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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM 8-K**

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**CURRENT REPORT**

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

**Date of Report (Date of earliest event reported): April 25, 2012**

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**THE CHEFS' WAREHOUSE, INC.**

(Exact Name of Registrant as Specified in Charter)

**Delaware**  
(State or Other Jurisdiction  
of Incorporation)

**001-35249**  
(Commission  
File Number)

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

**100 East Ridge Road, Ridgefield, CT 06877**  
(Address of Principal Executive Offices) (Zip Code)

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

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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## **Item 1.01 . Entry into a Material Definitive Agreement**

### Praml Transaction

On April 27, 2012, The Chefs' Warehouse West Coast, LLC ("West Coast"), a Delaware limited liability company and indirectly wholly-owned subsidiary of The Chefs' Warehouse, Inc. (the "Company"), a Delaware corporation, entered into a Stock Purchase Agreement (the "Stock Purchase Agreement") with Adelheid Putze and Rudolf Putze (the "Shareholders"), the owners of 100% of the stock of Praml International, Ltd. ("Praml"), a Nevada corporation, pursuant to which West Coast acquired, on that date, 100% of the stock of Praml from the Shareholders for approximately \$19.5 million in cash (the "Purchase Price"), resulting in Praml becoming a wholly-owned subsidiary of West Coast (the "Praml Transaction"). The Purchase Price is subject to a post-closing working capital adjustment as described in the Stock Purchase Agreement. West Coast financed the Purchase Price paid to the Shareholders with borrowings under the Credit Facilities (as defined below). The terms of the Stock Purchase Agreement are summarized below.

The Stock Purchase Agreement contains customary representations and warranties and covenants from West Coast and the Shareholders, including representations and warranties about Praml's business, assets, operations, and liabilities. Pursuant to the Stock Purchase Agreement, the Shareholders and West Coast are, subject to certain temporal and financial limitations, obligated to indemnify each other for, among other things, losses resulting from breaches or misrepresentations under the Stock Purchase Agreement. West Coast deposited approximately \$2 million of the Purchase Price in an escrow account to be held for up to eighteen (18) months following the closing of the Praml Transaction to satisfy claims made by West Coast under the terms of the Stock Purchase Agreement.

In connection with the Praml Transaction, the Shareholders have entered into consulting agreements with West Coast and have agreed not to compete with West Coast in the state of Nevada for a period of six (6) years.

The foregoing description of the Stock Purchase Agreement entered into in connection with the Praml Transaction does not purport to be a complete description of the parties' rights and obligations under the Stock Purchase Agreement. The foregoing description of the Stock Purchase Agreement is qualified in its entirety by reference to the Stock Purchase Agreement filed herewith as Exhibit 2.1.

### Lease Agreement for New York City Distribution Facility

On April 26, 2012 (the "Lease Commencement Date"), Dairyland HP LLC ("DHP"), a Delaware limited liability company and an indirectly wholly-owned subsidiary of the Company, entered into an Agreement of Lease (the "Lease Agreement") with The City of New York, a municipal corporation of the State of New York, acting by and through its Department of Small Business Services (the "City").

Under the Lease Agreement, from the Lease Commencement Date until May 31, 2013, which is the anticipated full vacate date (the "Full Vacate Date"), DHP will lease from the City a substantial portion of the warehouse facility (the "Facility") located at 200-240 Food Center Drive, Bronx, New York 10474 (the "Land"), as well as a rail shed consisting of approximately 57,803 square feet (the "Rail Shed") and a portion of the exterior areas on the Land containing an area sufficient to meet all applicable zoning, parking and other rules and ordinances (collectively, the "Initial Premises"). Following the Full Vacate Date, DHP will lease from the City all of the approximately 176,406 square feet of the Facility, the Rail Shed and all of the exterior areas on the Land (collectively, the "Final Premises" and together with the Initial Premises, the "Premises"). The Facility will house an expanded distribution facility for the Company's New York City operations. Dairyland USA Corporation, a New York corporation and

wholly-owned subsidiary of the Company (“Dairyland”), currently leases a portion of the Premises pursuant to a Sublease Agreement with A.L. Bazzini Co., Inc. (the “Existing Sublease”), which agreement was terminated upon DHP’s entering into the Lease Agreement.

The initial term of the Lease Agreement will be for fifteen years from the Lease Commencement Date (the “Initial Term”), with the Company having the option to extend the Lease Agreement for two ten-year renewal terms. DHP also has a right of first offer on the Premises should the City decide to sell the Premises to non-governmental purchasers in a competitive process. Base rent under the Lease Agreement is expected to be approximately \$69,000 per month prior to the Full Vacate Date and approximately \$110,000 per month beginning on the Full Vacate Date, subject to certain fixed increases over the course of the Initial Term as set forth in the Lease Agreement and to adjustment based on DHP’s optional expansion of the Facility into the exterior areas of the Land. In addition, throughout the Initial Term rent abatements will apply at different intervals. Additionally, on the earlier of twelve (12) months following completion of the redevelopment of the Rail Shed (as described in more detail below) and twenty-four (24) months following the Lease Commencement Date, DHP will owe additional monthly rent on the Rail Shed.

Pursuant to the terms of the Lease Agreement, DHP is required to redevelop the Facility, including portions of the exterior areas and the Rail Shed, and must invest at least \$7 million into the redevelopment project. The redevelopment of the Facility must be substantially completed within twenty-four (24) months of the Full Vacate Date, and the redevelopment of the Rail Shed must be substantially completed within thirty-six (36) months of the Full Vacate Date. The Company expects that the redevelopment expenses will be in the range of approximately \$15 million to \$20 million, which the Company intends to finance through its borrowings under a New Markets Tax Credit loan, which is described in more detail below, as well as working capital, including by virtue of borrowings under the Credit Facility (as defined below).

The Lease Agreement contains customary events of default, including, without limitation, nonpayment of lease payments, inaccuracy of representations and warranties in any material respect and events of bankruptcy. Additionally, an event of default will occur if DHP fails to complete the redevelopment of the Facility and the Rail Shed as set forth in the Lease Agreement. Upon the occurrence of an event of default, among other things, the City has the right to terminate the Lease Agreement and repossess the Premises, and DHP shall pay all lease payments due under the Lease Agreement through the remainder of the applicable lease term.

The foregoing description of the Lease Agreement does not purport to be a complete description of the parties’ rights and obligations under the above-described Lease Agreement. The above description is qualified in its entirety by reference to the complete Lease Agreement, a copy of which is filed herewith as Exhibit 10.1 and is incorporated herein by reference.

#### New Markets Tax Credit Loan Transaction

On April 26, 2012 (the “Loan Commencement Date”), DHP entered into a financing arrangement under the New Markets Tax Credit (“NMTC”) program under the Internal Revenue Code of 1986, as amended (the “Code”), pursuant to which Commercial Lending II LLC (“CLII”), a community development entity and a subsidiary of JPMorgan Chase Bank, N.A., will provide to DHP an \$11.0 million construction loan (the “Loan”) to help fund DHP’s expansion and build-out of the Facility and the Rail Shed (the “Project”), which construction is required under the Lease Agreement. The NMTC program was provided for in the Community Renewal Tax Relief Act of 2000 to induce capital investment in qualified low income communities.

The Loan is evidenced by a Mortgage Note, dated as of April 26, 2012 (the "Mortgage Note"), between DHP, as maker, and CLII, as payee. Under the Mortgage Note DHP is obligated to pay CLII (i) monthly interest payments on the principal balance then outstanding and (ii) the entire unpaid principal balance then due and owing on April 26, 2017. Interest accrues under the Mortgage Note at 1.00% per annum for as long as DHP is not in default thereunder, which interest shall be calculated on the basis of the actual number of days elapsed over a year of 360 days. The Mortgage Note also provides for permitted prepayment of the Mortgage Note, in whole or in part, in \$100,000 increments, after March 15, 2014. The Mortgage Note sets forth a late charge for payments not made within ten days of the due date of 5% of the unpaid amount. Additionally, the Mortgage Note contains customary events of default, including the events of default set forth in Loan Agreement, the Building Loan Agreement and the Security Agreement (each as defined below), and upon an event of default, the full principal balance remaining under the Mortgage Note may be declared immediately due and payable and a default rate equal to 5% over the fixed rate of 1% will be applied to such remaining principal balance.

The Mortgage Note is secured by a Leasehold Mortgage and Security Agreement and Assignment of Leases and Rents, dated as of April 26, 2012 (the "Mortgage and Security Agreement"), pursuant to which DHP grants CLII a first priority secured lien on DHP's leasehold interest in the Premises, including all improvements made on the Premises, as well as, among other things, a lien on all fixtures incorporated into the project improvements and a lien on all of DHP's machinery, apparatus, equipment, fittings, trade fixtures and other property purchased with borrowings under the Mortgage Note. All liabilities of and payments by DHP to CLII with respect to the Loan are guaranteed by the Company, Chefs' Warehouse Parent, LLC ("Parent"), Dairyland, The Chefs' Warehouse Mid-Atlantic, LLC ("Mid-Atlantic"), Bel Canto Foods, LLC ("Bel Canto"), West Coast, and The Chefs' Warehouse of Florida, LLC ("Florida") pursuant to the terms of a Joint and Several Guaranty of Payment, dated as of April 26, 2012 (the "Guaranty").

Additionally, DHP and CLII entered into a Building Loan Agreement, dated as of April 26, 2012 (the "Building Loan Agreement"), pursuant to which the proceeds of the Loan will be released from a disbursement account (the "Disbursement Account") to DHP in connection with construction under the Project. The funds deposited in the Disbursement Account are pledged to CLII as security for the repayment of the Mortgage Note. Under the terms of the Building Loan Agreement, DHP is obligated to invest an amount equal to the amount in excess of the \$11.0 million loaned to DHP under the Building Loan Agreement necessary to complete the Project. The Building Loan Agreement contains customary events of default, as well as events of default relating to, among other things, the failure of a timely lien-free completion of the Project as provided in the Building Loan Agreement. Upon the occurrence of an event of default, CLII may, among other things, declare amounts due under the Mortgage Note immediately due and payable and may cease to release proceeds from the Disbursement Account.

In connection with the Project, DHP, as borrower, the Company, Parent, Dairyland, Mid-Atlantic, Bel Canto, West Coast, and Florida, as guarantors, and CLII, as lender, entered into a Loan Agreement, dated as of April 26, 2012 (the "NMTC Loan Agreement"). Under the NMTC Loan Agreement, DHP provides certain representations and covenants with respect to, among other things, the continuing operation of the business at the Facility as a "qualified active low income community business," as defined under Section 45D(d)(2) of the Code and Treasury Regulation Section 1.45D-1(d)(4) (a "QALICB"), in order to maintain the status of the Loan as a "qualified low-income community investment" as defined under Section 45D of the Code and Treasury Regulation Section 1.45D-1(d) (a "QLICI"). The NMTC Loan Agreement further provides that, starting on the earlier of the first day of the month following the one-year anniversary of the Loan Commencement Date or the first day of the month following the completion of the Project as discussed in the Building Loan Agreement and the plans and specifications with respect thereto, Mid-Atlantic shall deposit monthly payments of \$61,111 into a sinking fund reserve to be pledged to and controlled by CLII, which will remain in escrow for purposes of securing the obligations of Mid-Atlantic under the Guaranty. The sinking fund reserve shall not exceed the principal balance under the Mortgage Note.

In addition to the above-described obligations, DHP, the Company, Dairyland, Parent, Bel Canto, Mid-Atlantic, West Coast, and Florida have provided assurances with respect to the qualification of the Loan as a QLICI and the qualification of DHP as a QALICB and agreed to indemnify the lender for losses suffered by the lender as a result of these assurances no longer being available. Additionally, these companies have agreed to jointly and severally indemnify and hold harmless CLII for any loss suffered as a result of the presence of any hazardous materials at the Premises, including the cost of any related clean-up.

The foregoing description does not purport to be a complete description of the parties' rights and obligations under the above-described Loan, Mortgage Note, Mortgage and Security Agreement, Guaranty, Building Loan Agreement and NMTC Loan Agreement. The above description is qualified in its entirety by reference to the complete Mortgage Note, Mortgage and Security Agreement, Guaranty, Building Loan Agreement and NMTC Loan Agreement, copies of which are filed herewith as Exhibits 10.2, 10.3, 10.4, 10.5 and 10.6, respectively, and are incorporated herein by reference.

#### Senior Secured Credit Facility

On April 25, 2012, Dairyland, Mid-Atlantic, Bel Canto, West Coast and Florida (each a "Borrower" and collectively, the "Borrowers") and the Company and Parent (each a "Guarantor" and collectively, the "Guarantors") entered into a senior secured credit facility (the "Credit Agreement") with the lenders from time to time party thereto, JPMorgan Chase Bank, N.A. ("Chase"), as Administrative Agent, and the other parties thereto.

The Credit Agreement provides for a senior secured term loan facility (the "Term Loan Facility") in the aggregate amount of up to \$40,000,000 (the loans thereunder, the "Term Loans") and a senior secured revolving loan facility (the "Revolving Credit Facility" and, together with the Term Loan Facility, the "Credit Facilities") of up to an aggregate amount of \$100,000,000 (the loans thereunder, the "Revolving Credit Loans" and, collectively with the Term Loans, the "Loans"), of which up to \$1,000,000 is available for letters of credit and up to \$3,000,000 is available for short-term borrowings on a swingline basis. The Credit Agreement also provides that the Borrowers may, at their option, increase the aggregate amount of either borrowings under the Revolving Credit Facility or the Term Loan Facility in an aggregate amount up to \$40,000,000 (but in not less than \$10,000,000 increments) without the consent of any lenders not participating in such increase, subject to certain customary conditions and lenders committing to provide the increase in funding. There can be no assurance that additional funding will become available. Unutilized commitments under the Revolving Credit Facility portion of the Credit Agreement are subject to a per annum fee of 0.40%. A fronting fee of 0.25% per annum is payable on the face amount of each letter of credit issued under the Credit Facilities.

On April 25, 2012, the Borrowers incurred \$40,000,000 in borrowings under the Term Facility of the Credit Agreement to repay existing borrowings under the senior secured credit facility entered into by the Borrowers and Guarantors on August 2, 2011 with the lenders from time to time party thereto, Chase, as Administrative Agent, and the other parties thereto (the "Existing Credit Agreement"). The final maturity of the Term Loans is April 25, 2017. Subject to adjustment for prepayments, the Company is required to make quarterly principal payments on the Term Loans on June 30, September 30, December 31 and March 31, with the first four quarterly payments equal to \$1,000,000 and the last sixteen quarterly payments equal to \$1,500,000, with the remaining balance due upon maturity.

On April 25, 2012, the Borrowers incurred approximately \$3.0 million in borrowings under the Revolving Credit Facility portion of the Credit Agreement to repay borrowings under the Existing Credit Agreement. Going forward, borrowings under the Revolving Credit Facility portion of the Credit Agreement will be used for Capital Expenditures (as defined in the Credit Agreement), Permitted Acquisitions (as defined in the Credit Agreement), working capital and general corporate purposes of the Borrowers. The commitments under the Revolving Credit Facility expire on April 25, 2017 and any Revolving Credit Loans then outstanding will be payable in full at that time.

The Credit Facilities are jointly and severally guaranteed by the Borrowers and the Guarantors, including the Company. In addition, the Credit Agreement is secured pursuant to a Pledge and Security Agreement, dated as of April 25, 2012 (the "Pledge and Security Agreement"), by first priority liens on substantially all of the Borrowers' and each Guarantor's assets and includes a pledge of the equity interests of each of the Company's subsidiaries. The collateral does not include, among other things, equity interests in and assets of DHP or owned real property unless it was purchased with borrowings under the Credit Facility and had a fair market value at the time of purchase of greater than \$1 million.

Borrowings under the Credit Facilities will bear interest at the Company's option of either (i) the alternate base rate (representing the greatest of (1) Chase's prime rate, (2) the federal funds effective rate for overnight borrowings plus  $\frac{1}{2}$  of 1% and (3) the Adjusted LIBO Rate for one month plus 2.50%) plus in each case the applicable margin of 0.50% for Revolving Credit Loans or Term Loans or (ii), in the case of Eurodollar Borrowings (as defined in the Credit Agreement), the Adjusted LIBO Rate plus the applicable margin of 3.0% for Revolving Credit Loans or Term Loans. The LIBO Rate is the rate for eurodollar deposits for a period equal to one, two, three, six or nine months (as selected by the Borrowers) appearing on Reuters Screen LIBOR01 Page (or any successor or substitute page of such service), at approximately 11:00 a.m. London time, two business days prior to the commencement of the applicable interest period.

The Credit Agreement includes negative covenants, in many cases subject to certain carve-outs and dollar limitations, that limit, among other things, additional indebtedness, transactions with affiliates, additional liens, sales of assets, dividends, investments and advances, prepayments of debt, mergers and acquisitions (with a carveout for Permitted Acquisitions (as defined in the Credit Agreement)). The Credit Agreement also includes financial covenants that require (i) the ratio of the Company's consolidated EBITDA (as defined in the Credit Agreement) minus the unfinanced portion of capital expenditures to the Company's consolidated Fixed Charges (as defined in the Credit Agreement) on a trailing twelve month basis as of the end of each of the Company's fiscal quarters not be less than 1.25 to 1.00 and (ii) the ratio of the Company's consolidated Total Indebtedness (as defined in the Credit Agreement) to the Company's consolidated EBITDA (as defined in the Credit Agreement) (the "Leverage Ratio") for the then trailing twelve months be greater than (A) 3.50 to 1.00 for any fiscal quarter ending in the Company's 2012 and 2013 fiscal years, (B) 3.25 to 1.00 for any fiscal quarter ending in the Company's 2014 and 2015 fiscal years and (C) 3.00 to 1.00 for any fiscal quarter ending thereafter.

Under the terms of the Credit Agreement, (A) 50% of the net proceeds from the issuance by the Borrowers or Guarantors of equity interests must be used to repay borrowings under the Credit Facility if the Leverage Ratio (as calculated in accordance with the Credit Agreement) on the last day of the Company's most recent fiscal quarter is equal to or greater than 2.50 to 1.00, (B) 100% of the net proceeds from (i) asset sales by the Borrowers or Guarantors; (ii) insurance recoveries; (iii) indebtedness other than indebtedness permitted under the Credit Agreement and (iv) extraordinary receipts must be used to prepay borrowings under the Credit Facilities, subject, in the case of (B), to a 270-day reinvestment period and (C) 50% of excess cash flow must be used to repay borrowings under the Credit Facility if the Leverage Ratio (as calculated in accordance with the Credit Agreement) on the last day of the Company's most recent fiscal quarter is equal to or greater than 2.00 to 1.00 (with a cap on such prepayment of \$2 million for the fiscal year ended 2012 and \$4 million per year for each fiscal year ended thereafter).

The Credit Agreement also contains customary representations and warranties that must be accurate in order for the Borrowers to borrow under the Revolving Credit Facility. In addition, the Credit Agreement contains customary events of default, including, but not limited to, payment defaults, breaches of representations and warranties, covenant defaults, defaults under other material debt, events of bankruptcy and insolvency, failure of any guaranty or security document supporting the Credit Facilities to be in full force and effect, and a change of control. If an event of default occurs and is continuing, the Borrowers may be required immediately to repay all amounts outstanding under the Credit Agreement. Lenders holding at least 50% of the loans and commitments under the Credit Agreement may elect to accelerate the maturity of the loans and/or terminate the commitments under the Credit Agreement upon the occurrence and during the continuation of an event of default; provided, however, that this election must be made by at least two (2) lenders under the Credit Agreement if there exists at least two (2) lenders under the Credit Agreement.

The foregoing description does not purport to be a complete description of the parties' rights and obligations under the above-described Credit Agreement and Pledge and Security Agreement. The above description is qualified in its entirety by reference to the complete Credit Agreement and Pledge and Security Agreement, which are filed herewith as Exhibits 10.7 and 10.8, respectively, to this Current Report on Form 8-K and are incorporated herein by reference.

#### Forward-Looking Statements

Safe Harbor Statement under the Private Securities Litigation Reform Act of 1995: Statements in this report 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. The risks and uncertainties which could impact these statements include, but are not limited to, the Company's ability to generate sufficient levels of working capital to finance the redevelopment expenses not financed by the Loan under the Project; the Company's ability to timely complete the Project within its current cost estimates; and the Company's sensitivity to general economic conditions, including the current economic environment. Any forward-looking statements in this report are made pursuant to the Private Securities Litigation Reform Act of 1995 and, as such, speak only as of the date of this report. The Company is not undertaking to update any information in this report until the effective date of its future reports required by applicable laws. Any projections of future operations are based on a number of assumptions, many of which are outside the Company's control and should not be construed in any manner as a guarantee that such results will in fact occur. The Company may from time to time update these publicly announced projections, but it is not obligated to do so.

#### **Item 1.02. Termination of a Material Definitive Agreement**

On April 26, 2012, in connection with DHP's entry into the Lease Agreement, the Existing Sublease between Dairyland and A.L. Bazzini Co., Inc. was terminated, effective upon DHP's execution of the Lease Agreement.

On April 25, 2012, each of the Existing Credit Agreement and that certain Pledge and Security Agreement, dated as of August 2, 2011, by and among the Borrowers and Guarantors and Chase, as Administrative Agent, entered into in connection with the Existing Credit Agreement, was terminated in connection with the Company's entering into the Credit Agreement and the Pledge and Security Agreement.

**Item 2.01. Completion of Acquisition or Disposition of Assets**

The information set forth in Item 1.01 under the caption “Praml Transaction” is incorporated in this Item 2.01 by reference.

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

The information set forth in Item 1.01 under the captions “Lease Agreement for New York City Distribution Facility,” “New Markets Tax Credit Loan Transaction” and “Senior Secured Credit Facility” is incorporated in this Item 2.03 by reference.

