Administrative Agent pursuant to this Section 9.23(b) shall not have any effect on a Payment Recipient's obligations pursuant to Section 9.23(a) or on whether or not an Erroneous Payment has been made.

(c) Each Lender or Secured Party hereby authorizes the Administrative Agent to set off, net *and apply any and all amounts at any time owing to such Lender* or Secured Party under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Lender or Secured Party under any Loan Document with respect to any payment of principal, interest, fees or other amounts, against any amount that the Administrative Agent has demanded to be returned under immediately preceding clause (a).

(d) Erroneous Payment Recovery.

(i) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor in accordance with immediately preceding clause (a), from any Lender that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an "Erroneous Payment Return Deficiency"), upon the Administrative Agent's notice to such Lender at any time, then effective immediately (with the consideration therefor being acknowledged by the parties hereto), (A) such Lender shall be deemed to have assigned its Loans of the relevant class with respect to which such Erroneous Payment was made (the "Erroneous Payment Impacted Class") in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of the Loans (but not Commitments) of the Erroneous Payment Impacted Class, the "Erroneous Payment Deficiency Assignment") (on a cashless basis and such amount calculated at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Administrative Agent in such instance)), and is hereby (together with the Borrowers) deemed to execute and deliver an Assignment and Assumption with respect to such Erroneous Payment Deficiency Assignment, and such Lender shall deliver any requested promissory notes evidencing such Loans to the Borrower Representative or the Administrative Agent (but the failure of such Person to deliver any such promissory notes shall not affect the effectiveness of the foregoing assignment), (B) the Administrative Agent as the assignee Lender shall be deemed to have acquired the Erroneous Payment Deficiency Assignment, (C) upon such deemed acquisition, the Administrative Agent as the assignee Lender shall become a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender shall cease to be a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and its applicable Commitments which shall survive as to such assigning Lender, (D) the Administrative Agent and the Borrowers shall each be deemed to have waived any consents required under this Agreement to any such Erroneous Payment Deficiency Assignment, and (E) the Administrative Agent will reflect in the Register its ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment. For the avoidance of doubt, no Erroneous Payment Deficiency



Assignment will reduce the Commitments of any Lender and such Commitments shall remain available in accordance with the terms of this Agreement.

(ii) Subject to Section 9.04 (but excluding, in all events, any assignment consent or approval requirements (whether from the Borrowers or otherwise)), the Administrative Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and the Administrative Agent shall retain all other rights, remedies and claims against such Lender (and/or against any recipient that receives funds on its respective behalf). In addition, an Erroneous Payment Return Deficiency owing by the applicable Lender (x) shall be reduced by the proceeds of prepayments or repayments of principal and interest, or other distribution in respect of principal and interest, received by the Administrative Agent on or with respect to any such Loans acquired from such Lender pursuant to an Erroneous Payment Deficiency Assignment (to the extent that any such Loans are then owned by the Administrative Agent) and (y) may, in the sole discretion of the Administrative Agent, be reduced by any amount specified by the Administrative Agent in writing to the applicable Lender from time to time.

(e) The parties hereto agree that (x) irrespective of whether the Administrative Agent may be equitably subrogated, in the event that an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights and interests of such Payment Recipient (and, in the case of any Payment Recipient who has received funds on behalf of a Lender or Secured Party, to the rights and interests of such Lender or Secured Party, as the case may be) under the Loan Documents with respect to such amount (the “Erroneous Payment Subrogation Rights”) (provided that the Loan Parties’ Obligations under the Loan Documents in respect of the Erroneous Payment Subrogation Rights shall not be duplicative of such Obligations in respect of Loans that have been assigned to the Administrative Agent under an Erroneous Payment Deficiency Assignment) and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrowers or any other Loan Party; provided that this Section 9.23(e) shall not be interpreted to increase (or accelerate the due date for), or have the effect of increasing (or accelerating the due date for), the Obligations of the Borrowers relative to the amount (and/or timing for payment) of the Obligations that would have been payable had such Erroneous Payment not been made by the Administrative Agent; provided, further, that for the avoidance of doubt, immediately preceding clauses (x) and (y) shall not apply to the extent any such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrowers for the purpose of making such Erroneous Payment.