**Item 9.01. Financial Statements and Exhibits**

(d) *Exhibits.* The following exhibits are being filed or furnished, as applicable, herewith to this Current Report on Form 8-K.

<u>Exhibit No.</u>	<u>Description</u>
2.1	Stock Purchase Agreement, dated as of April 27, 2012, among The Chefs’ Warehouse West Coast, LLC and Adelheid Putze and Rudolf Putze (Pursuant to Item 601(b)(2) of Regulation S-K, the schedules and exhibits to this agreement are omitted, but will be provided supplementally to the Securities and Exchange Commission upon request).
10.1	Agreement of Lease, dated as of April 26, 2012, between the City of New York, as Landlord, and Dairyland HP LLC, as Tenant.
10.2	Mortgage Note, dated as of April 26, 2012, between Dairyland HP LLC, as Maker, and Commercial Lending II LLC, as Payee.
10.3	Leasehold Mortgage and Security Agreement and Assignment of Leases and Rents, dated as of April 26, 2012, between Dairyland HP LLC, as Mortgagor, and Commercial Lending II LLC, as Mortgagee.
10.4	Joint and Several Guaranty of Payment, dated as of April 26, 2012, among The Chefs’ Warehouse, Inc., Chefs’ Warehouse Parent, LLC, 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.
10.5	Building Loan Agreement, dated as of April 26, 2012, between Commercial Lending II LLC, as Lender, and Dairyland HP LLC, as Borrower.
10.6	Loan Agreement, dated as of April 26, 2012, among Dairyland HP LLC, as Borrower, The Chefs’ Warehouse, Inc., Chefs’ Warehouse Parent, LLC, 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 Guarantors, and Commercial Lending II LLC, as Lender.
10.7	Credit Agreement, dated as of April 25, 2012, 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 Chefs’ Warehouse, Inc. and Chefs’ Warehouse Parent, LLC, as Guarantors, the Lenders party thereto, JPMorgan Chase Bank, N.A., as Administrative Agent, and the other Loan Parties party thereto.

10.8 Pledge and Security Agreement, dated April 25, 2012, by and among Dairyland USA Corporation, 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., Chefs' Warehouse Parent, LLC, and the other Subsidiaries of The Chefs' Warehouse, Inc. that become party thereto after the date thereof, as Guarantors, and JPMorgan Chase Bank, N.A., as Administrative Agent.

**SIGNATURES**

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

THE CHEFS' WAREHOUSE, INC.

By: /s/ Alexandros Aldous

Name: Alexandros Aldous

Title: General Counsel and Corporate Secretary

Date: April 30, 2012

## EXHIBIT INDEX

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10.8	Pledge and Security Agreement, dated April 25, 2012, by and among Dairyland USA Corporation, 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., Chefs' Warehouse Parent, LLC, and the other Subsidiaries of The Chefs' Warehouse, Inc. that become party thereto after the date thereof, as Guarantors, and JPMorgan Chase Bank, N.A., as Administrative Agent.

STOCK PURCHASE AGREEMENT  
among  
THE CHEFS' WAREHOUSE WEST COAST, LLC  
and  
ADELHEID PUTZE  
RUDOLF PUTZE  
April 27, 2012

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## **STOCK PURCHASE AGREEMENT**

This STOCK PURCHASE AGREEMENT (this "Agreement"), dated as of April 27, 2012, is by and among The Chefs' Warehouse West Coast, LLC, a Delaware limited liability company ("Buyer"), and Adelheid Putze and Rudolf Putze (each a "Shareholder" and collectively, the "Shareholders"). Buyer and the Shareholders are referred to collectively herein as the "Parties" and each individually as a "Party". Capitalized terms used herein and not otherwise defined in the text of this Agreement have the meanings given to such terms in Article VI.

### **RECITALS**

**WHEREAS**, the Shareholders own 100% of the shares of capital stock (the "Shares") of Praml International, LTD., a Nevada corporation (the "Company"), which Shares constitute all of the issued and outstanding shares of capital stock of the Company;

**WHEREAS**, the Company is engaged in the Business; and

**WHEREAS**, on the date hereof, the Shareholders desire to sell to Buyer, and Buyer desires to purchase from the Shareholders, the Shares for the consideration and on the terms and conditions set forth in this Agreement.

### **AGREEMENTS**

**NOW, THEREFORE**, in consideration of the respective representations, warranties, agreements and conditions hereinafter set forth and other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the Parties hereto agree as follows:

#### **ARTICLE I.**

##### **SALE AND TRANSFER OF SHARES; CLOSING**

1.1 Sale and Transfer of Shares. Upon the terms and conditions set forth herein, the Shareholders hereby sell, transfer and convey the Shares to Buyer, and Buyer hereby agrees to purchase the Shares from the Shareholders, free and clear of all Liens.

##### 1.2 Purchase Price.

(a) Determination of Purchase Price. At the Closing, Buyer shall purchase the Shares from the Shareholders for an amount equal to \$19,548,011.94 (the "Purchase Price"). The Purchase Price shall be subject to post-Closing adjustments as provided for herein. The Parties hereby agree and acknowledge that the Purchase Price to be paid at Closing is an amount equal to (a) \$17,000,000 plus (b) the Closing Date Net Working Capital. The Purchase Price, less the Working Capital Holdback and the Escrow Amount which shall be paid by Buyer to the Escrow Account as set forth in Section 1.3, shall be payable by Buyer to the Shareholders at the Closing as set forth in Section 1.4(c)(i) in accordance with the instructions set forth in the Closing Statement.

(b) Closing Date Net Working Capital. Attached hereto as Exhibit A is an estimated balance sheet of the Company as of the Effective Time (the "Closing Date Balance Sheet"), which has been prepared by the Company and which sets forth the estimated Net Working Capital of the Company as of the Effective Time (the "Closing Date Net Working Capital"). The Closing Date Balance Sheet was prepared in accordance with sound business practices and in a manner consistent with the preparation of the Financial Statements, subject to the following: (i) Inventory is valued, in the aggregate, on a first-in, first-out basis; (ii) no amount is reflected with respect to Inventory that is damaged, beyond the stated expiration date, or frozen and refrozen; (iii) no amount is reflected with respect to accounts receivable (A) that are subject to dispute, offset, counterclaim or other claim or defense, (B) that are past due by ninety (90) days or greater, or (C) that are not evidenced by an invoice rendered to the customer; (iv) the calculation of the Net Working Capital takes into account any rebates, bill backs or other discounts; and (v) the calculation of the Net Working Capital includes an accrual for any post-termination benefits with respect to the Excluded Employees or any other former employee of the Company, including, without limitation, severance payments, COBRA Liabilities and any other similar benefits. The Closing Date Balance Sheet provides that the Closing Date Net Working Capital is an amount equal to \$2,548,011.94.

(c) Post-Closing Purchase Price Adjustment. On or before the 130<sup>th</sup> day following the Closing Date, Buyer shall prepare and deliver to the Shareholders a final balance sheet of the Company as of the Effective Time (the "Final Closing Date Balance Sheet"), which shall include the final determination of the Net Working Capital of the Company as of the Effective Time (the "Final Closing Date Net Working Capital"). The Final Closing Date Balance Sheet shall be prepared in a manner consistent with the preparation of the Closing Date Balance Sheet; provided, however, that any accounts receivable reflected in the Closing Date Balance Sheet will be disregarded for purposes of the Final Closing Date Balance Sheet to the extent such accounts receivable remain uncollected 120 days following the Closing. During the 30-day period immediately following the Shareholders' receipt of the Final Closing Date Balance Sheet, the Shareholders and their agents and representatives shall be permitted to review Buyer's working papers related to the preparation and determination of the Final Closing Date Balance Sheet. The Final Closing Date Balance Sheet shall become final and binding upon the Parties thirty (30) days following the Shareholders' receipt thereof, unless the Shareholders give written notice of disagreement (a "Notice of Disagreement") to Buyer prior to such date. Any Notice of Disagreement shall specify in reasonable detail the nature and dollar amount of any disagreement so asserted. If Buyer receives a Notice of Disagreement within the appropriate time frame, each undisputed item on the Final Closing Date Balance Sheet shall become final and binding and each disputed item on the Final Closing Date Balance Sheet shall become final and binding on the earliest of (x) the date the Parties resolve in writing each such difference they have with respect to the matters specified in the Notice of Disagreement or (y) the date on which each such matter in dispute is finally resolved jointly by the Shareholders' independent public accountant and Buyer's independent public accountant. After the twenty (20) days following delivery of a Notice of Disagreement, if the Parties have not resolved such differences outlined in the Notice of Disagreement, the Parties, unless otherwise mutually agreed to in writing, shall submit to their respective independent public accountants for review and resolution only such matters that remain in dispute and that were properly included in the Notice of Disagreement. The Parties shall instruct their respective independent public accountants to use their respective reasonable best efforts to resolve such disputed matters within thirty (30) days of submission and to not assign a value to any item in dispute greater than the greatest value for such item assigned by either Party or lesser than the smallest value of such item assigned by either Party. Each Party shall pay the fees and expenses of its respective independent public accountants.

Upon the final determination of the Final Closing Date Balance Sheet and Final Closing Date Net Working Capital as set forth in this Section 1.2(c), if the Final Closing Date Net Working Capital as reflected in the Final Closing Date Balance Sheet exceeds the Closing Date Net Working Capital as reflected in the Closing Date Balance Sheet, then Buyer shall pay to the Shareholders an amount equal to the difference between the Final Closing Date Net Working Capital and the Closing Date Net Working Capital (the "Post-Closing Adjustment") within thirty (30) days of demand by the Shareholders. Upon the final determination of the Final Closing Date Balance Sheet and Final Closing Date Net Working Capital, if the Final Closing Date Net Working Capital as reflected in the Final Closing Date Balance Sheet is less than the Closing Date Net Working Capital as reflected in the Closing Date Balance Sheet, then the Post-Closing Adjustment shall be deducted from the Working Capital Holdback. If the Post-Closing Adjustment is payable to Buyer and is less than the Working Capital Holdback, the balance of the Working Capital Holdback, after deduction of the Post-Closing Adjustment, shall be promptly released to the Shareholders, pro rata, by joint written instructions executed by the Shareholders and Buyer and delivered to the Escrow Agent. If the Post-Closing Adjustment is payable to Buyer and exceeds the Working Capital Holdback, Buyer shall set off the remaining amount from the Escrow Amount, and, if the Escrow Amount is exhausted, the Shareholders, jointly and severally, shall pay to Buyer any portion of the Post-Closing Adjustment not paid from the Working Capital Holdback and the Escrow Amount within thirty (30) days of demand by Buyer.

Any payments made under this Section 1.2(c) shall be treated by the Parties as an adjustment to the Purchase Price for Tax purposes.

1.3 Escrow Agreement. At Closing, the Shareholders, Buyer and the Escrow Agent shall enter into the Escrow Agreement, dated as of the date hereof (the "Escrow Agreement"), which provides for the payment by Buyer to the escrow account (the "Escrow Account") of \$144,964.67 (together with interest accrued thereon, the "Working Capital Holdback"), and \$1,954,801.19 (together with any interest accrued thereon, the "Escrow Amount").

#### 1.4 Closing.

(a) Time and Place of Closing. The consummation of the transactions contemplated by and the delivery of related documents, instruments and agreements provided for in this Agreement (collectively, the "Closing") shall take place on the date hereof (the "Closing Date"). The Closing will be effective as of 11:59 p.m. Pacific Time on April 27, 2012 (the "Effective Time").

(b) Closing Deliveries of the Shareholders. At Closing, the Shareholders shall deliver to Buyer, in addition to any other documents to be delivered under the provisions of this Agreement, all of the following documents:

(i) the Closing Statement, dated as of the date hereof, duly executed by the Shareholders (the “Closing Statement”);

(ii) certificates representing the Shares, free and clear of all Liens, duly endorsed (or accompanied by duly executed stock powers) for transfer to Buyer or accompanied by stock powers endorsed in blank;

(iii) evidence of full and complete payment of all Indebtedness (including payoff letters with respect thereto) and releases of all Liens (other than Permitted Liens with respect to the Assets) on the Shares and the Assets, including the termination of all security interests with respect to the Shares or the Assets, in each case in a form reasonably acceptable to Buyer;

(iv) a certificate of the Secretary of the Company (A) certifying, as complete and accurate as of the Closing, attached copies of the bylaws of the Company, and (B) certifying and attaching all requisite resolutions or actions of the Company’s board of directors and shareholders, as applicable, approving the execution and delivery of this Agreement, the Transaction Documents and the consummation of the transactions contemplated hereby and thereby;

(v) a good standing certificate of the Company from its jurisdiction of incorporation and each jurisdiction in which the Company is qualified to transact business and a certified copy of the Company’s articles of incorporation, each dated within ten (10) Business Days prior to the Closing Date;

(vi) the Consulting Agreements, dated as of the date hereof, duly executed by the Shareholders (the “Consulting Agreements”);

(vii) the written resignations of all officers and directors of the Company, as well as evidence that the Excluded Employees are no longer employees of the Company;

(viii) the Escrow Agreement, duly executed by the Shareholders;

(ix) each of the consents set forth on Schedule 1.4(b)(ix);

(x) the Landlord Estoppel, dated as of the date hereof, duly executed by the Landlord;

(xi) the assignment and assumption of the Pre-Closing Liabilities, dated as of the date hereof, duly executed by the Shareholders and the Company (the “Assignment and Assumption of Pre-Closing Liabilities”);

(xii) a statement of account specific revenue and Margin for each specific account for the fiscal years 2010, 2011 and 2012 to date, up to and including the last month prior to Closing (the “Statement of Account Specific Revenue and Margin”); and

(xiii) such other documents relating to the transactions contemplated by this Agreement as Buyer may reasonably request.

(c) Closing Deliveries of Buyer. At Closing, Buyer shall deliver to the Shareholders, in addition to any other documents to be delivered under the provisions of this Agreement, all of the following:

(i) the Purchase Price, less the Working Capital Holdback and the Escrow Amount which shall be placed in the Escrow Account pursuant to Section 1.3, payable by wire transfer of immediately available funds in accordance with the Closing Statement;

(ii) the Closing Statement, the Escrow Agreement, and the Consulting Agreements, in each case duly executed by Buyer (or the Company, as applicable);

(iii) a certificate of the Secretary of Buyer (A) certifying, as complete and accurate as of the Closing, attached copies of the operating agreement of Buyer, and (B) certifying and attaching all requisite resolutions or actions of Buyer's sole manager approving the execution and delivery of this Agreement, the Transaction Documents and the consummation of the transactions contemplated hereby and thereby;

(iv) a good standing certificate of Buyer in each jurisdiction in which Buyer is qualified to transact business and a certified copy of Buyer's certificate of formation, each dated within ten (10) Business Days prior to the Closing Date; and

(v) such other documents relating to the transactions contemplated by this Agreement as the Shareholders may reasonably request.

1.5 Tax Withholding. Buyer or any agent of Buyer shall be entitled upon giving prior written notice to the Shareholders to deduct and withhold from the Purchase Price or other payment otherwise payable by Buyer pursuant to this Agreement the amounts required to be deducted and withheld under the Code, or any provision of state, local or foreign Tax Law, with respect to the making of such payment. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes of this Agreement as having been paid by Buyer.

1.6 Purchase Price Allocation. Buyer and the Shareholders agree to allocate the Purchase Price among the Shares and the restrictive covenants contained in Section 4.2(b) in accordance with Schedule 1.6. For all purposes, including Taxes, if applicable, the Parties agree to report the transactions contemplated in this Agreement in a manner consistent with the allocation set forth on Schedule 1.6 and none of Parties will take any position inconsistent therewith in any Tax Returns, in any refund claim, in any litigation, or otherwise. Each Party agrees to notify the other if any U.S. or foreign taxing authority proposes to reallocate the Purchase Price.

**ARTICLE II.  
REPRESENTATIONS AND WARRANTIES OF THE SHAREHOLDERS**

The Shareholders, jointly and severally, represent and warrant to Buyer as follows:

**2.1 Organization; Ownership of Shares; Capitalization; and Power.**

(a) The Company is a corporation duly organized, validly existing and in good standing under the Laws of the State of Nevada. The Company is duly qualified or otherwise authorized to act as a foreign corporation and is in good standing under the Laws of every other jurisdiction in which such qualification or authorization is necessary as a result of the conduct of the Business, except for those jurisdictions in which the failure by the Company to be so qualified or authorized would not have a Material Adverse Effect. Each jurisdiction in which the Company is qualified to do business is set forth on Schedule 2.1(a). True, complete and accurate copies of the Articles of Incorporation, all amendments to such Articles of Incorporation, and the Bylaws of the Company have been delivered to Buyer.

(b) Each Shareholder possesses the power and authority necessary to execute and deliver this Agreement and all other agreements and documents contemplated hereby (the "Transaction Documents") (to which such Shareholder is a party), and to carry out the transactions contemplated by this Agreement and the Transaction Documents (to which such Shareholder is a party). The Company possesses all requisite corporate power and authority necessary to own and operate its properties and the Assets, to carry on the Business as presently conducted, to execute and deliver the Transaction Documents (to which it is a party), and to carry out the transactions contemplated by this Agreement and the Transaction Documents (to which it is a party).

(c) The Shareholders own 100% of the outstanding capital stock of the Company, and no individual or entity (other than Buyer and The Chefs' Warehouse, Inc., a Delaware corporation) has any option, warrant, right, call, commitment, conversion right, right of exchange, right of first refusal or other agreement, right or privilege capable of becoming an option, commitment, conversion right, right of exchange, right of first refusal or other agreement for the purchase or other acquisition of any equity interest in the Company. Schedule 2.1(c) sets forth the number of shares of capital stock of the Company authorized, issued and outstanding and the numbers of shares of capital stock of the Company and ownership percentage of the Company owned by each of the Shareholders. Each Shareholder owns such capital stock free and clear of all Liens. The capital stock of the Company has not been issued in violation of, and is not subject to, any preemptive or subscription rights or rights of first refusal. The Company has not violated the Securities Act of 1933, as amended, or other applicable Laws in connection with the offer, sale or issuance of its equity securities. All of the issued and outstanding shares of capital stock of the Company are validly issued, fully paid and nonassessable. There are no outstanding contractual obligations of the Company to repurchase, redeem or otherwise acquire any shares of the Company's capital stock or other equity interests or to provide funds to, or make any investment (in the form of a loan, capital contribution or otherwise) in, any other Person. By virtue of the transfer of the Shares to Buyer at the Closing, Buyer will obtain full title to the Shares free and clear of all Liens.

(d) Except as set forth on Schedule 2.1(d), the Company does not own any equity interest in any other Person and does not have any option, warrant, right, call, commitment, conversion right, right of exchange, right of first refusal or other agreement, right or privilege capable of becoming an option, commitment, conversion right, right of exchange, right of first refusal or other agreement for the purchase of any equity interest of any other Person.

2.2 Authorization. The Company's and each Shareholder's execution, delivery and performance of this Agreement and the Transaction Documents to which it is a party have been duly authorized by the Company and the Shareholders, as applicable. Each of the Shareholders has all requisite power, authority and capacity to execute and deliver this Agreement, the Transaction Documents and the documents required to be delivered pursuant to Section 1.4(b) of this Agreement and to consummate the transactions contemplated hereby and thereby. This Agreement and the Transaction Documents have been duly authorized, executed and delivered by the Shareholders and the Company and (upon the execution by Buyer of this Agreement and the Transaction Documents to which Buyer is a party) constitute valid and binding obligations of the Company and each Shareholder, as applicable, enforceable against the Company and the Shareholders in accordance with their terms, except as may be limited by applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or similar Laws affecting creditors' rights generally or by general principles of equity (the "Creditors' Rights and Equitable Limitations").

2.3 Non-Contravention. Except for the Consents being delivered by the Shareholders pursuant to Section 1.4(b)(ix), the execution, delivery and performance by the Company and each Shareholder of this Agreement and the Transaction Documents to which any of them is a party, and the fulfillment of and compliance with the respective terms hereof and thereof by the Company and each Shareholder, as applicable, do not (i) conflict with or result in a breach of the terms, conditions or provisions of, (ii) result in the creation of any Lien upon any Asset pursuant to, (iii) result in a violation of or default under, (iv) require any authorization, Consent, exemption or other action by or notice or declaration to, or filing with, any Person or any Government Entity pursuant to, or (v) give any Person the right to default or exercise any remedy under, accelerate the maturity or performance of or payment under or cancel, terminate or modify (A) the Articles of Incorporation, all amendments to the Articles of Incorporation, the Bylaws or any shareholders' agreement or similar agreement of the Company, (B) any Contract to which the Company or any Shareholder is subject or by which the Assets are bound, or (C) any Law to which the Company or any Shareholder is subject. The Company and each Shareholder have obtained all Consents, approvals, authorizations or orders of third parties, including Government Entities, necessary for the authorization, execution and performance of this Agreement and the Transaction Documents by the Company and the Shareholders, as applicable.

#### 2.4 Financial Statements.

(a) The Shareholders have delivered to Buyer the unaudited financial statements of the Company as of December 31, 2011 and December 31, 2010, together with unaudited interim monthly financial statements for the current fiscal year up to and including March 31, 2012, including the balance sheet and the related statements of operations, statements

of changes in stockholders' equity and statements of cash flows of the Company (collectively, the "Financial Statements"), copies of which are attached as Schedule 2.4(a). The Financial Statements have been prepared consistent with the past practice of the Company, and fairly present in all material respects the assets, liabilities and financial position of the Company and the results of operations and changes in financial position and cash flows as of the dates and for the periods specified. The Financial Statements (i) have been prepared in accordance with the books of account and other financial records of the Company, all of which have been made available to Buyer, (ii) are complete and correct in all material respects and (iii) represent actual, bona fide transactions and have been maintained in accordance with sound business practices.

(b) The Statement of Account Specific Revenue and Margin delivered to Buyer pursuant to Section 1.4(b)(xii) sets forth in all material respects a true and correct statement of account specific revenue and Margin for each specific account for the fiscal years 2010, 2011 and 2012 to date, up to and including the last month prior to Closing.

(c) Except as set forth on Schedule 2.4(c), the Net Working Capital of the Company as of the Closing Date, as finally determined, is sufficient to operate the Business consistent with past practices of the Company over the last twelve months.

2.5 Books and Records. The Shareholders and the Company have delivered or provided to Buyer for its review true, complete and correct copies of the following items, as amended and presently in effect, for the Company: (a) articles of incorporation or similar organizational document, (b) bylaws, (c) minute books, (d) stock registration books and (e) any shareholders' agreement or other similar agreements governing the rights as between the Shareholders. The minute books contain, in all material respects, a record of all shareholder and director meetings and actions taken without a meeting for the time period from January 1, 2007 to the date hereof and the stock registration books are complete and accurate and contain a complete record of all transactions in the Company's capital stock from the date of its incorporation to the date hereof.

2.6 Inventory. The Inventory (i) is not damaged to the extent that would make it commercially un-saleable in the ordinary course of the Business, beyond its stated expiration date or frozen and re-frozen and consists of a quantity and quality commercially usable and saleable in the ordinary course of the Business, as conducted by the Company in a commercially reasonable manner and (ii) has been valued based on an average cost basis, net of any related bill backs, discounts or supplier rebates. The Company is not under any Liability or obligation with respect to the return of any Inventory in the possession of its customers or any other Person in excess of its historical experience. The Inventory has been stored in compliance with all Laws and is not adulterated or mislabeled, misbranded or unsafe within the meaning of the FDA Act (including the Pesticide and Food Additive Amendment of 1958) and the regulations thereunder.

2.7 Assets. The Company has good and valid title to the Assets, free and clear of all Liens (other than Permitted Liens). Except as set forth on Schedule 2.7, the Assets constitute all assets used or held for use in the conduct the Business as conducted on December 31, 2011 and as currently conducted, except for those Assets disposed of in the ordinary course of the Business, consistent with past practices. All personal property included in the Assets is in good and usable condition except for ordinary wear and tear and no such Asset is in need of repair or replacement other than as part of routine maintenance in the ordinary course of business.

## 2.8 Real Property; Leased Real Property.

(a) The Company does not own any real property in fee. Schedule 2.8(a) contains an accurate and complete list of all leases, subleases, licenses, concessions and other agreements for the lease of real property to which the Company is a party, by which it is bound, or to which any of its Assets or properties is subject, including all amendments and modifications thereto (the "Leases"). True, correct and complete copies of the Leases have been made available to Buyer. Pursuant to the Leases, the Company holds a leasehold or subleasehold estate in, or is granted the right to use and occupy, the land, buildings, improvements, fixtures or other interest in real property described therein (individually, a "Leased Real Property"). With respect to each Lease: (i) such Lease is valid, binding, enforceable and in full force and effect subject to the Creditors' Rights and Equitable Limitations; (ii) neither the Company, nor to the Knowledge of the Shareholders, any other party thereto, is in default or breach under the terms of such Lease and no event has occurred that, with the passage of time or the giving of notice or both, would constitute a default or breach by the Company or, to the Knowledge of the Shareholders, any other party thereto under the terms of such Lease; and (iii) the Company has not assigned, subleased, mortgaged, deeded in trust or otherwise transferred or encumbered any Lease or Leased Real Property or any interest therein.

(b) To the Knowledge of the Shareholders, there is no existing or proposed eminent domain proceeding that would result in the taking of all or any part of the Leased Real Property or that would preclude or impair the continued use of the Leased Real Property as heretofore used in the conduct of the Business. With respect to the Leased Real Property, the Company has adequate and, to the Knowledge of the Shareholders, legal access to water supply, storm and sanitary sewer facilities, telephone, gas and electrical connections, fire protection, drainage and other public utilities, in each case as is necessary for the conduct of businesses as heretofore conducted. To the Knowledge of the Shareholders, such Leased Real Property, and its continued use, occupancy and operation as currently used, occupied and operated, does not constitute a nonconforming use under all applicable building, zoning, subdivision and other land use and similar Laws, regulations and ordinances nor has the Company received any notice of such nonconforming use or of a violation of such Laws. All buildings, structures, fixtures and improvements ("Improvements") located at the Leased Real Property are, to the Knowledge of the Shareholders, structurally sound with no material defects and are in good operating condition, ordinary wear and tear excepted.

## 2.9 Contracts.

(a) Schedule 2.9(a) sets forth a list of all Contracts to which the Company is a party or by which the Assets are bound as of the date hereof. The Company has not violated or breached, or committed any default under, any Contract, and each Contract is (a) in full force and effect and (b) a legal, valid and binding obligation of the Company subject to the Creditors' Rights and Equitable Limitations, and, to the Knowledge of the Shareholders, a legal, valid and binding obligation of each other party thereto subject to the Creditors' Rights and Equitable Limitations. Each other party thereto has, to the Knowledge of the Shareholders, performed all

obligations required to be performed by it as of the date hereof and, to the Knowledge of the Shareholders, has not violated, breached or committed any default in any respect. There has not occurred any event or events that, with or without the lapse of time or the giving of notice or both, constitutes a default, breach or violation by the Company under any Contract. The Company has not given to, or received from, any other party to any Contract any notice or other communication regarding any actual or alleged breach of or default under, or threat or indication of any intention to terminate prior to the expiration of its term, any such Contract.

(b) Except as required by Law or as set forth on Schedule 2.9(b), there are no outstanding material warranties, other than those made in the ordinary course of business consistent with past practices of the Company, made by the Company and there have been no material warranty claims within the past two (2) years and there are no material unresolved claims thereunder.

2.10 Absence of Certain Changes. Except as and to the extent set forth on Schedule 2.10 and other than entering into this Agreement, since December 31, 2011, the Company has conducted the Business in the ordinary course consistent with past practices. Without limiting the generality of the foregoing and except as and to the extent set forth on Schedule 2.10, since December 31, 2011, the Company has not:

(a) suffered any adverse change in its working capital, financial condition, assets, liabilities, or business, experienced any labor difficulty, or suffered any casualty loss, other than losses of less than \$5,000 each (whether or not insured);

(b) made any change in the Business or operations or in the manner of conducting the Business other than changes in the ordinary course of business;

(c) incurred any Indebtedness or incurred any Liabilities, except Liabilities incurred in the ordinary course of business and consistent with past practice, or experienced any change in any assumptions underlying or methods of calculating any bad debt, contingency or other reserves;

(d) written down the value of any Inventory, or written off as uncollectible any notes or accounts receivable or any portion thereof, except for write-downs and write-offs of less than \$10,000;

(e) authorize or adopt a plan of liquidation or dissolution;

(f) cancelled any debts, except as contemplated by this Agreement;

(g) entered into any new line of business;

(h) waived any rights of substantial value with respect to the Assets;

(i) entered into a settlement or compromise of any pending or threatened Proceeding;

(j) sold, transferred or conveyed any of its properties or assets (whether real, personal or mixed, tangible or intangible), except in the ordinary course of business and consistent with past practice;

(k) granted any increase in the compensation of any officer, director, employee or agent (including, without limitation, any increase pursuant to any bonus, pension, profit sharing or other plan or commitment) except in the ordinary course of business and consistent with past practices or adopted any such plan or other arrangements; and no such increase, or the adoption of any such plan or arrangement, is planned or required;

(l) failed to spend funds for any budgeted capital expenditures, or made, or made any commitment with respect to, any capital expenditures (except for routine maintenance);

(m) declared, set aside or paid any dividend or other distribution (whether in cash, securities or other combination thereof) in respect of any shares of capital stock of the Company;

(n) made any change in any method of accounting or accounting practice or any method of income Tax accounting or income Tax elections;

(o) paid, loaned or advanced any amount to or in respect of, or sold, transferred or leased any properties or assets (real, personal or mixed, tangible or intangible) to, or entered into any agreement, arrangement or transaction with, any Shareholder or the officers or directors of the Company, any Affiliates or associates of the Company or any of its respective officers or directors, or any business or entity in which any of such Persons has any direct or indirect interest, except for compensation to the officers and employees of the Company at rates not exceeding the rates of compensation in effect at December 31, 2011 and advances to employees in the ordinary course of business for travel and expense disbursements in accordance with past practice, but not in excess of \$5,000 at any one time outstanding;

(p) sold, transferred, licensed, abandoned, let lapse, encumbered or otherwise disposed of any Intellectual Property;

(q) suffered any Material Adverse Effect;

(r) amended its articles of incorporation, bylaws or similar governing documents;

(s) amended, terminated or entered into any Contract which is material to the Company as a whole, other than this Agreement;

(t) entered into any change in control, severance, termination or employment agreement or any similar agreement with any Company Employee or established any collective bargaining, bonus, profit sharing, thrift, compensation, stock option, restricted stock, pension, retirement, deferred compensation, employment, termination, severance or other plan, trust fund, policy or arrangement for the benefit of any current or former employee; or

(u) agreed, whether in writing or otherwise, to take any action described in this Section 2.10.

2.11 Litigation. Except as set forth on Schedule 2.11, as of the date hereof, there are no actions, suits, hearings, proceedings (including any arbitration proceedings), orders, investigations, grievances, indictments, mediations or other claims (collectively, "Proceedings") pending or, to the Knowledge of the Shareholders, threatened against or affecting the Company or the Business, at law or in equity, or before or by any Government Entity (including any Proceedings with respect to the transactions contemplated by this Agreement and the Transaction Documents).

2.12 Brokerage. There are no claims for brokerage commissions, finders' fees or similar compensation in connection with the transactions contemplated by this Agreement based on any arrangement or agreement to which the Company (or its Affiliates) or any Shareholder is a party or to which the Company (or its Affiliates) or any Shareholder is subject for which Buyer could become liable or obligated.

### 2.13 Employees.

(a) Schedule 2.13(a)-1 identifies, as of the date hereof, all of the Company's sales representatives, customer service representatives, office personnel, office managers, and other employees employed by the Company (the "Company Employees"). Schedule 2.13(a)-2 identifies those sales representatives, customer service representatives, office personnel, office managers, and other employees formerly employed by the Company but who were terminated by the Company immediately prior to the Closing (the "Excluded Employees"). To the actual Knowledge of the Shareholders (without any duty of inquiry), no Company Employee plans to terminate employment with the Company during the next twelve (12) months. The Company is not a party to or bound by any collective bargaining agreement relating to any Company Employees. There is no organizational effort presently being made or, to the Knowledge of the Shareholders, threatened by or on behalf of any labor union with respect to the Company Employees. Except as set forth on Schedule 2.13(a)-3, neither the Company nor any Shareholder has committed any unfair labor practice in connection with the Business, no charge alleging any unfair labor practice has been filed or is currently pending against the Company, and the Company is in full compliance with all federal, state and local wage and hour Laws governing payment of wages and/or overtime pay.

(b) The Company has complied with all requirements to give notice to its employees and to any Government Entity, pursuant to any applicable Laws with respect to the employment, discharge or layoff of employees by the Company before or at the time of the Closing, including but not limited to, to the extent it may be applicable, the Worker Adjustment and Retraining Notification Act and/or similar state and local Laws and any rules or regulations as have been issued in connection with the foregoing.

(c) Schedule 2.13(c) sets forth a complete and accurate list with respect to the Company Employees of the name (or other identifier), title, location, annual salary, hire date, adjusted service date, incentive/bonus plan eligibility and target, YTD paid bonus/incentives, FLSA status, department name, vacation/PTO balance, FTE, supervisor, last review result, last increase pay amount, last pay increase date, medical/dental/vision elections, actively at work (y/n), FMLA, salary continuation, employee/independent contractor or leased employee indicator.

2.14 Directors and Officers; Compensation; Banks. Schedule 2.14 contains a true and correct listing of (i) the names of all of the Company's directors and officers; (ii) the names of all persons whose compensation from the Company for the twelve (12) months ended December 31, 2012 is reasonably expected to equal or exceed \$100,000; (iii) the name of each financial institution in which the Company has an account, or safe deposit box, the account numbers therefor and the names of all persons authorized to draw thereon, or to have access thereto; and (iv) the names of all persons holding powers of attorney from the Company, and a summary statement of the terms thereof.

2.15 Intellectual Property.

(a) Schedule 2.15(a) contains a true, correct and complete list of all (i) Company Intellectual Property registered or applied for or subject to registration or application before any Government Entity, specifying, where applicable, the respective registration or application numbers and the names of all registered owners; (ii) Company Software and (iii) licenses and other Contracts pursuant to which the Company obtains rights to any Company Intellectual Property from a third party or grants rights in any material Company Intellectual Property. The Company exclusively owns or possesses valid licenses or other legal rights, free and clear of all Liens (other than Permitted Liens), to all Company Intellectual Property. Except as disclosed on Schedule 2.15(a), the Company Intellectual Property is (A) in full force and effect, (B) has not lapsed, expired or been abandoned or withdrawn, (C) is valid, enforceable and subsisting and is not subject to any Contract containing any covenant or other provision, outstanding claim, settlement agreement, consents, judgments, orders, forbearances to sue or similar obligations or Proceedings that in any way limit or adversely affect, or that could adversely affect or limit, the Company's use or exploitation thereof or rights thereto. The Company Intellectual Property constitutes all the Intellectual Property used or held for use in the conduct of the Business as conducted on December 31, 2011, as currently conducted and as proposed to be conducted by the Company as of the date hereof, including all Intellectual Property as is necessary for the offer, sale, license or distribution of any Company Product. The Company has taken all commercially reasonable actions to establish, maintain, protect and enforce the Company Intellectual Property.

(b) The conduct of the Business (and its employees' and consultants' performances of their duties in connection therewith) and the Company's use of any Company Intellectual Property does not copy without permission, infringe, misappropriate, violate, impair or conflict with ("Infringe") any common law, statutory or other right of any Person, including any rights relating to any Intellectual Property. There is no litigation, opposition, cancellation, Proceeding, objection or claim pending, asserted or threatened in writing against the Company concerning the ownership, validity, registrability, enforceability, infringement, misappropriation, violation or use of, or licensed right to use any Company Intellectual Property, and, to the Knowledge of the Shareholders, no valid basis exists for any such litigation, opposition, cancellation, Proceeding, objection or claim. To the Knowledge of the Shareholders, no Person is Infringing any of the Intellectual Property. To the extent that any Company Intellectual

Property has been developed or created by an employee or a third party for or on behalf of the Company, the Company has a written agreement with such employee or third party with respect thereto and thereby has obtained exclusive ownership of all intellectual property rights in and to such Company Intellectual Property. The Company has taken all commercially reasonable measures to protect the secrecy, confidentiality and value of its Trade Secrets, and its Trade Secrets have not been used, divulged or appropriated either for the benefit of any third party (other than the Company) or to the detriment of the Company.

(c) All Information Systems operate and perform in all material respects as necessary for the conduct of the Business and in accordance with their documentation and functional specifications. The Information Systems do not contain any disabling or destructive code or virus that would impede or result in the disruption of the operation of the business operations of the Company. All licenses and other Contracts pursuant to which the Company obtains rights to any Company Intellectual Property from a third party or grants rights in any material Company Intellectual Property to a third party are in full force and effect in accordance with their terms and no default exists under any of the same by the Company or, to the Knowledge of the Shareholders after due inquiry, by any other party thereto. The licenses or other Contracts related to the Company Intellectual Property disclosed on Schedule 2.15(c) constitute all of the material Contracts relating to any grant or receipt of rights in and to any Company Intellectual Property.

(d) Neither the execution, delivery, or performance of this Agreement nor the consummation of any of the transactions contemplated by this Agreement will, with or without notice or lapse of time, result in or give any third party the right or option to cause or declare (i) a loss of, or Lien on any Company Intellectual Property; (ii) release, disclosure or delivery of any Company Intellectual Property by or to any escrow agent or other third party; (iii) the grant, assignment or transfer to any other third party of any license or other right or interest under, to, or in any of the Company Intellectual Property; or (iv) Buyer being bound by or subject to any non-compete or other restriction on the operation of scope of the Business.

#### 2.16 Employee Benefit Plans.

(a) Schedule 2.16(a) lists all deferred compensation, incentive compensation, stock purchase, stock option or other equity-based, retention, change in control, severance or termination pay, hospitalization or other medical, life, dental, vision, disability or other insurance, supplemental unemployment benefits, profit-sharing, pension or retirement plans, programs, agreements or arrangements, and each other fringe or other employee benefit plan, program, agreement or arrangement (including any "employee benefit plan", within the meaning of Section 3(3) of ERISA), sponsored, maintained or contributed to or required to be contributed to by the Company or by any ERISA Affiliate for the benefit of any current or former employee, independent contractor or director (and/or their dependents or beneficiaries) of the Company, or with respect to which the Company or any ERISA Affiliate otherwise has any Liabilities or obligations (the "Employee Benefit Plans").

(b) No Employee Benefit Plan is (i) a “multiemployer plan,” as such term is defined in Section 3(37) of ERISA, (ii) a plan that is subject to Title IV of ERISA, Section 302 of ERISA or Sections 412, 430 or 436 of the Code or (iii) is a multiple employer plan as defined in Section 413(c) of the Code, and neither the Company nor any ERISA Affiliate, has maintained, contributed to, or been required to contribute to any Employee Benefit Plan described in clauses (i), (ii) or (iii) above within the last six (6) years.

(c) Each Employee Benefit Plan is and has been maintained and administered in compliance with its terms in all material respects and with the applicable requirements of ERISA, the Code and any other applicable Laws. The Company has timely paid all contributions, premiums and expenses payable to or in respect of each Employee Benefit Plan under the terms thereof and in accordance with applicable Laws. Neither the Company nor any ERISA Affiliate or, to the Knowledge of the Shareholders, any other Person, has engaged in any transaction with respect to any Employee Benefit Plan that would be reasonably likely to subject the Company or Buyer or any Affiliate thereof to any Tax or penalty (civil or otherwise) imposed by ERISA, the Code or other applicable Laws.

(d) Each Employee Benefit Plan that is a “nonqualified deferred compensation plan” (within the meaning of Section 409A(d)(1) of the Code) has been operated in compliance with Section 409A of the Code, IRS Notice 2005-1, Treasury Regulations issued under Section 409A of the Code, and any subsequent guidance relating thereto, and no additional Tax under Section 409A(a)(1)(B) of the Code has been or is reasonably expected to be incurred by a participant in any such Employee Benefit Plan, and no employee or independent contractor of the Company is entitled to any gross-up or otherwise entitled to indemnification by the Company or any ERISA Affiliate for any violation of Section 409A of the Code.

(e) With respect to each Employee Benefit Plan, the Company has made available to Buyer true, correct and complete copies of each of the following documents: (i) a copy of each Employee Benefit Plan (including any amendments thereto and all administration agreements, insurance policies, investment management or advisory agreements and all prior Employee Benefit Plan documents, if amended within the last three (3) years); (ii) a copy of the three (3) most recent Form 5500 annual reports, if any, required under ERISA or the Code; (iii) a copy of the most recent summary plan description (and any summary of material modifications), if any, required under ERISA; (iv) if the Employee Benefit Plan is funded through a trust or any third party funding vehicle, a copy of the trust or other funding agreement (including any amendments thereto); (v) if the Employee Benefit Plan is intended to be qualified under Section 401(a) of the Code, the most recent determination and/or opinion letter received from the Internal Revenue Service; (vi) actuarial reports (if any); (vii) all correspondence with the Internal Revenue Service, Department of Labor regarding any Employee Benefit Plan; (viii) all discrimination tests for each Employee Benefit Plan for the three (3) most recent plan years (if any); (ix) a list of all employees or former employees of the Company currently receiving COBRA benefits; and (x) any other related material or documents regarding the Employee Benefit Plans. Schedule 2.16(a) sets forth the terms and conditions of any unwritten Employee Benefit Plan.

(f) None of the Employee Benefit Plans that are “welfare benefit plans” within the meaning of Section 3(1) of ERISA provide for continuing benefits or coverage after termination or retirement from employment, except for COBRA continuation coverage rights under a “group health plan” as defined in Section 4980B(g) of the Code and Section 607 of ERISA.

(g) Each Employee Benefit Plan that is intended to be qualified under Section 401(a) of the Code has received a determination from the Internal Revenue Service that it is so qualified and/or has an opinion letter upon which it is entitled to rely, and there are no facts or circumstances that would be reasonably likely to adversely affect the qualified status of any such Employee Benefit Plan.

(h) Except as set forth in Schedule 2.16(h), the consummation of the transactions contemplated by this Agreement and the Transaction Documents will not (i) result in a material increase in or accelerate the vesting of any of the benefits available under any Employee Benefit Plan, (ii) otherwise entitle any current or former director or employee of the Company to any payment from the Company, or (iii) result in any "parachute payment" that would not be deductible by reason of the application of Section 280G of the Code and subject the recipient of any such payment to the excise tax under Section 4999 of the Code.

(i) There are no pending or, to the Knowledge of the Shareholders, threatened, Proceedings that have been asserted relating to any Employee Benefit Plan by any employee or beneficiary covered under any Employee Benefit Plan or otherwise involving any Employee Benefit Plan (other than routine claims for benefits). No examination, voluntary correction proceeding or audit of any Employee Benefit Plan by any Government Entity is currently in progress or, to the Knowledge of the Shareholders, threatened. The Company is not a party to any agreement or understanding with the Pension Benefit Guaranty Corporation, the Internal Revenue Service or the Department of Labor.