(f) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment received, including, without limitation, any defense based on “discharge for value” or any similar doctrine.

(g) Each party’s obligations, agreements and waivers under this Section 9.23(g) shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Commitments and/or the

repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

ARTICLE X LOAN GUARANTY

SECTION 10.01. Guaranty. Each Loan Guarantor hereby agrees that it is jointly and severally liable for, and, as a primary obligor and not merely as surety, absolutely and unconditionally guarantees to the Lenders, the prompt payment when due, whether at stated maturity, upon acceleration or otherwise, and at all times thereafter, of the Obligations and all costs and expenses, including, without limitation, all court costs and attorneys' and paralegals' fees (including allocated costs of in-house counsel and paralegals) and expenses paid or incurred by the Administrative Agent and the Lenders in endeavoring to collect all or any part of the Obligations from, or in prosecuting any action against, any Borrower, any Loan Guarantor or any other guarantor of all or any part of the Obligations (such costs and expenses, together with the Obligations, collectively the "Guaranteed Obligations"). Each Loan Guarantor further agrees that the Guaranteed Obligations may be extended or renewed in whole or in part without notice to or further assent from it, and that it remains bound upon its guarantee notwithstanding any such extension or renewal. All terms of this Loan Guaranty apply to and may be enforced by or on behalf of any domestic or foreign branch or Affiliate of any Lender that extended any portion of the Guaranteed Obligations.

SECTION 10.02. Guaranty of Payment. This Loan Guaranty is a guaranty of payment and not of collection. Each Loan Guarantor waives any right to require the Administrative Agent or any Lender to sue any Borrower, any Loan Guarantor, any other guarantor, or any other Person obligated for all or any part of the Guaranteed Obligations (each, an "Obligated Party"), or otherwise to enforce its payment against any collateral securing all or any part of the Guaranteed Obligations.

SECTION 10.03. No Discharge or Diminishment of Loan Guaranty. (a) Except as otherwise provided for herein, the obligations of each Loan Guarantor hereunder are unconditional and absolute and not subject to any reduction, limitation, impairment or termination for any reason (other than the indefeasible payment in full in cash of the Guaranteed Obligations), including: (i) any claim of waiver, release, extension, renewal, settlement, surrender, alteration or compromise of any of the Guaranteed Obligations, by operation of law or otherwise; (ii) any change in the corporate existence, structure or ownership of any Borrower or any other Obligated Party liable for any of the Guaranteed Obligations; (iii) any insolvency, bankruptcy, reorganization or other similar proceeding affecting any Obligated Party or their assets or any resulting release or discharge of any obligation of any Obligated Party; or (iv) the existence of any claim, setoff or other rights which any Loan Guarantor may have at any time against any Obligated Party, the Administrative Agent, any Lender or any other Person, whether in connection herewith or in any unrelated transactions.

(b) The obligations of each Loan Guarantor hereunder are not subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any of the Guaranteed Obligations or otherwise, or any provision of applicable law or regulation purporting to prohibit payment by any Obligated Party, of the Guaranteed Obligations or any part thereof.

(c) Further, the obligations of any Loan Guarantor hereunder are not discharged or impaired or otherwise affected by: (i) the failure of the Administrative Agent, the Collateral Agent or any Lender to assert any claim or demand or to enforce any remedy with respect to all or any part of the Guaranteed Obligations; (ii) any waiver or modification of or supplement to any provision of any



agreement relating to the Guaranteed Obligations; (iii) any release, non-perfection or invalidity of any indirect or direct security for the obligations of any Borrower for all or any part of the Guaranteed Obligations or any obligations of any other Obligated Party liable for any of the Guaranteed Obligations; (iv) any action or failure to act by the Administrative Agent, the Collateral Agent or any Lender with respect to any collateral securing any part of the Guaranteed Obligations; or (v) any default, failure or delay, willful or otherwise, in the payment or performance of any of the Guaranteed Obligations, or any other circumstance, act, omission or delay that might in any manner or to any extent vary the risk of such Loan Guarantor or that would otherwise operate as a discharge of any Loan Guarantor as a matter of law or equity (other than the indefeasible payment in full in cash of the Guaranteed Obligations).