(j) Neither the Company nor any ERISA Affiliate has used the services or workers provided by third party contract labor suppliers, temporary employees, "leased employees" (as that term is defined in Section 414(n) of the Code), or individuals who have provided services as independent contractors, to an extent that would reasonably be expected to result in the disqualification of any of the Employee Benefit Plans or the imposition of penalties or excise Taxes with respect to any of the Employee Benefit Plans by the Internal Revenue Service, the Department of Labor or the Pension Benefit Guaranty Corporation.

2.17 Insurance. Schedule 2.17 sets forth a complete and accurate list of all insurance under which any of the assets or properties of the Company are covered or otherwise relating to the Business, including policy numbers, names and addresses of insurers and liability or risk covered, amounts of coverage, limitations and deductions and expirations dates. Such policies are in full force and effect, and the Company has paid or accrued (to the extent not due and payable) all premiums due, and have otherwise performed in all respects all of its obligations under, each such policy of insurance. The Company has made available to Buyer (a) true and complete copies or binders of all such insurance policies and (b) a list of all claims paid under the insurance policies of the Company since December 31, 2010.

2.18 Customers and Suppliers. Schedule 2.18 contains a complete and accurate list of all Company Customers both as of the date hereof and during the 12-month period ended March 31, 2012, showing the total sales to each such customer during the 12-month period ended March 31, 2012. Schedule 2.18 also contains a complete and accurate list of all of the Company's suppliers both as of the date hereof and during the 12-month period ended March 31, 2012. Except as noted on Schedule 2.18, no Company Customer as of the date hereof has notified the Company in writing of its intent to cease or diminish its purchasing from the Company during the next twelve (12) months. Except as noted on Schedule 2.18, no supplier of the Company as of the date hereof has notified the Company of its intent to terminate its relationship with the Company or cease or diminish its supplying the Company.

2.19 Relationships with Company Related Persons. Except as set forth on Schedule 2.19, (i) no Shareholder, director or officer of the Company (any such individual, a “Company Related Person”), or, to the Knowledge of the Shareholders, any Affiliate or member of the immediate family of any Company Related Person, is, or since December 31, 2010 has been, directly or indirectly, an owner of more than 5% of an Affiliate, of any Company Customer or of any supplier of the Company or otherwise involved in any business arrangement or relationship with the Company or any Company Customer or supplier of the Company, other than employment arrangements entered into in the ordinary course of the Business, and (ii) no Company Related Person or, to the Knowledge of the Shareholders, any Affiliate or member of the immediate family of any Company Related Person, directly or indirectly, owns, or since December 31, 2010 has owned, any property or right, tangible or intangible, used by the Company in the conduct of the Business.

2.20 Legal Compliance; Governmental Licenses.

(a) Except as set forth on Schedule 2.20(a), the Company and each Shareholder, officer and director are in full compliance with the FDA Act and PACA, and have complied with all other applicable Laws in connection with the Business.

(b) All Governmental Licenses required to conduct the Business have been obtained by the Company and are in full force and effect and are being complied with in all material respects.

(c) Since December 31, 2010, (i) neither the Company nor any Shareholder has received written notice from any Government Entity that explicitly alleges any non-compliance (or that the Company or any Shareholder is under investigation or the subject of an inquiry by any such Government Entity for such alleged non-compliance) with any applicable Law; and (ii) neither the Company nor any Shareholder has entered into any written or, to the Knowledge of the Shareholders, express oral agreement or settlement with any Government Entity with respect to its non-compliance with, or violation of, any applicable Law.

(d) Since December 31, 2010, the Company has timely filed all regulatory reports, schedules, statements, documents, filings, submissions, forms, registrations and other documents, together with any amendments required to be made with respect thereto, that each was required to file with any Government Entity.

(e) Neither the Company, any Shareholder nor, to the Knowledge of the Shareholders, any director, officer, agent, or employee of the Company or any other authorized Person acting for or on behalf of the Company, has directly or indirectly in material violation of any applicable Law, rule or regulation of any Government Entity (including the Foreign Corrupt Practices Act of 1977, as amended) made any illegal contribution, gift, bribe, rebate, payoff, influence payment, kickback, or other improper payment to any Person, regardless of form, whether in money, property, or services (A) to obtain favorable treatment in securing business, (B) to pay for favorable treatment for business secured, or (C) to obtain special concessions or for special concessions already obtained, for or in respect of the Company or any Affiliate thereof.

(f) The Company possesses, and is in compliance with, all Governmental Licenses necessary to (i) occupy, maintain, operate and use the Leased Real Property as it is currently used, and (ii) conduct the Business as currently conducted. Schedule 2.20(f) contains a true and complete list of all Governmental Licenses. The consummation of the transactions contemplated by this Agreement and the Transaction Documents shall not result in a revocation or cancellation of any Governmental License.

#### 2.21 Taxes.

(a) The Company has filed all Tax Returns that it was required to file under applicable Laws taking into account all available extensions. All such Tax Returns were true, correct and complete in all material respects and were prepared in compliance with all applicable Laws. All Taxes due and owing by the Company (whether or not shown on any Tax Return) have been paid. The Company is not the beneficiary of any extension of time within which to file any Tax Return. No claim has ever been made by a Government Entity in a jurisdiction where the Company does not file Tax Returns that the Company is or may be subject to taxation by that jurisdiction. There are no Liens for Taxes (other than Permitted Liens) upon any of the Assets of the Company

(b) The Company has withheld and paid (i) all Taxes required to have been withheld and paid in connection with any amounts paid or owing to any employee, independent contractor, creditor, stockholder, or other third party, and all Forms W-2 and 1099 required with respect thereto have been properly completed and timely filed, and (ii) all Taxes required to be withheld in respect of any amount distributed to or allocable to any owners thereof.

(c) To the Knowledge of the Shareholders, no Government Entity may assess any additional Taxes on the Company for any period for which Tax Returns have been filed. No foreign, federal, state, or local Tax audits or administrative or judicial Tax proceedings are pending or, to the Knowledge of the Shareholders, being conducted with respect to the Company. The Company has not received from any Government Entity (including jurisdictions where the Company has not filed Tax Returns) any (i) written notice indicating an intent to open an audit or other review, (ii) written request for information related to Tax matters, or (iii) written notice of deficiency or proposed adjustment for any amount of Tax proposed, asserted, or assessed by any Government Entity against the Company. Schedule 2.21(c) lists all federal, state, local, and foreign income Tax Returns filed with respect to the Company for taxable periods ended on or after December 31, 2008, indicates those Tax Returns that have been audited, and indicates those Tax Returns that currently are the subject of audit. The Company has provided Buyer with correct and complete copies of all federal income Tax Returns, examination reports, and statements of deficiencies assessed against or agreed to by the Company filed or received since January 1, 2008.

(d) The Company has not waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency.

(e) The Company is not a party to any agreement, contract, arrangement or plan that has resulted or could result, separately or in the aggregate, in the payment of any “excess parachute payment” within the meaning of Section 280G of the Code (or any corresponding provision of state, local or foreign Tax law) (including any payment required to be made in connection with the transactions contemplated hereby). The Company has disclosed on its federal income Tax Returns all positions taken therein that could give rise to a substantial understatement of federal income Tax within the meaning of Section 6663 of the Code. The Company has not participated in any “reportable transaction” within the meaning of Treasury Regulation Section 1.6011-4. The Company is not a party to or bound by any Tax allocation, sharing or similar agreement (including any advance pricing agreement, closing agreement or other agreement relating to Taxes with any Government Entity), or has any current or potential contractual or legal obligation to indemnify any other Person with respect to Taxes. The Company (A) is not and has never been a member of an “affiliated group” within the meaning of Section 1504(a) of the Code filing a consolidated federal income Tax Return or a member of an affiliated, consolidated, combined or unitary group with respect to any state, local or foreign Taxes, or (B) does not have any Liability for the Taxes of any Person under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local, or foreign law), as a transferee or successor, by contract, or otherwise.

(f) The unpaid Taxes of the Company do not materially exceed the reserve for Tax Liabilities set forth on the face of the Closing Date Balance Sheet (rather than in any notes thereto).

(g) The Company will not be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any:

(i) change in method of accounting for a taxable period ending on or prior to the Closing Date;

(ii) “closing agreement” as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or foreign income Tax law) executed on or prior to the Closing Date;

(iii) installment sale or open transaction disposition made on or prior to the Closing Date; or

(iv) prepaid amount received on or prior to the Closing Date (other than in the ordinary course of business and consistent with past practice).

(h) All books and records relating to Taxes (including related work papers) have been adequately maintained for all periods ending on or after December 31, 2008 (or for periods with respect to which the statute of limitations remains open).

(i) The Company has not elected to defer cancellation of indebtedness income under Section 108(i) of the Code.

(j) All fees, charges, costs or expenses pursuant to Affiliate services agreements or otherwise which are paid by the Company or any of its Affiliates are made on an arms' length basis within the meaning of Section 482 of the Code and the regulations and rulings promulgated thereunder. No claim has been asserted by any Government Entity that the Company is liable for any Taxes based on Section 482 of the Code or comparable provisions of other applicable Laws.

(k) Schedule 2.21(k) sets forth a description of all transactions with respect to which the Company has received a ruling request from any Taxing authority and contains a copy of such ruling requests and the corresponding rulings.

(l) Schedule 2.21(l) sets forth all Tax grants, abatements or incentives granted or made available by any Government Entity for the benefit of the Company, and, to the Knowledge of the Shareholders, any condition relating to the continued availability of such Tax grants, abatements or incentives to the Company, or events or circumstances which could impair the ability of Buyer or its Affiliates or the Company to utilize such Tax grants, abatements or incentives following the Closing.

(m) The Company has not distributed stock of another Person, or has had its stock distributed to another Person, in a transaction that was purported or intended to be governed in whole or in part by Sections 355 or 361 of the Code.

(n) There is no power of attorney given by or binding on the Company with respect to Taxes for any period for which the statute of limitations (including any waivers or extensions) has not expired.

(o) Except as set forth on Schedule 2.21(o), the Company has never experienced an "ownership change" as defined in Section 382(g) of the Code, and Sections 382, 383 and 384 of the Code currently have no effect on the Company.

(p) The Company has filed with the appropriate Government Entities all unclaimed property reports as required under applicable Laws.

(q) The Company does not have an interest in an entity classified as a partnership for federal income Tax purposes.

(r) The Company has not taken any positions with respect to Taxes for 2010 and 2011 that would require disclosure on Schedule UTP to IRS Form 1120, assuming for such purposes that the Company is required to file Schedule UTP.

(s) The Company has never been a United States real property holding company within the meaning of Section 897 of the Code.

## 2.22 Environmental Matters.

(a) The Company has obtained all Governmental Licenses under Environmental Laws required for the conduct and operation of the Business (except where the failure to obtain any such Governmental License would not have a Material Adverse Effect) and is in compliance in all material respects with the terms and conditions contained therein and with all applicable Environmental Laws. There are no Environmental Claims pending or, to the Knowledge of the Shareholders, threatened with respect to the Assets or the Business. To the Knowledge of the Shareholders, there is no condition on, at or under any property (including the air, soil and groundwater) currently or formerly owned, leased or used by the Company (including off-site waste disposal facilities) or created by the Company's operations that would create a Liability with respect to the Assets or the Business under applicable Environmental Laws. To the Knowledge of the Shareholders, there are no past or present actions, activities, circumstances, events or incidents (including the Release or Handling of any Hazardous Material) with respect to the Business that would form the basis of an Environmental Claim or create a Liability under applicable Environmental Laws. There are no underground storage tanks, above ground storage tanks or drums of Hazardous Materials present on any portion of any property leased or used by the Company. The Company has not caused a Release or otherwise placed any Hazardous Materials into, on or under the soils, surface water or groundwater at, on, under or from any portion of any property owned, leased, operated or used by the Company. To the Knowledge of the Shareholders, no portion of any structures on any property owned, leased, operated or used by the Company in the Business contain any asbestos or mold.

(b) The Company has not been provided with any site assessments, compliance audits, environmental studies or similar reports relating to (i) the environmental conditions on, under or about the properties or assets currently owned, leased, operated or used by the Company or any predecessor in interest thereto or (ii) any Hazardous Materials Handled or Released by the Company or any other Person on, under, about or from, or otherwise in connection with, any of the properties or assets currently owned, leased, operated or used by the Company in connection with the Business.

2.23 Orders, Commitments and Returns. The aggregate of all accepted and unfilled orders for the sale of merchandise entered into by the Company does not exceed an amount which can reasonably be expected to be filled in the ordinary course of the Business, and the aggregate of all Contracts or commitments for the purchase of products by the Company does not exceed an amount which is reasonable for its anticipated volumes of business (all of which orders, Contracts and commitments were made in the ordinary course of the Business). There are no asserted, or if unasserted, sustainable, claims to return merchandise of the Company by reason of alleged over-shipments, defective merchandise, breach of warranty or otherwise, other than such claims regularly experienced and resolved in the ordinary course of the Business. There is no merchandise in the hands of customers under any understanding that such merchandise is returnable other than pursuant to the standard returns policy set forth in the Company's Contracts. The Shareholders do not have actual knowledge that the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby will result in any cancellations or withdrawals of accepted and unfilled orders for the sale of the Company's merchandise.

2.24 Accounts Receivable; Trade Accounts Payable. Except as set forth on Schedule 2.24, the accounts receivable of the Company (i) arose through the Company's bona fide sales of goods or merchandise to customers which have been shipped from the Company to such customer within the ninety (90) days preceding the Closing Date, (ii) are not subject to any dispute, offset, counterclaim or other claim or defense on the part of the customer, (iii) are not subject to any return or rejection of the merchandise in respect of such account receivable which has not been cured or remedied to the satisfaction of the customer, and (iv) are evidenced by an invoice rendered to the customer. The trade accounts payable of the Company have arisen from bona fide transactions.

2.25 Full Disclosure. Neither this Agreement, nor any Schedule, Exhibit, list, certificate or other instrument and document furnished or to be furnished by the Shareholders or the Company to Buyer pursuant to this Agreement or any Transaction Document, contains any untrue statement of a fact or omits to state any fact required to be stated herein or therein or necessary to make the statements and information contained herein or therein not misleading. Neither the Company nor any Shareholder has withheld from Buyer disclosure of any event, condition or fact which may adversely affect the Company's assets, prospects or condition (financial or otherwise) or the Business.

### **ARTICLE III. REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to the Shareholders as follows:

3.1 Organization, Power and Authority. Buyer is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware. Buyer is duly qualified or otherwise authorized to act as a foreign corporation and is in good standing under the Laws of every other jurisdiction in which such qualification or authorization is necessary. Buyer possesses all requisite limited liability company power and authority necessary to own and operate its properties, to carry on its business as presently conducted, to execute and deliver this Agreement and to carry out the transactions contemplated by this Agreement.

#### 3.2 Authorization; No Breach.

(a) The execution, delivery and performance of this Agreement and all other Transaction Documents to which Buyer is a party or by which Buyer is bound have been duly authorized by Buyer. This Agreement (upon the execution by the Shareholders of this Agreement) constitutes a valid and binding obligation of Buyer, enforceable in accordance with its terms, and all Transaction Documents to which Buyer is a party, when executed and delivered by Buyer in accordance with the terms hereof, shall (upon the execution by the Shareholders of the Transaction Documents to which the Shareholders are a party) each constitute a valid and binding obligation of Buyer, enforceable in accordance with its terms, except Creditors' Rights and Equitable Limitations.

(b) The execution, delivery and performance by Buyer of this Agreement and all other agreements and instruments contemplated hereby to which Buyer is a party, and the fulfillment of and compliance with the respective terms hereof and thereof by Buyer, do not and shall not (i) conflict with or result in a breach of the terms, conditions or provisions of, (ii) constitute a default under (whether with or without the passage of time, the giving of notice or

both), (iii) give any third party the right to modify, terminate or accelerate any obligation under, (iv) result in a violation of, or (v) require any authorization, Consent, approval, exemption or other action by or notice or declaration to, or filing with, any third party or Government Entity pursuant to, (A) the organizational documents of Buyer, (B) any Law to which Buyer is subject, or (C) any agreement or instrument to which Buyer is subject.

3.3 Litigation. There are no Proceedings pending or, to the Knowledge of Buyer, threatened against or affecting Buyer, at law or in equity, or before any Government Entity, with respect to the transactions contemplated by this Agreement or which if adversely determined would have an effect on Buyer's ability to consummate the transactions contemplated hereby in a timely manner or perform its obligations hereunder.

3.4 Brokerage. There are no claims for brokerage commissions, finders' fees or similar compensation in connection with the transactions contemplated by this Agreement based on any arrangement or agreement to which Buyer (or its Affiliates) is subject for which the Shareholders could become liable or obligated.

3.5 Governmental Approvals and Filings. No consent, approval or action of, filing with or notice to any Government Entity on the part of Buyer is required in connection with the execution, delivery and performance of this Agreement or the consummation of the transactions contemplated hereby.

3.6 Purchase for Investment. The Shares will be acquired by Buyer for Buyer's own account for the purpose of investment, it being understood that the right to dispose of such Shares shall be entirely within the discretion of Buyer. Buyer will refrain from transferring or otherwise disposing of any of the Shares, or any interest therein, in such manner as to cause the Shareholders to be in violation of the registration requirements of the Securities Act of 1933, as amended, or applicable state securities or blue sky Laws.

#### **ARTICLE IV. POST-CLOSING COVENANTS AND AGREEMENTS**

4.1 Employee Matters and Employee Benefits. Buyer shall use reasonable efforts to ensure that, on and after the Closing, Company Employees who after the Closing are employed or retained by Buyer or an Affiliate of Buyer ("Hired Employees") are provided terms and conditions of employment that are substantially similar to the terms and conditions of employment or service currently applicable to officers and/or employees of Buyer and its Affiliates having similar responsibilities and positions as the Hired Employees taking into account the location of such Hired Employees. Nothing in this Agreement shall be construed to create a right in any Company Employee to employment or retention by Buyer or any of its Affiliates for any specific period of time and, subject to any agreement between an employee and Buyer or any of its Affiliates, the employment or retention of each Hired Employee shall be on an "at will" basis.

#### 4.2 Non-Competition.

(a) Material Inducement. Each Shareholder hereby acknowledges that each is familiar with the Confidential Information and Trade Secrets pertaining to the Company, the Assets and the Business. Each Shareholder acknowledges and agrees that Buyer and its Affiliates would be irreparably damaged if the Shareholders or their Affiliates were to provide services to or otherwise participate in the business of any Person competing or planning to compete with Buyer or its Affiliates in a business similar to the Business and that any such competition by the Shareholders or their Affiliates would result in a significant loss of goodwill by the Business and the Company. Each Shareholder further acknowledges and agrees that the covenants and agreements set forth in this Section 4.2 were a material inducement to Buyer to enter into this Agreement and to perform its obligations hereunder and that none of Buyer or its Affiliates would obtain the benefit of the bargain set forth in this Agreement as specifically negotiated by the Parties if any Shareholder breached the provisions of this Section 4.2.

(b) Restrictive Covenants. In further consideration of the amounts to be paid hereunder for the Shares, each Shareholder covenants and agrees that he or she will not, and will cause his or her Affiliates not to, without the prior written consent of Buyer, engage, directly or indirectly, in any business competing or planning to compete with the Business, including but not limited to soliciting or serving any customers of the Business, for a period of six (6) years following the Closing in the State of Nevada. In addition, each Shareholder agrees that until the sixth anniversary of the Closing, neither Shareholder shall (and shall cause his or her Affiliates not to) directly, or indirectly through another Person hire or attempt to hire any Hired Employee or other employee of Buyer.

(c) Remedies. If, at the time of enforcement of any of the covenants contained in Section 4.2(b) (the "Restrictive Covenants"), a court shall hold that the duration, scope or area restrictions stated herein are unreasonable under circumstances then existing, the Parties agree that the maximum duration, scope or area reasonable under such circumstances shall be substituted for the stated duration, scope or area and that the court shall be allowed and directed to revise the restrictions contained herein to cover the maximum period, scope and area permitted by applicable Laws. Each Shareholder has determined and hereby acknowledges that the Restrictive Covenants are reasonable in terms of duration, scope and area restrictions and are necessary to protect the goodwill of the Business and the substantial investment in the Shares made by Buyer hereunder. Each Shareholder further acknowledges and agrees that the Restrictive Covenants are being entered into by them in connection with the sale of the Company and the goodwill of the Business and the Company.

If any Shareholder or an Affiliate of any Shareholder breaches, or threatens to commit a breach of, any of the Restrictive Covenants, any of Buyer or its respective Affiliates shall have the following rights and remedies, each of which rights and remedies shall be independent of the others and severally enforceable, and each of which is in addition to, and not in lieu of, any other rights and remedies available to Buyer or any of its Affiliates at law or in equity:

(i) the right and remedy to have the Restrictive Covenants specifically enforced by any court of competent jurisdiction, it being agreed that any breach or threatened breach of the Restrictive Covenants would cause irreparable injury to Buyer and that monetary damages would not provide an adequate remedy to Buyer; and

(ii) the right and remedy to require each Shareholder to account for and pay over to Buyer or its Affiliates any profits, monies, accruals, increments or other benefits derived or received by such Person as the result of any transactions constituting a breach of the Restrictive Covenants from the date any Shareholder was in breach of any of the Restrictive Covenants.

(d) In the event of any breach or violation by any Shareholder of any of the Restrictive Covenants, the time period of such covenant shall be tolled until such breach or violation is resolved.

4.3 Further Assurances. Following the Closing, each Shareholder shall execute and deliver such further instruments of conveyance and transfer as Buyer may reasonably request and provide and shall take such additional action as Buyer may reasonably request to effect, consummate, confirm or evidence the transactions contemplated by this Agreement and the Transaction Documents.

#### 4.4 Confidentiality.

(a) Buyer and the Shareholders acknowledge and agree that certain information relating to Buyer, the Company, the Business, the Assets and the Shareholders is confidential (“Confidential Information”). Confidential Information includes (i) all of the terms and conditions of this Agreement and any of the other Transaction Documents, (ii) all information regarding the Shareholders disclosed to Buyer and all information regarding Buyer disclosed to the Shareholders or learned by the Shareholders during Buyer’s and the Shareholders’ negotiations, and (iii) any information relating to the negotiations between the Parties, including, without limitation, offers and counteroffers regarding the terms and conditions of this Agreement and the Transaction Documents which do and do not ultimately form part of the final executed versions of the Transaction Documents. Buyer and the Shareholders further acknowledge and agree that Confidential Information also includes the following information related to the Business: (i) financial, accounting and Tax information, including, without limitation, earnings, sales, financial projections and other similar information, (ii) internal policies and procedures, marketing strategies and pricing information, (iii) sources of supplies and terms of suppliers, (iv) information relating to business practices, (v) personnel information, and (vi) information relating to litigation or possible litigation and (vii) information relating to the other Intellectual Property.

(b) Buyer, the Company and the Shareholders shall treat all Confidential Information as strictly confidential and proprietary, shall not disclose such Confidential Information and shall comply in all material respects with all Laws protecting such Confidential Information from unauthorized disclosure. Buyer and the Shareholders further agree not to take any action which would cause all or any portion of the Confidential Information which is privileged to lose such protection. Buyer and the Shareholders shall each implement such systems and controls as may be reasonably necessary to ensure that it and each of its officers, directors, Affiliates, agents, representatives and employees comply with the confidentiality provisions of this Agreement. Each Party further agrees, if and to the extent permitted by applicable Law, to notify the other Party immediately in writing of any Known attempt or effort by any third party to obtain information or documents that comprise a part of the Confidential Information, including, without limitation, receipt of a subpoena or request for information or documents, to permit such other Party, at its own expense, to seek a protective order or otherwise defend against such disclosure or delivery, and, subject to the foregoing, a Party may comply with such subpoena or request for information or documents without violating the restrictions set forth herein.

(c) Notwithstanding any terms herein to the contrary, information shall not be considered Confidential Information if such information (i) was available to the public prior to the time of disclosure to the receiving Party, (ii) becomes available to the public as a result of action by Persons other than the receiving Party, (iii) was rightfully in a Party's possession prior to receipt of such information from the other Party hereto, (iv) was obtained by the receiving Party from a third party not Known by the receiving Party to be under any obligation not to so disclose, or (v) is information which the receiving Party can document was independently developed by such Party.

(d) Notwithstanding this Section 4.4, the Shareholders agree and acknowledge that Buyer may have to disclose certain information with respect to the transactions contemplated by this Agreement pursuant to the Securities and Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (the "Exchange Act"). Accordingly, the Parties hereby agree, if, on the advice of counsel to Buyer, Buyer is required to disclose the transactions contemplated hereby pursuant to the Exchange Act, such disclosure shall not be a violation or breach of this Section 4.4.

4.5 Straddle Periods. For purposes of this Agreement, whenever it is necessary to determine the Liability for Taxes of the Company for any taxable period of the Company that includes (but does not end on) the Closing Date (a "Straddle Period"), the determination of the Taxes of the Company for the portion of the Straddle Period ending on and including, and the portion of the Straddle Period beginning after, the Closing Date shall be determined by assuming that the Straddle Period consisted of two (2) taxable years or periods, one which ended at the close of the Closing Date and the other which began at the beginning of the day following the Closing Date, and items of income, gain, deduction, loss or credit, and state and local apportionment factors of the Company for the Straddle Period shall be allocated between such two (2) taxable years or periods on a "closing of the books basis" by assuming that the books of the Company were closed at the close of the Closing Date. However, (i) exemptions, allowances or deductions that are calculated on an annual basis, such as the deduction for depreciation, and (ii) periodic Taxes such as real and personal property Taxes shall be apportioned ratably between such periods on a daily basis.

4.6 Transfer Taxes. All sales, use, transfer, real property transfer, value added, recording, registration, notary, stamp, stamp duty or similar Taxes and fees, and all recording costs, arising out of the transfer of the Shares pursuant to this Agreement and all costs and expenses incurred in connection with the transferring and recording of title to the Shares (excepting such costs and expenses arising solely as a result of the legal or regulatory status of Buyer) (collectively, the "Transfer Taxes"), if any, shall be the responsibility of the Shareholders. The Tax Returns relating to such Transfer Taxes shall be timely prepared by the Shareholders (taking into account all available extensions), and the Shareholders will provide copies of such Tax Returns to Buyer within ten (10) days of filing such Tax Returns.

#### 4.7 Cooperation on Tax and Further Assurances.

(a) Cooperation. Buyer and the Shareholders shall, or shall cause their respective Affiliates to, at no cost or expense to Buyer or the Shareholders, as applicable, reasonably cooperate with each other and furnish or cause to be furnished to each other, as promptly as practical, such information (including the Company's books, records and other information) and assistance relating to the Business as is reasonably necessary for the preparation and filing of any Tax Return, claim for refund or other filings relating to Tax matters, for the preparation of any Tax audit, for the preparation of any Tax protest, for the prosecution or defense of any suit or other Proceeding relating to Tax matters, or for any other reasonable business purpose, including without limitation, defense or resolution of any matter arising out of the conduct of the Business prior to the Effective Time of any matter arising out of or relating to this Agreement.

(b) Further Assurances. The Parties further agree, upon request, to use their commercially reasonable efforts to obtain any certificate or other document from any Government Entity or any other Person as may be necessary to mitigate, reduce or eliminate any Tax that could be imposed (including, without limitation, with respect to the transactions contemplated hereby) on the Company.

4.8 Payment of Excluded Liabilities. On and after the Closing Date, the Shareholders shall pay and discharge when due (taking into account all available extensions or extensions granted consistent with the past practice of the Business), all of the debts and Liabilities arising in connection with the ownership or operation of the Assets or the Business prior to the Effective Time (taking into account any set-offs, offsets, deductions, reductions, rebates, claims and counterclaims with respect thereto), except to the extent such debts and Liabilities are accounted for in the Final Closing Date Net Working Capital (the "Pre-Closing Liabilities"), whether or not the claim with respect thereto has been asserted on or prior to the Effective Time. If any Pre-Closing Liabilities are not so paid or provided for, and Buyer reasonably determines that failure to make such payments will impair Buyer's use or enjoyment of the Assets or conduct of the Business, Buyer may give the Shareholders notice of its intent to make all such payments directly. If the Shareholders, in good faith, dispute the amount allegedly due, the Shareholders shall so notify Buyer and thereafter proceed with reasonable commercial diligence to resolve such dispute. If the Shareholders do not so notify Buyer, or after notice fail to reasonably resolve such dispute, Buyer may pay the amounts directly (but shall have no obligation to do so) and will be promptly reimbursed by the Shareholders for such payments.

### **ARTICLE V. INDEMNIFICATION**

#### 5.1 Survival; No Other Representations.

(a) All of the representations and warranties of the Parties made in this Agreement or made pursuant to this Agreement shall survive the Closing and shall expire eighteen (18) months following the Closing Date; provided, however, that such expiration shall not affect the Parties' rights and obligations as to any claims asserted by written notice specifying, in reasonable detail, the nature of such claim and the facts and circumstances with reasonable specificity pertaining thereto, delivered to the Party against whom such claim is asserted pursuant to Section 5.2 prior to such time. Notwithstanding the foregoing, the representations and warranties contained in Section 2.1 (Organization; Ownership of Shares; Capitalization; and Power), Section 2.2 (Authorization), Section 2.3 (Non-Contravention),

Section 2.7 (Assets), Section 2.12 (Brokerage), Section 2.15 (Intellectual Property), Section 2.16 (Employee Benefit Plans), Section 2.21 (Taxes), and Section 2.22 (Environmental Matters) (collectively, the “Shareholders’ Fundamental Representations”) and in Section 3.1 (Organization, Power and Authority), Section 3.2 (Authorization; No Breach), and Section 3.4 (Brokerage) (collectively, the “Buyer’s Fundamental Representations”) shall survive in perpetuity following the Closing. An Indemnified Party shall have no right to assert any new claim for indemnification for a breach of a representation or warranty after the expiration of the above survival periods. The covenants and other agreements of the Parties contained in this Agreement and the other Transaction Documents shall survive the Closing for the period so specified or until they are otherwise terminated or performed in accordance with their respective terms.

(b) Notwithstanding anything to the contrary contained in this Agreement, it is the explicit intent of each Party that neither the Shareholders nor Buyer are making any representation or warranty whatsoever, express or implied, except for those representations and warranties contained in Articles II and III of this Agreement, respectively, or elsewhere throughout this Agreement. In particular, the Shareholders make no representation or warranty to Buyer with respect to any financial projection or forecast relating to the Business. With respect to any projection or forecast delivered by or on behalf of the Shareholders to Buyer or otherwise discussed with Buyer, Buyer acknowledges that: (i) there are uncertainties inherent in attempting to make such projections and forecasts, (ii) Buyer is familiar with such uncertainties, (iii) Buyer is taking full responsibility for making its own evaluation of the adequacy and accuracy of all such projections and forecasts furnished to Buyer, and (iv) Buyer shall have no claim or action against the Shareholders with respect thereto. Nothing in this Section 5.1(b) shall be deemed to limit, alter or otherwise affect the representations and warranties of the Shareholders set forth in Section 2.4.

#### 5.2 Indemnification.

(a) Indemnification by the Shareholders. Subject to the limitations set forth in this Article V, from and after the Closing, the Shareholders shall, jointly and severally, indemnify, defend and hold harmless Buyer and its Affiliates (all such foregoing Persons, collectively, the “Buyer Indemnitees”) from and against any Losses the Buyer Indemnitees may suffer, sustain or become subject to (“Buyer Indemnifiable Losses”) arising out of, in connection with or resulting from:

- (i) any breach or inaccuracy of any representation or warranty made by the Shareholders in this Agreement;
- (ii) any nonfulfillment or breach of any covenant, agreement or obligation to be performed by the Shareholders pursuant to this Agreement;

and

- (iii) the Pre-Closing Liabilities;

(iv) (A) any Taxes of the Company which are unpaid as of the Closing Date (and not otherwise accounted for in the calculation of the Closing Date Net Working Capital or prepaid to the IRS) with respect to taxable periods ending on or before the Closing

Date and the portion of any Straddle Period ending on the Closing Date, (B) any Transfer Taxes for which the Shareholders are liable pursuant to this Agreement, (C) the lost benefit of any credit, deduction or loss for Tax purposes which would have been available to reduce or otherwise offset Taxes of Buyer or any Affiliate thereof (including, following the Closing, the Company) but for a breach of any representation or warranty made in Section 2.21, or (D) any Taxes arising by reason of the Company being a member of any “affiliated group” (within the meaning of Section 1504(a) of the Code) on or prior to the Closing Date, including pursuant to Treasury Regulations § 1.1502-6(a) (or any predecessor or successor thereof or any analogous or similar Law); and

(v) any Covered Matter.

(b) Indemnification by Buyer. Subject to the limitations set forth in this Article V, from and after the Closing, Buyer shall indemnify, defend and hold harmless the Shareholders and their respective Affiliates (all such foregoing Persons, collectively, the “Shareholder Indemnitees”; each Buyer Indemnitee and each Shareholder Indemnitee, as the context requires, are each sometimes referred to herein as an “Indemnified Party”) from and against any Losses the Shareholder Indemnitees may suffer, sustain or become subject to (“Shareholder Indemnifiable Losses”), arising out of, in connection with or resulting from:

(i) any breach or inaccuracy of any representation or warranty made by Buyer in this Agreement;

(ii) any nonfulfillment or breach of any covenant, agreement or obligation to be performed by Buyer pursuant to this Agreement; and

(iii) all of the debts and Liabilities (other than Liabilities for which the Buyer Indemnitees are entitled to seek indemnification pursuant to Section 5.2(a)) arising in connection with the ownership of the Shares or the operation of the Assets or the Business from and after the Effective Time.

### 5.3 Limits on Indemnification.

(a) The Shareholders shall not have any obligation to indemnify Buyer Indemnitees to the extent (i) such Buyer Indemnifiable Losses arise after the expiration of the applicable survival periods set forth in Section 5.1 of this Agreement, or (ii) with respect to any Buyer Indemnifiable Losses arising under Section 5.2(a)(i), such Buyer Indemnifiable Losses exceed, in the aggregate, \$2,500,000 (the “Liability Cap”). Notwithstanding the foregoing, claims asserted under Section 5.2(a)(i) for Buyer Indemnifiable Losses arising from a breach of a Shareholders’ Fundamental Representation and claims of fraud, willful misconduct or intentional misrepresentation shall not be subject to the Liability Cap. Additionally, the Shareholders shall indemnify Buyer against all Pre-Closing Liabilities, after exhaustion of the Escrow Amount, which indemnification shall not be subject to the Liability Cap.

(b) Buyer shall not have any obligation to indemnify Shareholder Indemnitees with respect to any Shareholder Indemnifiable Losses arising under Section 5.2(b)(i) to the extent such Shareholder Indemnifiable Losses (i) arise after the expiration of the applicable survival periods set forth in Section 5.1 of this Agreement, and (ii) exceed, in the aggregate, the

Liability Cap. Notwithstanding the foregoing, claims asserted under Section 5.2(b)(i) for Shareholder Indemnifiable Losses arising from a breach of a Buyer's Fundamental Representation and claims of fraud, willful misconduct or intentional misrepresentation shall not be subject to the Liability Cap. Additionally, Buyer shall indemnify the Shareholders against all Shareholder Indemnifiable Losses arising under Section 5.2(b)(iii), which indemnification shall not be subject to the Liability Cap.

(c) Any claims for Buyer Indemnifiable Losses shall first be made against the Escrow Amount and Working Capital Holdback and then, following the exhaustion of the Escrow Amount and Working Capital Holdback, the Shareholders, jointly and severally.

(d) An Indemnified Party shall, at the Indemnifying Party's request, cooperate in the defense of any matter subject to indemnification hereunder at the Indemnifying Party's expense.

(e) The Parties shall treat any payments made pursuant to this Article V as an adjustment to the Purchase Price for federal Tax purposes, unless a final determination causes such payment not to be treated as an adjustment to the Purchase Price for federal Tax purposes.

(f) The amount of any Loss an Indemnifying Party shall be required to pay shall be reduced by insurance proceeds actually received by the Indemnified Party related to such Loss. Each party shall use commercially reasonable best efforts to collect any such proceeds or other amounts to which it is entitled.

#### 5.4 Matters Involving Third Parties.

(a) Promptly after receipt by an Indemnified Party under Section 5.2(a) or Section 5.2(b) of notice of the commencement of any claim by a third party against it, such Indemnified Party will, if a claim is to be made against an Indemnifying Party, give prompt notice to the Indemnifying Party of the commencement of such claim, but the failure to notify the Indemnifying Party will not relieve the Indemnifying Party of any Liability that it may have to any Indemnified Party, except to the extent that the Indemnifying Party demonstrates that the defense of such Proceeding is prejudiced by the Indemnified Party's failure to give such notice.

(b) If any claim referred to in Section 5.4(a) is brought against an Indemnified Party and it gives notice to the Indemnifying Party of the commencement of such third-party claim, the Indemnifying Party will, unless the claim involves Taxes, be entitled to participate in such third-party claim and, to the extent that it desires (unless (i) the Indemnifying Party is also a party to such third-party claim and the Indemnified Party determines in good faith and upon advice of counsel that joint representation would be inappropriate, or (ii) the Indemnifying Party fails to provide reasonable assurance to the Indemnified Party of its financial capacity to defend such third-party claim and provide indemnification with respect to such third-party claim), to assume the defense of such third-party claim with counsel reasonably satisfactory to the Indemnified Party and, after notice from the Indemnifying Party to the Indemnified Party of its election to assume the defense of such third-party claim, the Indemnifying Party will not, as long as it diligently conducts such defense, be liable to the Indemnified Party under this Article V for any fees of other counsel or any other expenses with respect to the defense of such third-party

claim, in each case subsequently incurred by the Indemnified Party in connection with the defense of such third-party claim, other than reasonable costs of investigation. If the Indemnifying Party assumes the defense of a third-party claim, no compromise or settlement of such claims may be effected by the Indemnifying Party without the Indemnified Party's consent, such consent not to be unreasonably withheld, conditioned or delayed. If notice is given to an Indemnifying Party of the commencement of any third-party claim and the Indemnifying Party does not, within twenty (20) days (or, if earlier, by the tenth day preceding the day on which an answer or other pleading must be served in order to prevent judgment by default in favor of the Person asserting the claim) after the Indemnified Party's notice is given, give notice to the Indemnified Party of its election to assume the defense of such third-party claim, the Indemnifying Party will be bound by any determination made in such third-party claim.

(c) Notwithstanding the foregoing, if an Indemnified Party demonstrates that there is a reasonable probability that a third-party claim may adversely affect it or its Affiliates other than as a result of monetary damages for which it would be entitled to indemnification under this Agreement, the Indemnified Party may, by notice to the Indemnifying Party, assume the exclusive right to defend, compromise or settle such third-party claim, but the Indemnifying Party will not be bound by any determination of a third-party claim so defended or any compromise or settlement effected without its consent (which may not be unreasonably withheld or delayed).

5.5 Schedules. Any matter disclosed or contained on any schedule to this Agreement shall be deemed disclosed for all other schedules hereunder to the extent that it is reasonably apparent that such disclosure is applicable to such schedules.

5.6 Materiality. For purposes of calculating the amount of Losses to which an Indemnified Party is entitled under this Article V, the terms "material," "materiality" and "Material Adverse Effect" and similar qualifications will be disregarded; provided, however, for purposes of determining whether a breach of a representation or warranty has occurred, such qualifications shall be taken into consideration.

## **ARTICLE VI. DEFINITIONS**

(a) For the purposes hereof, the following terms have the meanings set forth below:

"Affiliate" of any particular Person means any other Person controlling, controlled by or under common control with such particular Person, where "control" means the possession, directly or indirectly, of the power to direct the management and policies of a Person whether through the ownership of voting securities, contract or otherwise.

"Agreement" has the meaning set forth in the preamble.

"Assets" mean those assets used or held for use in the conduct of the Business.

"Assignment and Assumption of Pre-Closing Liabilities" has the meaning set forth in Section 1.4(b)(xi).

“Business” means the business related to the sale and distribution of food products conducted by the Company.

“Business Day” means each day which is not a day on which banking institutions in the city of New York, New York are authorized or obligated by law or executive order to close.

“Buyer” has the meaning set forth in the preamble.

“Buyer Indemnifiable Losses” has the meaning set forth in Section 5.2(a).

“Buyer Indemnitees” has the meaning set forth in Section 5.2(a).

“Buyer’s Fundamental Representations” has the meaning set forth in Section 5.1.

“Closing” has the meaning set forth in Section 1.4(a).

“Closing Date” has the meaning set forth in Section 1.4(a).

“Closing Date Balance Sheet” has the meaning set forth in Section 1.2(b).

“Closing Date Net Working Capital” has the meaning set forth in Section 1.2(b).

“Closing Statement” has the meaning set forth in Section 1.4(b)(i).

“COBRA” means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

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

“Company” has the meaning set forth in the recitals.

“Company Customers” means those Persons to which the Company has sold any food products at any time, whether or not such Person is a current customer of the Company.

“Company Employees” has the meaning set forth in Section 2.13(a).

“Company Intellectual Property” means all Intellectual Property used or held for use by the Company in connection with the conduct of the Business as currently conducted and as proposed to be conducted and any Company Product, including without limitation, all Company Software.

“Company Product” means any product, good or service owned by the Company (regardless of commercial availability) or otherwise marketed, sold or offered for license or sale by the Company, including without limitation any such product or service in active development by the Company.

“Company Related Person” has the meaning set forth in Section 2.19.

“Company Software” means any proprietary computer software, applications, tools, databases, and data warehouses owned or purported to be owned by the Company or licensed to the Company on an exclusive basis, including, without limitation, compiled and object code versions thereof, source code therefor, and all libraries, database structures, (including without limitation scripts, triggers, stored procedures, and the like), and technical and user documentation relating thereto.

“Confidential Information” has the meaning set forth in Section 4.4(a).

“Consent” means any approval, consent, license, permit, ratification, waiver or other authorization issued, granted, given or otherwise made available by or under the authority of any Government Entity or third party or pursuant to any applicable Law, and all consents and approvals of third parties necessary to prevent any conflict with, violation or breach of, or default under, or any right of termination or buy-out by any third party, cancellation, amendment or acceleration of any obligation or the loss of any benefit under, any Contracts.

“Consulting Agreements” has the meaning set forth in Section 1.4(b)(vi).

“Contract” means any written or oral loan or credit agreement, note, bond, debenture, indenture, mortgage, guarantee, deed of trust, lease, franchise, permit, authorization, license, contract, instrument, employee benefit plan or practice or other binding agreement, obligation, arrangement, understanding or commitment.

“Covered Matters” shall mean those matters set forth Schedule 6(a).

“Creditors’ Rights and Equitable Limitations” has the meaning set forth in Section 2.2.

“Effective Time” has the meaning set forth in Section 1.4(a).

“Employee Benefit Plans” has the meaning set forth in Section 2.16(a).

“Environmental Claim” shall mean any Proceeding, notice, letter, demand or request for information (in each case in writing) by any Person alleging potential Liability (including potential Liability for investigatory costs, cleanup costs, governmental response costs, natural resources damages, property damages, personal injuries or penalties) arising out of, based on or resulting from any violation of Environmental Laws or the Release, emission or presence of any Hazardous Material at any location.