SECTION 10.04. Defenses Waived. To the fullest extent permitted by applicable law, each Loan Guarantor hereby waives any defense based on or arising out of any defense of any Borrower or any Loan Guarantor or the unenforceability of all or any part of the Guaranteed Obligations from any cause, or the cessation from any cause of the liability of any Borrower or any Loan Guarantor, other than the indefeasible payment in full in cash of the Guaranteed Obligations. Without limiting the generality of the foregoing, each Loan Guarantor irrevocably waives acceptance hereof, presentment, demand, protest and, to the fullest extent permitted by law, any notice not provided for herein, as well as any requirement that at any time any action be taken by any Person against any Obligated Party, or any other Person. Each Loan Guarantor confirms that it is not a surety under any state law and shall not raise any such law as a defense to its obligations hereunder. The Collateral Agent may, at its election, foreclose on any Collateral held by it by one or more judicial or non-judicial sales, accept an assignment of any such Collateral in lieu of foreclosure or otherwise act or fail to act with respect to any collateral securing all or a part of the Guaranteed Obligations, compromise or adjust any part of the Guaranteed Obligations, make any other accommodation with any Obligated Party or exercise any other right or remedy available to it against any Obligated Party, without affecting or impairing in any way the liability of such Loan Guarantor under this Loan Guaranty except to the extent the Guaranteed Obligations have been fully and indefeasibly paid in cash. To the fullest extent permitted by applicable law, each Loan Guarantor waives any defense arising out of any such election even though that election may operate, pursuant to applicable law, to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Loan Guarantor against any Obligated Party or any security.

SECTION 10.05. Rights of Subrogation. No Loan Guarantor will assert any right, claim or cause of action, including, without limitation, a claim of subrogation, contribution or indemnification, that it has against any Obligated Party, or any collateral, until the Loan Parties and the Loan Guarantors have fully performed all their obligations to the Administrative Agent, the Collateral Agent and the Lenders.

SECTION 10.06. Reinstatement; Stay of Acceleration. If at any time any payment of any portion of the Guaranteed Obligations (including a payment effected through exercise of a right of setoff) is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy or reorganization of any Borrower or otherwise (including pursuant to any settlement entered into by a Secured Party in its discretion), each Loan Guarantor's obligations under this Loan Guaranty with respect to that payment shall be reinstated at such time as though the payment had not been made and whether or not the Administrative Agent and the Lenders are in possession of this Loan Guaranty. If acceleration of the time for payment of any of the Guaranteed Obligations is stayed upon the insolvency, bankruptcy or reorganization of any Borrower, all such amounts otherwise subject to acceleration under the terms of any agreement relating to the Guaranteed Obligations shall nonetheless be payable by the Loan Guarantors forthwith on demand by the Administrative Agent.

SECTION 10.07. Information. Each Loan Guarantor assumes all responsibility for being and keeping itself informed of the Borrowers' financial condition and assets, and of all other

circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and the nature, scope and extent of the risks that each Loan Guarantor assumes and incurs under this Loan Guaranty, and agrees that neither the Administrative Agent nor any Lender shall have any duty to advise any Loan Guarantor of information known to it regarding those circumstances or risks.

SECTION 10.08. [Intentionally Omitted].

~~SECTION 10.09. Taxes. Each payment of the Guaranteed Obligations will be made by each Loan Guarantor without withholding for any Taxes, unless such withholding is required by law. If any Loan Guarantor determines, in its sole discretion exercised in good faith, that it is so required to withhold Taxes, then such Loan Guarantor may so withhold and shall timely pay the full amount of withheld Taxes to the relevant Governmental Authority in accordance with applicable law. If such Taxes are Indemnified Taxes, then the amount payable by such Loan Guarantor shall be increased as necessary so that, net of such withholding (including such withholding applicable to additional amounts payable under this Section), the Administrative Agent or applicable Lender (as the case may be) receives the amount it would have received had no such withholding been made.~~

. Any obligation of any Borrower under Section 2.17 to pay any additional amounts to, or indemnify, the Administrative Agent, or any Lender for any taxes that are required to be withheld or deducted from payments made to the Administrative Agent, or any Lender, or to pay for, or indemnify the Administrative Agent, or any Lender for, any stamp and other similar taxes, shall apply mutatis mutandis (and without duplication) to each Loan Guarantor with respect to the Guaranteed Obligations and payments thereunder. Each Loan Guarantor agrees that the provisions of Section 2.17 shall apply with respect to any payments made by any Loan Guarantor .

SECTION 10.10. Maximum Liability. The provisions of this Loan Guaranty are severable, and in any action or proceeding involving any state corporate law, or any state, federal or foreign bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of any Loan Guarantor under this Loan Guaranty would otherwise be held or determined to be avoidable, invalid or unenforceable on account of the amount of such Loan Guarantor' s liability under this Loan Guaranty, then, notwithstanding any other provision of this Loan Guaranty to the contrary, the amount of such liability shall, without any further action by the Loan Guarantors or the Administrative Agent or any Lender, be automatically limited and reduced to the highest amount that is valid and enforceable as determined in such action or proceeding (such highest amount determined hereunder being the relevant Loan Guarantor' s "Maximum Liability"). This Section with respect to the Maximum Liability of each Loan Guarantor is intended solely to preserve the rights of the Administrative Agent and the Lenders to the maximum extent not subject to avoidance under applicable law, and no Loan Guarantor nor any other Person shall have any right or claim under this Section with respect to such Maximum Liability, except to the extent necessary so that the obligations of any Loan Guarantor hereunder shall not be rendered voidable under applicable law. Each Loan Guarantor agrees that the Guaranteed Obligations may at any time and from time to time exceed the Maximum Liability of each Loan Guarantor without impairing this Loan Guaranty or affecting the rights and remedies of the Administrative Agent or the Lenders hereunder; provided that, nothing in this sentence shall be construed to increase any Loan Guarantor' s obligations hereunder beyond its Maximum Liability.

SECTION 10.11. Contribution. In the event any Loan Guarantor (a "Paying Guarantor") shall make any payment or payments under this Loan Guaranty or shall suffer any loss as a result of any realization upon any collateral granted by it to secure its obligations under this Loan Guaranty, each other Loan Guarantor (each a "Non-Paying Guarantor") shall contribute to such Paying Guarantor an amount equal to such Non-Paying Guarantor' s "Contribution Percentage" of such payment

or payments made, or losses suffered, by such Paying Guarantor. For purposes of this Article X, each Non-Paying Guarantor's "Contribution Percentage" with respect to any such payment or loss by a Paying Guarantor shall be determined as of the date on which such payment or loss was made by reference to the ratio of (i) such Non-Paying Guarantor's Maximum Liability as of such date (without giving effect to any right to receive, or obligation to make, any contribution hereunder) or, if such Non-Paying Guarantor's Maximum Liability has not been determined, the aggregate amount of all monies received by such Non-Paying Guarantor from the Borrowers after the Effective Date (whether by loan, capital infusion or by other means) to (ii) the aggregate Maximum Liability of all Loan Guarantors hereunder (including such Paying Guarantor) as of such date (without giving effect to any right to receive, or obligation to make, any contribution hereunder), or to the extent that a Maximum Liability has not been determined for any Loan Guarantor, the aggregate amount of all monies received by such Loan Guarantors from the Borrowers after the Effective Date (whether by loan, capital infusion or by other means). Nothing in this provision shall affect any Loan Guarantor's several liability for the entire amount of the Guaranteed Obligations (up to such Loan Guarantor's Maximum Liability). Each of the Loan Guarantors covenants and agrees that its right to receive any contribution under this Loan Guaranty from a Non-Paying Guarantor shall be subordinate and junior in right of payment to the payment in full in cash of the Guaranteed Obligations. This provision is for the benefit of all of the Administrative Agent, the Lenders and the Loan Guarantors and may be enforced by any one, or more, or all of them in accordance with the terms hereof.