“Environmental Laws” shall mean any and all Laws promulgated, approved or entered thereunder by any Government Entity, including requirements of common law, relating to pollution or the protection, cleanup or restoration of the environment, or to human health or safety, including the Federal Clean Air Act, the Federal Clean Water Act, the Federal Resource Conservation and Recovery Act, the Federal Comprehensive Environmental Response, Compensation, and Liability Act, the Federal Occupational Safety and Health Act and the Federal Toxic Substances Control Act.

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

“ERISA Affiliate” means any entity that is considered a single employer with the Company under Section 414 of the Code.

“Escrow Account” has the meaning set forth in Section 1.3.

“Escrow Agent” means U.S. Bank National Association.

“Escrow Agreement” has the meaning set forth in Section 1.3.

“Escrow Amount” has the meaning set forth in Section 1.3.

“Exchange Act” has the meaning set forth in Section 4.4(d).

“Final Closing Date Balance Sheet” has the meaning set forth in Section 1.2(c).

“Final Closing Date Net Working Capital” has the meaning set forth in Section 1.2(c).

“Financial Statements” has the meaning set forth in Section 2.4(a).

“Government Entity” means individually, and “Government Entities” means collectively, the United States of America or any other nation, any state or other political subdivision thereof, or any entity exercising executive, legislative, judicial, regulatory or administrative functions of government, including any court, in each case having jurisdiction over the Company.

“Governmental License” means any license, permit, franchise certification, registration, identification number, certificate of need, certificate of occupancy, Food and Drug Administration registration, franchise, Consent or order of, or filing with, any state or federal Government Entity.

“Handling” shall mean the production, use, generation, emission, storage, treatment, transportation (including for disposal off-site), recycling, disposal (whether on-site or off-site), discharge, abandonment, Release or other management or disposition of any kind of any Hazardous Material.

“Hazardous Material” shall mean chemicals, pollutants, contaminants, hazardous materials, hazardous substances and hazardous wastes, medical waste, toxic substances, petroleum and petroleum products and by-products, asbestos-containing materials, mold, fungus, PCBs and any other chemicals, pollutants, substances or wastes, in each case regulated, or that could result in Liability, under Environmental Laws.

“Hired Employees” has the meaning set forth in Section 4.1.

“Improvements” has the meaning set forth in Section 2.8(b).

“Indebtedness” means, with respect to any Person, (i) indebtedness of such Person for borrowed money, whether secured or unsecured, (ii) obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (iii) obligations of such Person under conditional sale or other title retention agreements relating to property purchased by such Person,

(iv) capital lease obligations of such Person, (v) obligations of such Person under letter of credit or similar facilities, (vi) obligations of such Person under interest rate cap, swap, collar or similar transaction or currency hedging transactions, and (vii) guarantees of such Person of any such indebtedness referred to in clauses (i)-(vi) of any other Person.

“Indemnified Party” has the meaning set forth in Section 5.2(b).

“Indemnifying Party” means a Party from whom indemnification is sought pursuant to Article V.

“Information Systems” means all Company Software, computer hardware, data storage systems, computer and communications networks, architecture interfaces and firewalls (whether for data, voice, video, or other media access, transmission, or reception) and other apparatus used in the products and/or services of the Company to create, manipulate, store, transmit, exchange, or receive information in any form.

“Infringe” has the meaning set forth in Section 2.15(b).

“Intellectual Property” shall mean all U.S. and foreign (i) patents, patent applications (including all provisional, divisions, divisionals, continuations, continuations in part and reissues), renewals, patent disclosures and inventions (whether patentable or unpatentable and whether or not reduced to practice), business methods, continuing patent applications, reexaminations, and extensions thereof, any counterparts claiming priority therefrom, utility models, patents of importation/confirmation, certificates of invention, certificates of registration and like rights, including invention disclosures (“Patents”), (ii) registered and unregistered trademarks, service marks, logos, designs, slogans, trade dress, trade names, brand names and corporate names, assumed names, business names and all other indicia of origin and registrations and applications for registration thereof (“Trademarks”), (iii) registered and unregistered copyrights in both published works and unpublished works of authorship and applications for registration thereof (“Copyrights”), (iv) computer software (including source code, object code, binary code and algorithms), applications, programming, user interfaces, websites, databases and all documentation related thereto (“Software”), (v) trade secrets and Confidential Information (including without limitation ideas, formulas, compositions, know-how, trade secrets, manufacturing and production processes and techniques, research and development information, drawings, specifications, designs, plans, proposals, technical data, financial and marketing plans and customer and supplier lists and information), data, data collection and all rights therein throughout the world, blueprints, and all other non-public information, Confidential Information and tangible and intangible proprietary information (“Trade Secrets”), (vi) domain name registrations, web addresses, and uniform resource locators (“Domain Names”) and (vii) any similar or equivalent rights to any of the foregoing anywhere in the world.

“Inventory” means the Company’s goods, products and other items located at or in transit to or from the Company’s facilities for sale to Company Customers.

“Knowledge” or “Known” or “Knows” means, with respect to any Person, actual knowledge after reasonable inquiry and investigation.

“Landlord” means Hacienda-Arville LLC, as successor in interest to JASCO Properties.

“Laws” means all statutes, laws, codes, ordinances, regulations, rules, orders, judgments, writs, injunctions, assessments, awards, acts or decrees of any Government Entity.

“Leased Real Property” has the meaning set forth in Section 2.8(a).

“Leases” has the meaning set forth in Section 2.8(a).

“Liability” shall mean any and all charges, debts, obligations, bonds, indemnification and similar obligations, covenants, promises, guarantees, make whole agreements and similar obligations, and other liabilities, including all contractual obligations, whether absolute or contingent, inchoate or otherwise, matured or unmatured, liquidated or unliquidated, accrued or unaccrued, Known or unknown, whenever arising, and including those arising under any Law, threatened or contemplated Proceeding or ruling of any Government Entity or any award of any arbitrator (public or private) of any kind, including attorneys’ fees, and those arising under any Contract, commitment or undertaking, including those arising under this Agreement.

“Liability Cap” has the meaning set forth in Section 5.3(a).

“Lien” or “Liens” means any lien, pledge (including any negative pledge), purchase option, easement, restrictive covenant, security interest, deed of trust, right of first refusal, servitude, proxy, transfer restriction under any shareholder agreement or similar agreement, mortgage, conditional sales agreement, encumbrance or other right of third parties, voluntarily incurred or arising by operation of Law, and includes any agreement to give any of the foregoing in the future, and any contingent sale or other title retention agreement or lease in the nature thereof.

“Loss” or “Losses” shall mean all claims, demands, suits, Proceedings, judgments, losses, lost profits or multiple of lost profits, Liabilities, damages (including consequential damages), Taxes, costs, diminution of value and expenses of every kind and nature (including reasonable attorneys’ fees and costs of investigation).

“Margin” means the difference of A) the sum of all items invoiced by the Company to the customer, less B) the sum of (i) the cost the Company was billed for all such items by the applicable vendor (as estimated by the Company’s purchase order or, if available, as invoiced by vendor); (ii) any freight in, customs, duty, demurrage, special handling charges; and (iii) any outbound freight charges. Adjustments for changes in Inventory for any cause including damage, spoilage, lot consolidations, or miscounts may or may not be included.

“Material Adverse Effect” shall mean any change, effect, event, occurrence, state of facts or development that has had, or reasonably would be expected to have, individually or in the aggregate, a material adverse effect on (i) the Assets and Liabilities, Business, financial condition, or results of operations of the Company or (ii) the ability of the Company or the Shareholders, as applicable, to perform in a timely manner any of its obligations under this Agreement or any Transaction Document to which it is a party or any transaction contemplated hereby or thereby; provided, however, in no event shall any of the following be deemed by itself, individually or in the aggregate, to constitute a Material Adverse Effect: (I) a failure by the Business to meet internal earnings, revenue or other projections or earnings, revenue or other

predictions of any analyst (it being understood that the foregoing shall not preclude Buyer from asserting that the facts or occurrences giving rise to or contributing to such failure that are not otherwise excluded from the definition of Material Adverse Effect should be deemed to constitute, or be taken into account in determining whether there has been, or would be reasonably expected to be, a Material Adverse Effect); or (II) any event, circumstance or market condition occurring as a general economic or financial condition affecting the industry of the Business as a whole (provided, that any event, circumstance, or market condition referred to in this clause (II) may be taken into account in determining whether there has been a Material Adverse Effect if and to the extent such event, circumstance, or market condition has a materially disproportionate effect on the Company, taken as a whole, as compared to other companies operating in the industries in which the Company operates).

“Net Working Capital” shall mean (i) all current assets (including cash) of the Company minus (ii) all current liabilities (excluding Indebtedness and other amounts to be paid or discharged at Closing or that are the responsibility of the Shareholders under the terms of this Agreement) of the Company.

“Notice of Disagreement” has the meaning set forth in Section 1.2(c).

“PACA” means the federal Perishable Agricultural Commodities Act.

“Party” or “Parties” has the meaning set forth in the preamble.

“Permitted Lien” shall mean (a) any Lien for Taxes not yet due or delinquent, or (b) any carrier’s, warehousemen’s, landlord’s, mechanic’s, materialmen’s or similar Lien, arising in the ordinary course of business.

“Person” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a Government Entity or any department, agency or political subdivision thereof.

“Post-Closing Adjustment” has the meaning set forth in Section 1.2(c).

“Pre-Closing Liabilities” has the meaning set forth in Section 4.8.

“Proceedings” has the meaning set forth in Section 2.11.

“Purchase Price” has the meaning set forth in Section 1.2(a).

“Release” or “Released” shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, migrating or disposing (including abandoning or discarding).

“Restrictive Covenants” has the meaning set forth in Section 4.2(c).

“Shareholder” or “Shareholders” has the meaning set forth in the preamble.

“Shareholder Indemnifiable Losses” has the meaning in Section 5.2(b).

“Shareholder Indemnitees” has the meaning set forth in Section 5.2(b).

“Shareholders’ Fundamental Representations” has the meaning set forth in Section 5.1.

“Shares” has the meaning set forth in the recitals.

“Statement of Account Specific Revenue and Margin” has the meaning set forth in Section 1.4(b)(xii).

“Straddle Period” has the meaning set forth in Section 4.5.

“Tax” or “Taxes” means (i) federal, state, province, county, local, foreign or other income, gross receipts, ad valorem, franchise, profits, sales or use, transfer, registration, excise, utility, environmental, communications, real or personal property, capital stock, license, payroll, wage or other withholding, employment, unemployment, social security, severance, stamp, occupation, alternative or add-on minimum, estimated, customs duties, fees, assessments charges and other taxes of any kind whatsoever, whether disputed or not, (ii) all interest, penalties, fines, additions to tax or additional amounts imposed by any taxing authority in connection with any item described in clause (i) above, and (iii) all amounts described in clauses (i) and (ii) above payable as a result of having been a member of a consolidated, combined, affiliated or unitary group.

“Tax Return” means any return, declaration, report, claim for refund, estimate, information report, return statement or filing relating to Taxes, including any schedule or attachment thereto and including any amendment thereof.

“Transaction Documents” has the meaning set forth in Section 2.1(b).

“Transfer Taxes” has the meaning set forth in Section 4.6.

“Treasury Regulation” means the United States Treasury Regulations promulgated under the Code, and any reference to any particular Treasury Regulation section shall be interpreted to include any final or temporary revision of or successor to that section regardless of how numbered or classified.

“Working Capital Holdback” has the meaning set forth in Section 1.3.

(b) The words “hereof,” “herein,” and “hereunder” and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Whenever the words “include,” “includes” or “including” (or any variation thereof) are used in this Agreement, they shall be deemed to be followed by the words “without limitation.”

(c) The terms defined in the singular shall have a comparable meaning when used in the plural, and vice versa. All references to “dollars” or “\$” mean United States dollars. The term “foreign” shall mean non-United States.

**ARTICLE VII.  
MISCELLANEOUS**

7.1 Fees and Expenses. Except as specifically set forth in this Agreement, each Party to this Agreement shall pay its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement and the other agreements referred to herein, and the consummation of the transactions contemplated hereby and thereby.

7.2 Press Release and Announcements. None of the Parties hereto nor any of their respective Affiliates shall issue any press releases or make any public announcement with respect to this Agreement or the transactions contemplated hereby without the prior written consent of the other Party hereto. Notwithstanding the foregoing, any such press release or public announcement may be made if required by applicable Law or pursuant to the Exchange Act; *provided*, that the Party required to make such press release or public announcement shall, to the extent possible, confer with the other Party concerning the timing and content of such press release or public announcement before the same is made.

7.3 Remedies. Following the Closing and except as specifically provided for elsewhere in this Agreement, the indemnity obligations under Article V shall be the sole and exclusive remedy for any breach of any representation, warranty or covenant (other than for a claim of fraud, willful misconduct or intentional misrepresentation). All available rights and remedies shall be cumulative and non-exclusive, and may be exercised singularly or concurrently. One or more successive actions may be brought, either in the same action or in separate actions, as often as is deemed advisable, until all of the obligations to such Person are paid and performed in full. In any action arising out of or relating to this Agreement, including any interpretation or enforcement thereof, the prevailing party shall be entitled to recover its reasonable attorney fees, costs and disbursements incurred in such action or an appeal from the non-prevailing party.

7.4 Consent to Amendments; Waivers. This Agreement may be amended, or any provision of this Agreement may be waived upon the approval, in a writing, executed by Buyer and the Shareholders. No course of dealing between or among the Parties hereto shall be deemed effective to modify, amend or discharge any part of this Agreement or any rights or obligations of any such Party or such holder under or by reason of this Agreement.

7.5 Successors and Assigns. This Agreement and all covenants and agreements contained herein and rights, interests or obligations hereunder, by or on behalf of any of the Parties hereto, shall bind and inure to the benefit of the respective successors and permitted assigns of the Parties hereto whether so expressed or not, except that neither this Agreement nor any of the covenants and agreements herein or rights, interests or obligations hereunder may be assigned or delegated by the Shareholders without the prior written consent of Buyer, and neither this Agreement nor any of the covenants and agreements herein or rights, interests or obligations hereunder may be assigned or delegated by Buyer without the prior written consent of the Shareholders. Notwithstanding the foregoing, Buyer may assign any or all of its rights under this Agreement to any Affiliate, or direct or indirect subsidiary of Buyer, without the consent of the Shareholders.

7.6 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement or the application of any such provision to any Person or circumstance shall be held to be prohibited by, illegal or unenforceable under applicable Law or rule in any respect by a court of competent jurisdiction, such provision shall be ineffective only to the extent of such prohibition, illegality or unenforceability, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

7.7 Counterparts. This Agreement may be executed in counterparts (including by means of telecopied signature pages), any one of which need not contain the signatures of more than one Party, but all such counterparts taken together shall constitute one and the same agreement.

7.8 Descriptive Headings; Interpretation. The headings and captions used in this Agreement and the table of contents to this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Any capitalized terms used in any Schedule or Exhibit and not otherwise defined therein shall have the meanings set forth in this Agreement. The use of the word "including" herein shall mean "including without limitation."

7.9 Entire Agreement. This Agreement and the agreements and documents referred to herein contain the entire agreement and understanding among the Parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings, whether written or oral, relating to such subject matter in any way. In furtherance of the foregoing, the Letter, dated March 30, 2012, among The Chefs' Warehouse, Heidi Putze and Rudi Putze is hereby terminated and of no further force or effect. Except as expressly set forth in this Agreement (or as set forth in any certificate delivered pursuant to this Agreement), no Party hereto has made any representations or warranties of any kind to any other Party hereto with respect to the transactions contemplated hereby and none shall be implied.

7.10 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties hereto and their permitted successors and assigns and nothing herein expressed or implied shall give or be construed to give any Person, other than the Parties hereto and such permitted successors and assigns, any legal or equitable rights hereunder.

7.11 Schedules and Exhibits. All Schedules and Exhibits referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein.

7.12 Governing Law. All issues and questions concerning the construction, validity, enforcement and interpretation of this Agreement and the Schedules and Exhibits hereto shall be governed by, and construed in accordance with, the Laws of the State of New York without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of New York or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of New York. In furtherance of the foregoing, the internal Law of the State of New York shall control the interpretation and construction of this Agreement (and all Schedules and Exhibits hereto), even though under that jurisdiction's choice of law or conflict of law analysis, the substantive Law of some other jurisdiction would ordinarily apply.

7.13 Venue. BUYER AND THE SHAREHOLDERS IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF ANY NEW YORK STATE OR U.S. FEDERAL COURT LOCATED IN NEW YORK COUNTY OVER ANY PROCEEDING ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY TRANSACTION DOCUMENT AND BUYER AND THE SHAREHOLDERS HEREBY IRREVOCABLY AGREE THAT ALL CLAIMS IN RESPECT OF SUCH PROCEEDING MAY BE HELD AND DETERMINED IN SUCH NEW YORK STATE OR FEDERAL COURT. BUYER AND THE SHAREHOLDERS AGREE THAT A FINAL JUDGMENT IN ANY SUCH PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN ANY OTHER JURISDICTION BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. BUYER AND THE SHAREHOLDERS HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION THEY MAY HAVE TO THE LAYING OF VENUE IN NEW YORK COUNTY AND ANY OBJECTION TO ANY PROCEEDING IN NEW YORK COUNTY AS THE BASIS OF AN INCONVENIENT FORUM OR THAT THE VENUE OF THE PROCEEDING IS IMPROPER. BUYER AND THE SHAREHOLDERS HEREBY FURTHER WAIVE SERVICE OF PROCESS AND CONSENT TO PROCESS BEING SERVED IN ANY SUCH PROCEEDINGS BY MAILING OF COPIES THEREOF BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, OR DISPATCHED THROUGH A REPUTABLE OVERNIGHT COURIER SERVICE, ADDRESSED TO BUYER OR THE SHAREHOLDERS AT THEIR RESPECTIVE ADDRESSES APPEARING IN THIS AGREEMENT, AND AGREE THAT SUCH SERVICE SHALL CONSTITUTE GOOD AND SUFFICIENT SERVICE OF PROCESS AND NOTICE THEREOF.

7.14 Notices. All notices, demands or other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given when delivered personally, five (5) Business Days after being sent by U.S. certified mail (postage prepaid), return receipt requested, or one (1) Business Day after dispatch to a reputable overnight courier service (charges prepaid). Such notices, demands and other communications shall be sent to Buyer and the Shareholders at the addresses indicated below or to such other address or to the attention of such other Person as the recipient party has specified by prior written notice to the sending party. All notices, demands and other communications hereunder may be given by any other means (including telecopy or electronic mail), but shall not be deemed to have been duly given unless and until it is actually received by the intended recipient.

Buyer:

The Chefs' Warehouse West Coast, LLC  
c/o The Chefs' Warehouse, Inc.  
100 East Ridge Road  
Ridgefield, CT 06877  
Attn: Alexandros Aldous, General Counsel

with a mandatory copy to (which shall not constitute notice to Buyer):

Bass, Berry & Sims PLC  
150 Third Avenue South, Suite 2800  
Nashville, TN 37201  
Attn: D. Scott Holley, Esq.

Shareholders:

Adelheid and Rudolf Putze  
2351 Dolphin Court  
Henderson, NV 89074

with a mandatory copy to (which shall not constitute notice to the Shareholders):

Andrew J. Glendon, Esq.  
Santoro Whitmire  
10001 Park Run Drive  
Las Vegas, Nevada 89145

7.15 No Strict Construction. The Parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any Party hereto by virtue of the authorship of any of the provisions of this Agreement.

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

**BUYER:**

THE CHEFS' WAREHOUSE WEST COAST, LLC

By: /s/ James Wagner  
Name: James Wagner  
Title: Chief Operating Officer

**SHAREHOLDERS:**

By: /s/ Adelheid Putze  
Name: Adelheid Putze

By: /s/ Rudolf Putze  
Name: Rudolf Putze

AGREEMENT OF LEASE

between

THE CITY OF NEW YORK

and

DAIRYLAND HP LLC

A portion of the property known as the  
Hunts Point Food Distribution Center  
200-240 Food Center Drive  
Bronx, New York  
Block 2770, part of Lot 001 and Block 2781, Lot 500

Dated as of April 26, 2012

AGREEMENT OF LEASE FOR  
200-240 FOOD CENTER DRIVE  
HUNTS POINT, THE BRONX

This AGREEMENT OF LEASE (the "Lease"), is made as of April \_\_, 2012 (the "Commencement Date"), between THE CITY OF NEW YORK (the "City"), a municipal corporation of the State of New York, acting by and through its Department of Small Business Services, having an address at 110 William Street, New York, New York 10038, as "Landlord", and DAIRYLAND HP LLC, a limited liability company organized under the laws of the State of New York having its principal office at 100 East Ridge Road, Ridgefield, CT 06877, as "Tenant."