SECTION 10.12. Liability Cumulative. The liability of each Loan Party as a Loan Guarantor under this Article X is in addition to and shall be cumulative with all liabilities of each Loan Party to the Administrative Agent and the Lenders under this Agreement and the other Loan Documents to which such Loan Party is a party or in respect of any obligations or liabilities of the other Loan Parties, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

## ARTICLE XI

### THE BORROWER REPRESENTATIVE

SECTION 11.01. Appointment; Nature of Relationship. Holdings is hereby appointed by each of the Borrowers as its contractual representative (herein referred to as the "Borrower Representative" hereunder and under each other Loan Document, and each of the Borrowers irrevocably authorizes the Borrower Representative to act as the contractual representative of such Borrower with the rights and duties expressly set forth herein and in the other Loan Documents. The Borrower Representative agrees to act as such contractual representative upon the express conditions contained in this Article XI. The Administrative Agent and the Lenders, and their respective officers, directors, agents or employees, shall not be liable to the Borrower Representative or any Borrower for any action taken or omitted to be taken by the Borrower Representative or the Borrowers pursuant to this Section 11.01.

SECTION 11.02. Powers. The Borrower Representative shall have and may exercise such powers under the Loan Documents as are specifically delegated to the Borrower Representative by the terms of each thereof, together with such powers as are reasonably incidental thereto. The Borrower Representative shall have no implied duties to the Borrowers, or any obligation to the Lenders to take any action thereunder except any action specifically provided by the Loan Documents to be taken by the Borrower Representative.

SECTION 11.03. Employment of Agents. The Borrower Representative may execute any of its duties as the Borrower Representative hereunder and under any other Loan Document by or through authorized officers.

SECTION 11.04. Notices. Each Borrower shall immediately notify the Borrower Representative of the occurrence of any Default hereunder describing such Default and stating that such notice is a “notice of default”. In the event that the Borrower Representative receives such a notice, the Borrower Representative shall give prompt notice thereof to the Administrative Agent and the Lenders. Any notice provided to the Borrower Representative hereunder shall constitute notice to each Borrower on the date received by the Borrower Representative.

SECTION 11.05. Successor Borrower Representative. Upon the prior written consent of the Administrative Agent, the Borrower Representative may resign at any time, such resignation to be effective upon the appointment of a successor Borrower Representative. The Administrative Agent shall give prompt written notice of such resignation to the Lenders.

SECTION 11.06. Execution of Loan Documents. The Borrowers hereby empower and authorize the Borrower Representative, on behalf of the Borrowers, to execute and deliver to the Administrative Agent and the Lenders the Loan Documents and all related agreements, certificates, documents, or instruments as shall be necessary or appropriate to effect the purposes of the Loan Documents, including, without limitation, the Financials Certificates. Each Borrower agrees that any action taken by the Borrower Representative or the Borrowers in accordance with the terms of this Agreement or the other Loan Documents, and the exercise by the Borrower Representative of its powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Borrowers.

\* \* \* \*

**CERTIFICATIONS**

I, Christopher Pappas, certify that:

1. I have reviewed this quarterly report on Form 10-Q of The Chefs' Warehouse, Inc.;
2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rule 13a-15(f) and Rule 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: October 26, 2022

/s/ Christopher Pappas  
\_\_\_\_\_  
By: Christopher Pappas  
Chairman, President and Chief Executive Officer  
(Principal Executive Officer)



**CERTIFICATIONS**

I, James Leddy, certify that:

1. I have reviewed this quarterly report on Form 10-Q of The Chefs' Warehouse, Inc.;
2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rule 13a-15(f) and Rule 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: October 26, 2022

\_\_\_\_\_  
/s/ James Leddy  
By: James Leddy  
Chief Financial Officer  
(Principal Financial Officer)



**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the quarterly report of The Chefs' Warehouse, Inc. (the "Company") on Form 10-Q for the quarter ended September 23, 2022, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, James Leddy, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: October 26, 2022

By:           /s/ James Leddy          

James Leddy  
Chief Financial Officer  
(Principal Financial Officer)

A signed original of this written statement has been provided to the Company and will be retained by the Company and furnished to the SEC or its staff upon request.