WITNESSETH:

WHEREAS, the City is the owner of all of that certain property and the improvements thereon formally known as the Hunts Point Food Distribution Center in the Borough of the Bronx, City of New York ("Hunts Point"), and

WHEREAS, the City is the owner of certain land (the "Land") and the Building (as hereinafter defined) situated thereon, located within Hunts Point on a portion of Block 2770, Lot 001 and a portion of Block 2781, Lot 500 on the Tax Map of the Borough of the Bronx, City of New York and State of New York, as more particularly set forth in Exhibit A hereof;

WHEREAS, the City desires to continue and promote the commercial activities within Hunts Point so as to preserve existing and produce new employment opportunities for its citizenry and generate new revenues to the City; and

WHEREAS, A.L. Bazzini Co., Inc. ("Bazzini") was, immediately prior to the effectiveness of this Lease, leasing an approximately 82,685 square foot portion of the Building pursuant to a lease with Landlord, dated as of March 1, 2003 (the "Bazzini Lease"); and

WHEREAS, Dairyland (as defined hereinbelow), an Affiliate of Tenant and the Guarantor hereunder, was, up to the date hereof, in occupancy of a portion of the premises demised under the Bazzini Lease as subtenant pursuant to the terms of a sublease dated as of April 1, 2003 (the "Dairyland Sublease"); and

WHEREAS, R. Best Produce, Inc. ("R Best"), is currently in occupancy of (i) a 7,103 square foot portion of the premises demised under the Bazzini Lease as subtenant pursuant to the terms of a sublease dated as of April 1, 2003 (the "R Best Sublease"), having a scheduled expiration date of March 31, 2013 and (ii) a portion of the Building and the Exterior Areas (as hereinafter defined) pursuant to a Lease with Landlord having a scheduled expiration date of May 31, 2013 (the "R Best Lease"); and

WHEREAS, immediately prior to or concurrently with the execution of this Lease and as a condition to its effectiveness, (i) Dairyland and Bazzini have terminated the Dairyland Sublease, (ii) Bazzini has assigned the R Best Sublease to Landlord, and (iii) Bazzini has surrendered the Bazzini Lease to Landlord, all with the intent and purpose of permitting the immediate direct leasing of the majority of the Building by Landlord to Tenant hereunder,

subject only to the Bazzini License (as defined below) and the continuation of the R Best Lease and the R Best Sublease, demised hereunder on the Full Vacate Date (as hereinafter defined); and

WHEREAS, immediately upon the effectiveness of this Lease, Tenant is entering into a License Agreement with Bazzini (the "Bazzini License") with respect to a portion of the Premises; and

WHEREAS, the City desires to lease the Premises (as defined hereinbelow) to Tenant and Tenant desires to hire the same from the City upon the terms and conditions set forth herein; and

WHEREAS, pursuant to Section 1301.2.a of the Charter of The City of New York, the City is authorized to enter into a lease of the Premises; and

WHEREAS, the City, pursuant to the amended and restated contract (as amended, the "Consolidated Contract") dated as of June 30, 2011, by and between the City and the New York City Economic Development Corporation ("EDC"), has engaged EDC, a local development corporation pursuant to Section 1411 of the Not-For-Profit Corporation Laws of the State of New York, having an office at 110 William Street, New York, New York 10038, to provide certain property management and common services with respect to the Premises; and

WHEREAS, Apple Industrial Development Corp. ("Apple"), a Not-For-Profit Corporation under the laws of the State of New York, is an affiliate of EDC authorized to perform certain property management functions under EDC's administration; and

NOW THEREFORE, it is hereby mutually covenanted and agreed by and between the parties hereto that this Lease is made upon and subject to the terms, covenants and conditions hereinafter set forth.

## ARTICLE 1

### DEFINITIONS

For all purposes of this Lease and all agreements supplemental hereto the terms defined in this Article 1 shall have the following meanings:

"Accounting Principles" means the then current generally accepted accounting principles consistently applied.

"Additional Rental" has the meaning provided in Section 20.02 hereof.

"Administrator" means EDC or such other Person as EDC or Landlord may designate to administer this Lease.

“Affiliate” or “Affiliates” means (A) any Person that has, directly or indirectly, a five percent (5%) or greater ownership interest in Tenant, or any Person in which Tenant, any partner or shareholder of Tenant, or any shareholder or partner of any Person that is a partner or shareholder of Tenant, has a five percent (5%) or greater ownership interest, and (B) any individual who is a member of the immediate family (whether by birth or marriage) of an individual who is an Affiliate, which includes for purposes of this definition a spouse, a brother or sister of the whole or half blood (including an individual related by or through legal adoption) of such individual or his/her spouse, a lineal descendant or ancestor (including an individual related by or through legal adoption) of any of the foregoing, or a trust for the benefit of any of the foregoing. Ownership of or by Tenant referred to in this definition includes beneficial ownership effected by ownership of intermediate entities.

“Apple” has the meaning provided in the Recitals.

“Approved Architect” shall have the meaning provided in Section 8.01(a)(ii) hereof.

“Appurtenances” means all tenements, hereditaments, easements, rights-of-way, rights, privileges in and to the Land, including (a) easements over other lands granted by any easement agreement intended to benefit the Premises as the dominant parcel and (b) any streets, sidewalks, driveways, curbs, ways, alleys, vaults, gores or strips of land adjoining the Land.

“Assignee” has the meaning provided in Section 10.01(b)(ii) hereof.

“Assignment” has the meaning provided in Section 10.01(b)(i) hereof.

“Bankruptcy Security” has the meaning provided in Section 22.09(e) hereof.

“Base Rent” has the meaning provided in Section 4.01 hereof.

“Building” means the building located on the Premises, containing approximately 176,406 rentable square feet, and all base building systems located therein and serving the Premises and the Equipment situated therein and related thereto, all Improvements therein, and replacements thereof and substitutions therefor.

“Building Expansion” has the meaning provided in Section 4.01(a)(iii) hereof.

“Building Redevelopment” has the meaning provided in Section 13.01(a) hereof.

“Capital Improvement” means any change, replacement, alteration, improvement, installation (including any and all Work, as hereinafter defined, if applicable) or addition to the Premises (other than a Restoration), the removal of which will either cause damage to the Premises, its appurtenances or any other portion of the Building or will render the item so removed inoperable or without significant value the cost of which is properly classified as a capital expenditure under generally accepted accounting principles and the Internal Revenue Code of 1986 (as amended to date); provided that in no event shall any of Tenant’s Property constitute a Capital Improvement.

“Capital Transaction” has the meaning provided in Section 10.01(b)(iii) hereof.

“City” has the meaning provided in the Preamble.

“City’s Payment Rate” has the meaning provided in Section 5.05 hereof.

“Commencement Date” has the meaning provided in the Preamble hereof.

“Common Facilities” means the Demising Wall, roof of the Building, sprinkler system, rail and any facilities within the Building which may hereafter be furnished by Landlord for the non-exclusive access, use and/or benefit, in common, by all tenants and occupants of the Building, their officers, agents, employees, customers, deliverymen and invitees.

“Conditional Limitation Notice” has the meaning provided in Section 22.03(a) hereof.

“Conditional Limitation Period” has the meaning provided in Section 22.03(a) hereof.

“Consolidated Contract” has the meaning provided in the Recitals.

“Conviction” has the meaning provided in Section 37.05(c)(2) hereof.

“Dairyland” means Dairyland USA Corporation, a New York corporation.

“Date of Taking” has the meaning provided in Section 9.01(c) hereof.

“Default” means any condition or event, or failure of any condition or event to occur, which would, either after notice and the lapse of time or after the lapse of time, depending on the nature of the condition or event, constitute an Event of Default.

“Demising Wall” means the approximately 425 foot long wall (presently consisting, in part, of fencing) that partitions the Existing Space from the adjacent premises within the Building whether or not the latter is occupied by another tenant.

“Depository” means (i) the Recognized Mortgagee, (ii) if there is no Recognized Mortgagee, then the Institutional Lender (or the lead bank or agent, as the case may be) that is Tenant’s and/or its direct or indirect parent companies global financing lender under a senior credit facility (“Senior Lender”) or (iii) if there is no Recognized Mortgagee nor Senior Lender, then an Institutional Lender selected by Landlord and reasonably acceptable to Tenant which has an office in the City of New York, and has entered into a written agreement (a copy of which shall be provided to Tenant) with Landlord or Landlord’s designee to hold funds as provided in this Lease. Tenant shall be designated a third-party beneficiary of any agreement designating an Institutional Lender as Depository.

“EDC” has the meaning provided in the Recitals.

“Equipment” means all fixtures and base building HVAC equipment incorporated in or attached to and used or usable in the basic operation of the Premises and the applicable base building systems and shall include, but shall not be limited to: all machinery, apparatus, devices, motors, engines, dynamos, compressors, pumps, boilers and burners; all electric, sprinkler, heating, range, radiators, lighting, plumbing, ventilating, built-in air cooling and air conditioning systems; chutes, ducts, pipes, tanks, fittings, conduits and wiring; incinerating equipment; cranes, elevators, escalators, and hoists; built-in partitions, doors, cabinets and hardware; floor, wall and ceiling coverings; washroom, toilet and lavatory fixtures and equipment; window washing hoists and equipment; and all additions thereto or replacements thereof; but shall expressly exclude any Trade Fixtures and all of Tenant’s Property.

“Equity Interest” has the meaning provided in Section 10.01(b)(v) hereof.

“Event of Default” has the meaning provided in Section 22.01 hereof.

“Existing Space” means the portion of the Building that Tenant shall have the right to occupy on the Commencement Date containing approximately 138,536 rentable square feet, dated April 1, 2003 and expiring on March 31, 2013 and certain portions of the Exterior Areas as more particularly described herein and identified on Exhibit A-2 annexed hereto and made a part hereof, and specifically excluding the premises demised under the R Best Lease and the R Best Sublease.

“Expiration Date” has the meaning provided in Section 2.03 hereof.

“Exterior Areas” means the exterior truck and automobile parking, turnaround and loading areas and all other paved areas, accessways, walkways, pathways, curbs and the landscaped and unimproved areas located upon the Land (as more particularly identified in Exhibit A-1 hereto).

“Federal Courts” has the meaning provided in Section 37.14 hereof.

“First Renewal Term” has the meaning provided in Section 2.03(a) hereof.

“First Renewal Term Expiration Date” has the meaning provided in Section 2.03(a) hereof.

“Full Vacate Date” means the date on which all lessees, sub-lessees or occupants (except for Tenant) using or occupying any portion of the Building or Land other than the Existing Space have fully and legally vacated and surrendered their respective demised premises and removed their personal property and left same in broom clean condition.

“Governmental Authority or Authorities” means the United States of America, the State of New York, the City and any agency, department, legislative body, commission, board, bureau, instrumentality or political subdivision of any of the foregoing, now existing or hereafter created, having or claiming jurisdiction over the Premises or any portion thereof or any street, road, avenue, sidewalk or water immediately adjacent to the Premises, or any vault in or under the Premises.

“Guarantor” means Dairyland.

“Guaranty” means the Guaranty of this Lease, dated as of the date hereof, executed by Guarantor in favor of Landlord and guaranteeing all the terms, conditions, covenants, and agreements contained in this Lease.

“Hearing” has the meaning provided in Section 37.05(a) hereof.

“Hearing Officers” has the meaning provided in Section 37.05(a) hereof.

“Hunts Point” has the meaning provided in the Recitals.

“Imposition” or “Impositions” has the meaning provided in Section 5.01(b) hereof.

“Improvement Fund” has the meaning provided in Section 4.03.

“Improvements” means the Building, Rail Shed and all other improvements of every kind and description existing at or hereafter erected, constructed or placed upon the Land, and any and all alterations and replacements thereof, additions thereto and substitutions therefor.

“Indemnitees” has the meaning provided in Section 18.01 hereof.

“Indicted Party” has the meaning provided in Section 37.05(a) hereof.

“Initial Term” has the meaning provided in Section 2.02 hereof.

“Initial Term Expiration Date” has the meaning provided in Section 2.02 hereof.

“Institutional Lender” means a savings bank, a savings and loan association, a commercial bank or trust company (whether acting individually or in a fiduciary capacity), a private pension fund, a credit union or company, an insurance company organized and existing under the laws of the United States or any state thereof, a religious, educational or eleemosynary institution, a federal, state or municipal employee’s welfare, benefit, pension or retirement fund, any governmental agency or entity insured by a governmental agency or any syndicate, joint venture, or other combination of Institutional Lenders, provided that each member of any such syndicate, joint venture, or other combination would qualify individually as an Institutional Lender, and such other entities as may be approved in writing by Landlord, which approval will not be unreasonably withheld or delayed; provided, that each of the above entities shall qualify as an Institutional Lender only if it shall (a) be subject to the jurisdiction of the courts of the State of New York in any actions pertaining to this Lease or the Premises, (b) have a net worth of not less than \$35,000,000 and assets of not less than \$100,000,000, or such lower amounts as are deemed acceptable in Landlord’s sole discretion, and (c) not be a Prohibited Person.

“Insurance Proceeds” means those funds disbursed under the property damage insurance policy covering the Improvements to the extent such funds are necessary for Restoration of the Premises as set forth in Article 8.

“Land” means that certain real property located at 200-240 Food Center Drive, Bronx, New York, identified as Block 2770, part of Lot 1 and Block 2781, Lot 500 on the Tax Map of the Borough of the Bronx, as more particularly described on Exhibit A annexed hereto, together with all Appurtenances thereto.

“Landlord” means the City, provided, however, that if the City or any successor to its interest hereunder transfers or assigns its interest in the Premises or its interest under this Lease, then, from and after the date of such assignment or transfer, the term “Landlord” shall mean the assignee or transferee.

“Late Charge Rate” has the meaning provided in Section 4.08 hereof.

“Late Fee” has the meaning provided in Section 4.08 hereof.

“Lease” means this Agreement of Lease and all exhibits hereto and all amendments, modifications and supplements hereof and thereof.

“Lease Year” means the twelve month period beginning on the Commencement Date and each succeeding twelve month period from the anniversary thereof falling within the Term.

“Maintenance Fee” has the meaning provided in Section 4.03.

“Market Rules” means the rules and regulations relating to the operation of Hunts Point Food Distribution Center, as the same may be amended from time to time, promulgated by the Department of Small Business Services and/or the Commissioner of the Business Integrity Commission as currently promulgated under Title 66 RCNY Chapter 1 and Title 22 AC Chapter 1-B.

“New York State Courts” has the meaning provided in Section 37.14 hereof.

“Noticed Default” has the meaning provided in Section 2.03(b) hereof.

“Optional Work” has the meaning provided in Section 13.01(b) hereof.

“Organizational Documents” means Tenant’s certificate of incorporation and any other organizational documents of any direct or indirect constituent entity of Tenant.

“Partial Taking” has the meaning provided in Section 9.02(b) hereof.

“Permitted Leasehold Mortgage” has the meaning provided in Section 10.03(a)

“Permitted Person” has the meaning provided in Section 10.01(b)(viii) hereof.

“Permitted Use(s)” has the meaning provided in Section 6.01 hereof.

“Person” means an individual, corporation, partnership, joint venture, estate, trust, unincorporated association; any federal, state, county or municipal government or any bureau, department or agency thereof; and any fiduciary acting in such capacity on behalf of any of the foregoing.

“Pre-existing Conditions” has the meaning provided in Section 18.06 hereof.

“Premises” has the meaning provided in Section 2.01 hereof.

“Present Premises” has the meaning provided in Section 2.01 hereof.

“Prohibited Person” means:

- (a) Any Person(1) that is in default or in breach, beyond any applicable grace period, of its obligations under any material written agreement with the City or (2) that directly or indirectly controls, is controlled by, or is under common control with a Person that is in default or in breach, beyond any applicable grace period, of its obligation under any material written agreement with the City in each case unless such default or breach has been waived in writing by the entity with which such agreement was made.
- (b) Any Person (1) that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure, or (2) that directly or indirectly controls, is controlled by, or is under common control with a Person that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure. The determination as to whether any Person is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure, or directly or indirectly controls, is controlled by, or is under common control with a Person that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure shall be within the reasonable discretion of the City.
- (c) Any government, or any Person that is directly or indirectly controlled (rather than only regulated) by a government, that is finally determined to be in violation of (including, but not limited to, any participant in an international boycott in violation of) the Federal Export Administration Act of 1979, as amended, or any successor statute, or the regulations issued pursuant thereto, or any government that is, or any Person that, directly or indirectly, is controlled (rather than only regulated) by a government that is subject to the regulations or controls thereof. Such control shall not be deemed to exist in the absence of a determination to that effect by a Federal court, beyond right of appeal, or by the Federal government or the appropriate agency thereof.

- (d) Any government, or any Person that, directly or indirectly, is controlled (rather than only regulated) by a government, the effects of the activities of which are regulated or controlled pursuant to regulations of the United States Treasury Department or executive orders of the President of the United States of America issued pursuant to the federal Trading with the Enemy Act of 1917, as amended.
- (e) Any Person that is in default in the payment to the City of any real estate taxes, sewer rents or water charges totaling more than \$10,000 and has been given written notice of such default (or any Person that directly controls, is controlled by, or is under common control with a Person in such default), unless such default is then being contested in good faith in accordance with the law or an agreed payment plan has been approved by the office of the Commissioner of Finance.
- (f) Any Person (1) that has owned at any time in the preceding three (3) years any property which, while in the ownership of such Person, was acquired by the City by in rem tax foreclosure, other than a property in which the City has released or is in the process of releasing its interest pursuant to the Administrative Code of the City, or (2) that, directly or indirectly controls, is controlled by, or is under common control with a Person that has owned at any time in the preceding three (3) years any property which, while in the ownership of such Person, was acquired by the City by in rem tax foreclosure, other than a property in which the City has released or is in the process of releasing its interest pursuant to the Administration Code of the City.

“Project” has the meaning provided in Section 13.01 hereof.

“Rail Shed” means the structure, consisting of approximately 57,083 gross square feet further described in Exhibit A hereto.

“Rail Shed Redevelopment” has the meaning provided in Section 13.01(a) hereof.

“Recognized Mortgagee” means (i) initially, Commercial Lending II LLC, a Delaware limited liability company, and its successors and assigns, and (ii) any Institutional Lender (or the lead bank or agent, as the case may be, for purposes of administration of the loan) that then holds the permitted leasehold mortgage under Section 10.03 hereof, encumbering the Tenant’s leasehold estate created under this Lease and any affiliate or subsidiary thereof.

“Renewal Term” has the meaning provided in Section 2.03(a) hereof.

“Rent Commencement Date” has the meaning provided in Section 4.02(b) hereof.

“Rental” means all of the amounts payable by Tenant pursuant to this Lease, including, without limitation, the Base Rent, Additional Rental, Impositions, Maintenance Fee and any other sums, costs, expenses or deposits which Tenant is obligated, pursuant to any of the provisions of this Lease, to pay and/or deposit.

“Required Work” has the meaning provided in Section 13.01(a) hereof.

“Requirements” has the meaning provided in Section 14.01(b) hereof.

“Restore” means to repair, alter, restore, replace or rebuild following a casualty.

“Restoration” means repairs, alterations, restorations, replacements and rebuilding made necessary by a casualty.

“Second Renewal Term” has the meaning provided in Section 2.03(a) hereof.

“Second Renewal Term Expiration Date” has the meaning provided in Section 2.03(a) hereof.

“Senior Lender” has the meaning provided in the definition of “Depository” provided in Article 1 hereof.

“Sublease” has the meaning provided in Section 10.01(b)(vi) hereof.

“Substantially All of the Premises” has the meaning provided in Section 9.01(b) hereof.

“Substantial Completion” means the receipt of temporary certificates of occupancy issued by the New York City Department of Buildings for all the applicable Required Work or Optional Work.

“Subtenant” has the meaning provided in Section 10.01(b)(vii) hereof.

“Taking” has the meaning provided in Section 9.01(a) hereof.

“Tax(es)” means the real property taxes assessed and levied against the Premises, or any part thereof (or, if the Premises or any part thereof or the owner or occupant thereof is exempt from such real property taxes then the real property taxes assessed and which would be levied if not for such exemption), pursuant to the provisions of Chapter 58 of the Charter of New York City and Title 11, Chapter 2 of the Administrative Code of New York City, as the same may now or hereafter be amended, or any statute or ordinance in lieu thereof in whole or in part, *provided, however*, that Taxes shall in no event include any Impositions or any franchise, estate, inheritance, successor, capital levy, transfer, income, sales, excess profits or gains tax assessed, levied or imposed on Tenant, Tenant’s Affiliates, any operator or Subtenant.

“Temporary Taking” has the meaning provided in Section 9.03(a) hereof.

“Tenant” means Dairyland HP LLC and its successors; *provided, however*, that if this Lease and the leasehold estate hereby created are assigned in accordance with the terms hereof, then from and after the date of such assignment and until the next permitted assignment, the term “Tenant” shall mean the permitted assignee.

“Tenant’s Property” means all Trade Fixtures, furniture, furnishings, equipment and other personal property of Tenant or any sublessee under a sublease or any other occupant of any portion of the Premises, which includes, without limitation, any and all inventory, racking, shelving, cabling, antennae, free standing refrigerators and freezers, machinery, portable generators, communication equipment, security equipment and systems, data cabinets, hoist equipment, pallet jacks, scissor lifts, clamp trucks, wrapping machines, plug-in light fixtures, propane tanks, trash compactors, signs, desks, tables, movable partitions, vending machines, computer stations, printers, computer software and hardware, forklifts, and all other removable trade fixtures, furnishings and equipment, as now or may hereafter exist in or on any of the Improvements and which are owned by Tenant or any of its Affiliates or other sublessee or occupant and used or useful in the conduct of their respective businesses.

“Term” has the meaning provided in Section 2.03(a) hereof.

“Threshold Amount” shall mean Two Hundred and Fifty Thousand Dollars (\$250,000) (subject to increase at the rate of 2% per annum, commencing as of the first anniversary of the Full Vacate Date).

“Trade Fixtures” means any trade fixtures, machinery, office, manufacturing, warehouse, refrigeration, food preparation, storage or packaging equipment, which are not necessary to the operation of the applicable Improvements as buildings, and as to which the removal of which will not cause damage to the Premises or render the item so removed inoperable or without significant value.

“Transfer” has the meaning provided in Section 10.01(b)(ix) hereof.

“Transferee” has the meaning provided in Section 10.01(b)(x) hereof.

“Work” has the meaning provided in Section 13.01 hereof.

## ARTICLE 2

### DEMISE OF PREMISES AND TERM OF LEASE

#### Section 2.01. Premises.

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the following premises (the “Premises”): (i) beginning on the Commencement Date and until the Full Vacate Date, a portion of the Building, consisting of the Existing Space, together with the Rail Shed, and a portion of the Exterior Areas containing an area sufficient to meet all zoning, parking and other rules and ordinances applicable to the Premises under applicable Requirements in light of the Permitted Uses and expected employee density all as more particularly identified in Exhibit A-2 annexed hereto, and (ii) beginning on the Full Vacate Date, the entire Building consisting of approximately 176,406 rentable square feet, the Rail Shed, and all of the Exterior Areas, all as more particularly identified in Exhibit A-1 annexed hereto. Landlord leases the

Premises subject to the provisions of Article 6 (“Use”) and subject to the provisions of Section 24.02 hereof. There are no legally binding commitments from either party to revise the Premises as currently described herein (the “Present Premises”) however, at a future date Landlord and/or Lease Administrator and Tenant shall discuss in good faith (but without legal obligation) the possibility of excluding a portion of the Present Premises, and replacing such portion with an adjacent parcel, of equal size, outside of the Present Premises, subject to the approval of any Recognized Mortgagee.

TO HAVE AND TO HOLD unto Tenant, its permitted successors and assigns, for the term specified in Sections 2.02.

Section 2.02. Initial Term.

The initial fifteen (15) year term of this Lease (the “Initial Term”) shall commence and this Lease shall be effective on the Commencement Date and shall expire (i) at 11:59 p.m. on the last calendar day of the month in which the fifteenth (15<sup>th</sup>) anniversary of the Commencement Date shall occur, or (ii) upon such earlier date as this Lease may be terminated in accordance with the terms hereof (either, the “Initial Term Expiration Date”).

Section 2.03. Renewal Terms.

(a) Tenant shall have the following options to extend the term of this Lease on the terms and conditions contained herein: (i) for a period of ten (10) years (the “First Renewal Term”) commencing on the first day after the Initial Term Expiration Date and expiring at 11:59 p.m. on the day immediately preceding the twenty-fifth (25<sup>th</sup>) anniversary of the Commencement Date, or upon such earlier date as this Lease may be terminated in accordance with the terms hereof (either, the “First Renewal Term Expiration Date”); and (ii) for a period of ten (10) years (the “Second Renewal Term”) commencing on the first day after the First Renewal Term Expiration Date and expiring at 11:59 p.m. on the day immediately preceding the thirty-fifth (35<sup>th</sup>) anniversary of the Commencement Date, or upon such earlier date as this Lease may be terminated in accordance with the terms hereof (either, the “Second Renewal Term Expiration Date”) (references herein to “Expiration Date” shall mean the Initial Term Expiration Date, or if the First Renewal Term occurs, the First Renewal Term Expiration Date, or if the Second Renewal Term occurs, the Second Renewal Term Expiration Date as applicable; the First Renewal Term and Second Renewal Term shall each be referred to herein as a “Renewal Term”; the Initial Term, individually, or together with any applicable Renewal Term, is hereinafter collectively referred to as the “Term”).

(b) Tenant may exercise the options to extend the Term, as applicable, provided that (x) no Default has occurred with respect to which Landlord has delivered notice to Tenant (such notice being a “Noticed Default”) or (y) if such Default has occurred Tenant has cured such Default before the date specified in a Conditional Limitation Notice, only by giving written notice thereof to Landlord no earlier than twenty-four (24) months and no later than six (6) months prior to the scheduled expiration of the Initial Term and First Renewal Term, respectively (the “Renewal Notice”). Upon the due giving of any such notice, the Term shall be deemed extended for the period set forth in this Section for the applicable Renewal Term; *provided, further, however*, that (i) if a Noticed Default has occurred, either at the time Tenant

gives Landlord a Renewal Notice, or at any time prior to or as of the commencement of such Renewal Term, such right of Tenant to the stated renewals shall not be deemed forfeited or waived, but rather shall be deemed suspended until Tenant has cured any such Noticed Default within the applicable cure periods provided in Section 22.01 and (ii) if an Event of Default by Tenant has occurred hereunder and Landlord has sent a Conditional Limitation Notice and Tenant gives a renewal notice, either at the time Tenant gives Landlord a Renewal Notice or at any time during the period prior to or as of the commencement of such Renewal Term, such notice to renew shall be deemed null and void and of no further force or effect. For avoidance of doubt, during the pendency of any alleged Noticed Default or Event of Default, but prior to any Conditional Limitation Notice, the obligation to deliver the Renewal Notice not later than six (6) months prior to the scheduled expiration of the Initial Term and First Renewal Term, respectively, shall be tolled to the extent necessary to allow Tenant a period of ten (10) business days after the cure or other satisfaction in writing of the alleged Notice Default or Event of Default, to give a Renewal Notice. Upon the due giving of any Renewal Notice, the Term shall be deemed extended for the period set forth in this Section for the applicable Renewal Term. In the event Tenant does not give the Renewal Notice as set forth above, the aforesaid option of Tenant shall be deemed to have been waived, null and void and of no further force or effect and Tenant shall have no further right to extend or renew the Term hereof.

Section 2.04. Tenant's Right to Terminate for Pre-existing Conditions.

In the event that the clean up and remediation required as a result of Pre-existing Conditions would cost Tenant in excess of the proceeds made available pursuant to the Pollution/Environmental Liability Insurance required under Section 7.01(h) hereof, Tenant may, subject to the consent of any Recognized Mortgagee, elect to terminate this Lease without being deemed to be in default. In such event, the Lease shall expire on the termination date as set forth in such notice as if such date was the Expiration Date of this Lease and neither party shall have any further liability to the other hereunder except for any obligations or indemnities expressly stated to survive the expiration or termination of this Lease. Should any Recognized Mortgagee exist, any such termination without the prior written consent of such Recognized Mortgagee shall be void. Should Tenant elect not to terminate this Lease pursuant to this Section 2.04, Tenant shall be liable for the cost of any clean up and remediation work specified in Section 18.06 of this Lease.

Section 2.05. Month-to-Month Tenancy.

Notwithstanding anything in the foregoing to the contrary, if Tenant holds over after the termination of the Term, Tenant shall be deemed to be a month-to-month Tenant under Section 232-c of the New York Real Property Law and Tenant shall be obligated to pay monthly in advance, for the initial month during such holdover period, an amount equal to 105% of the last monthly payment of Base Rent payable during the Term, and for each succeeding month during the holdover period, an amount equal to 105% of the amount payable for each immediately preceding monthly period.

Section 2.06. Full Vacate Date

Landlord represents that as of the effective date of this Lease the only other direct tenant in the Building is R Best. It is anticipated that the Full Vacate Date shall occur on the next day following the scheduled expiration date of the R Best Lease (currently, May 31, 2013). Landlord agrees that it shall not enter into any renewal or extension of the term of the R Best Lease or otherwise grant any right to R Best or any other occupant any right or option to holdover or remain in its premises after the scheduled expiration date of May 31, 2013 or concede or waive any of its rights with respect thereto without the express prior written consent of Tenant in each instance, such consent to be granted or withheld by Tenant in its sole discretion. In the event that R Best or any party claiming by or through R Best or any other person shall holdover, Landlord agrees that it shall be obligated to use reasonable efforts to promptly and diligently seek to gain legal and physical possession of the applicable premises, including, to the fullest extent possible, the use of all appropriate summary and other legal proceedings to evict any such occupants remaining in the Building or on the Land as of or beyond June 1, 2013.

Section 2.07. Road Access

Landlord shall grant to Tenant a non-exclusive easement (as identified in Exhibit A hereto), providing access from the paved shared accessway in the Exterior Areas of the Premises to Food Center Drive.

ARTICLE 3

RIGHT OF FIRST OFFER

Section 3.01. Notice.

Prior to commencement of any competitive public process such as public auction or request for proposals (“RFP”) or other process for a sale of the Premises to an entity other than a public benefit corporation or local governmental or quasi-governmental development corporation, Landlord shall notify Tenant and any Recognized Mortgagee in writing (the “ROFO Notice”) of Landlord’s intent to commence such RFP or other process which ROFO Notice shall specify such conditions (the “Landlord’s Conditions”) as Landlord seeks to impose upon the sale and/or development and use of the Premises, which may include, without limitation, reasonable title requirements, reasonable minimum/maximum size of future development, reasonable design requirements or restrictions, reasonable operational limitations or requirements and/or reasonable use restrictions, provided that Tenant and its transferee(s) shall not be (i) precluded from operating and maintaining Improvements at least the size of the Improvements then existing at the Premises, or (ii) prohibited from using the Premises in connection with the Permitted Uses under this Lease. Such ROFO Notice shall also specifically request that Tenant respond to the ROFO Notice as set forth in Section 3.03 below.

Section 3.02. Right of First Offer.

Tenant shall have the right for thirty-five (35) days from receipt of the ROFO Notice (the “Exercise Period”) to exclusively negotiate with Landlord and agree on a term sheet (the “ROFO Term Sheet”), signed by both Landlord and Tenant, outlining the major parameters, including purchase price (the “ROFO Purchase Price”), of a contract of sale. During the Exercise Period, Landlord and Tenant shall negotiate in good faith the economic terms, including the ROFO Purchase Price, and other material terms and conditions upon which Tenant is prepared to purchase and Landlord is prepared to sell the Premises. At any time prior to the expiration of the Exercise Period, Tenant may send a written response (the “ROFO Response Notice”) stating; (i) Tenant’s election to purchase the Premises upon the mutually agreed terms contained in the ROFO Term Sheet, if applicable, or (ii) Tenant’s election to decline to purchase the Premises hereunder, or (iii) Tenant’s best offer to purchase the Premises (“Tenant’s Terms”), if Landlord and Tenant, despite good faith efforts, are unable to agree on a ROFO Term Sheet by mutual agreement as per clause (i) hereof (“Tenant’s Terms”), including Tenant’s best offer for a purchase price (“Tenant’s Offer Price”). If Tenant elects to purchase the Premises as described above, the ROFO Response Notice shall not be effective unless an earnest money deposit is delivered to an agreed escrow agent in an amount equal to five percent (5%) of the ROFO Purchase Price not later than three (3) business days after delivery of the ROFO Response Notice.

Should Tenant fail to send the ROFO Response Notice prior to the expiration of the Exercise Period, such failure shall be deemed a waiver of Tenant’s option to purchase the Premises. Should Landlord and Tenant, despite good faith efforts, fail to mutually agree to a ROFO Term Sheet prior to the expiration of the Exercise Period, Landlord may pursue a sale of the Premises to a third party pursuant to the terms of Section 3.04 herein. Notwithstanding anything to the contrary herein, Landlord is under no obligation to accept Tenant’s Terms or Tenant’s Offer Price and may, in the event that a ROFO Response Notice described in clause (iii) of this Section 3.02 is sent, pursue a sale of the Premises to a third party pursuant to the terms of Section 3.04 herein.

### Section 3.03. Deposit; Closing.

If Tenant elects to purchase the Premises pursuant to agreed terms under clause (i) of Section 3.02 above or clause (iii) of Section 3.02 above if same have been accepted by Landlord as per Section 3.04 below, Landlord and Tenant shall endeavor in good faith to enter into a contract of sale, based on such agreed terms and fix, as applicable, a closing date pursuant to the ROFO Response Notice, which must be a business day no later than ninety (90) days following the later of (A) Tenant's delivery of the ROFO Response Notice to Landlord, and (B) the date that Landlord advises Tenant in writing that it has obtained all required public approvals for the disposition of the Premises to Tenant (the "Closing Date" as the same may be extended by mutual written agreement of the parties thereto). If the Closing Date is not within one hundred twenty (120) days following the date Landlord advises Tenant in writing that it has obtained all required public approvals for the disposition of the Premises to Tenant, as a result of a breach or default by Tenant under the contract of sale, Tenant's rights with respect to the acquisition of the Premises hereunder shall terminate. If Tenant defaults beyond any notice and cure period in the applicable contract in its obligation to close (and Landlord is not also in default), then the deposit shall be retained by Landlord. If Landlord declines Tenant's offer to purchase the Premises or fails to convey title in accordance with this Section for reasons other than the default of Tenant or the failure to obtain all required public approvals for the disposition of the Premises to Tenant, then the deposit shall be returned to Tenant or, at Tenant's option, Tenant may seek specific performance. If the closing of the transfer occurs, the deposit shall be applied to the purchase price.

### Section 3.04. Third-Party Sales.

If Tenant makes an offer under clause (iii) of Section 3.02 above, Landlord shall notify Tenant in writing within thirty (30) days of delivery of ROFO Response Notice, whether or not Landlord will accept Tenant's offer. If (i) Landlord and Tenant fail to close by the Closing Date (for reasons other than a delay caused by Landlord), (ii) Tenant declines to purchase the Premises under clause (ii) of Section 3.02 above, or (iii) Landlord rejects Tenant's Terms should Tenant elect to send a ROFO Response Notice pursuant to clause (iii) of Section 3.02 above, then Landlord shall have the right to sell the Premises as set forth herein and shall have a period of three (3) years from the end of the Exercise Period to enter into a contract of sale with any bona fide purchaser to acquire the Premises subject to the Landlord's Conditions, and an additional six (6) months from execution of a contract of sale to close the sales transaction, at a purchase price of no less than one hundred percent (100%) of the ROFO Purchase Price (or Tenant's Offer Price in the event that Tenant has sent a ROFO Response Notice pursuant to clause (iii) of Section 3.02 above). If Landlord wishes to accept a third party offer at a price less than one hundred percent (100%) of the then-current ROFO Purchase Price (or Tenant's Offer Price in the event that Tenant has sent a ROFO Response Notice pursuant to clause (iii) of Section 3.02 above), then Landlord will give Tenant a "last look" for ninety (90) days from the date of notice (the "Last Look Notice") given by Landlord to Tenant of such potential acceptance of offer (which notice shall include the third party purchase price) to agree in writing to purchase at the price offered by the third party and upon the terms and conditions that Landlord is willing to accept (such response being the "Last Look Response"), and if so, the

terms and conditions set forth in Section 3.03 above shall apply as if the Last Look Response were the ROFO Response Notice therein. In the event such contract of sale is not executed with a bona fide purchaser with respect to the Premises pursuant to this Section 3.04 within three (3) years of Landlord's receipt of the ROFO Response Notice or in the event the contract of sale with such bona fide purchaser is executed but does not close within six (6) months of the date of contract execution, then Landlord shall not enter into any such agreement with a third party, close under any contract for sale for the Premises or commence a new RFP or other process for a sale bidding with respect to such Premises without once again proceeding in accordance with Article 3 above.

Section 3.05. Time of the Essence.

Time is of the essence with respect to the performance by each of Landlord and Tenant of its obligations and covenants under this Article 3.

Section 3.06. Termination.

Tenant's rights under this Section shall forever and permanently terminate upon the expiration or termination of this Lease, or upon the sale of the Premises to a bona-fide third party in accordance with the terms of this Article 3.

Section 3.07. No Assignment of Right of First Offer.

Notwithstanding anything in this Lease to the contrary, the rights contained in this Article 3 shall not be transferable to any Assignee, and shall be limited to and only exercisable by Dairyland HP LLC, Dairyland, or an Affiliate of Dairyland HP LLC or Dairyland.

Section 3.08. Separate Tax Lots and Assessments/Non-Disturbance

Prior to any conveyance of the Premises or any portion thereof to an entity other than a public benefit corporation or local governmental or quasi-governmental development corporation, pursuant to the terms set forth herein or otherwise, the Landlord shall obtain a separate tax lot for the Premises so that the Premises hereunder are taxed and assessed separately and apart from any other premises. Additionally, in the event that a mortgage on the fee estate underlying the Premises shall be made by the Landlord, the holder of such a mortgage shall enter into a non-disturbance agreement with the Tenant and the Recognized Mortgagee, whereby it is agreed that the Tenant and any other tenant under any of the foregoing shall not be joined as a party defendant in any foreclosure action which may be instituted by any such mortgagee by reason of a default under such fee mortgage and furthermore that the Lease shall not terminate by reason thereof and that upon any such foreclosure the fee mortgagee shall assume the obligations of the Landlord under the Lease. The Landlord shall deliver a copy of said non-disturbance agreement in form and content satisfactory to the Recognized Mortgagee upon its execution.

ARTICLE 4

RENT

Section 4.01. Base Rent.

(a) Determination of Base Rent.

(i) Base Rent shall be equal to (x) for the period prior to the Full Vacate Date, Six Dollars (\$6) per annum per rentable square foot of the Premises multiplied by the rentable square feet occupied by Tenant on the Commencement Date, and (y) thereafter, Seven Dollars and Fifty Cents (\$7.50) per annum per rentable square foot of the Premises multiplied by the rentable square feet occupied by Tenant as of the Full Vacate Date.

(ii) Base Rent shall increase annually by Two Percent (2%) per annum during the Initial Term, commencing on the first anniversary of the Full Vacate Date.

(iii) If Tenant performs the Optional Work (as defined in Section 13.01(b)) and expands the footprint and rentable square feet of the Building (the "Building Expansion"), then Base Rent shall be increased by an amount equal to the Base Rent for the Premises (as then escalated under clause (a)(ii) above) multiplied by the rentable square feet of the Building Expansion, as the case may be.

(b) Condemnation Base Rent Adjustment. Base Rent shall be adjusted in the event of a Partial Taking (other than a Temporary Taking) as provided in Section 9.02(b)(i) hereof.

(c) Renewal Term Base Rent.

(i) First Renewal Term. Base rent for the First Renewal Term shall be equal to the Base Rent for the last year during the Initial Term increased by Two Percent (2%). Thereafter, Base Rent shall increase annually by Two Percent (2%) per annum during the First Renewal Term; and

(ii) Second Renewal Term. Base rent for the Second Renewal Term shall be equal to the Base Rent for the last year during the First Renewal Term increased by Five Percent (5%). Base rent will increase annually by Two Percent (2%) per annum commencing on the first anniversary of the Second Renewal Term.

Section 4.02. Payments of Rental.

(a) Base Rent. Base Rent shall be paid in equal monthly installments, payable in advance beginning on the Rent Commencement Date and thereafter on the first day of each calendar month.

(b) Rent Commencement Date. "Rent Commencement Date" shall mean:

(i) with respect to the Existing Space, two (2) months after the Commencement Date;

(ii) with respect to the portions of the existing Building that are outside the Existing Space, six (6) months after the Full Vacate Date;

(iii) with respect to the Rail Shed, the earlier of one (1) year after Substantial Completion of the Rail Shed Redevelopment or twenty-four (24) months after the Commencement Date;

(iv) with respect to any Building Expansion, eighteen (18) months after Substantial Completion of the applicable Optional Work.

(c) Prorations of Base Rent. Monthly installments of Base Rent which are due for any period of less than a full month shall be appropriately apportioned on the basis of the number of calendar days in such month.

(d) Rental. Unless otherwise specified in this Article 4, all Rental (other than Base Rent and Maintenance Fee) payable under this Lease shall be paid in full by Tenant not later than ten (10) Business Days following Tenant's receipt of written demand therefor by Landlord or EDC.

(e) Manner and Place of Payment. Commencing on the Commencement Date and thereafter all payments of Base Rent and other Rental hereunder shall be paid to Landlord (or, in the case of Impositions, to such other Person as required by the rules and regulations governing payment thereof) when the same shall become due and payable as provided herein, without notice or demand (except as otherwise provided herein), by check (or by certified check where such payment is called for herein) drawn on an account maintained with a bank that is a member of the New York Clearing House Association (or any successor entity with similar functions), payable to the order of Apple Industrial Development Corp., at the following address:

Apple Industrial Development Corp.  
P.O. Box 029188  
Brooklyn, New York 11202

or to the order of such other entity, or at such other address as Landlord or Lease Administrator may designate in writing in accordance with the notice provisions hereof. All payments hereunder by Tenant shall be denominated in United States Dollars, which shall be the currency of account for all purposes. Impositions, if any, shall be payable in the form and to the location provided by rules and regulations governing the payment thereof.

(f) Rent Abatement. Tenant shall receive rent abatements with respect to the Building and Rail Shed at two different periods. The first rent abatement will be for a six (6) month period starting on the second anniversary of the Full Vacate Date. The second rent abatement will be for six (6) months starting on the fifth anniversary of the Full Vacate Date.

Section 4.03. Hunts Point Maintenance Fee. Commencing on the Commencement Date and on each anniversary thereafter for the Term of the Lease, Tenant shall

pay to Landlord an annual fee equal to twenty eight cents (\$0.28) per rentable square foot of the Premises (as existing on such date) (the "Maintenance Fee"), which Maintenance Fee shall not be subject to increase at any time during the Term, including any Renewal Term. Any Maintenance Fee which is due for any period of less than a full calendar year shall be appropriately apportioned. Such fee, together with other similar fees paid by other tenants within the Hunts Point Food Distribution Center, shall be held by Landlord in a separate fund (the "Improvement Fund") and shall be used solely for maintenance of common area improvements within the Hunts Point Food Distribution Center, including but not limited to, sidewalks, specialty lights and signage, greenway elements (street furniture, paving, lighting and landscaping), freight rail lines, bulkhead and public art.

Section 4.04. Intentionally Omitted.

Section 4.05. Intentionally Omitted.

Section 4.06. Net Lease.

Except as provided in Section 5.05 of this Lease or as otherwise expressly provided elsewhere in this Lease, Rental shall be absolutely net to Landlord without any abatement, diminution, reduction, deduction, counterclaim, credit, setoff or offset whatsoever (except as may be required in any proceeding where the right to assert any claim against Landlord would be extinguished unless a counterclaim, set off, or deduction is asserted in such proceeding) so that each Lease Year of the Term shall yield, net to Landlord, all Rental. Tenant shall pay all costs, expenses and charges of every kind relating to the Premises that may arise or become due or payable during or after (but attributable to a period falling within) the Term in the manner required by the Lease.

Section 4.07. Intentionally Omitted.

Section 4.08. Late Charges.

If (a) any payment of Rental, or any other payment hereunder, is not received by Landlord within ten (10) days after the day on which it first becomes due, or (b) Landlord has made a payment required to be made by Tenant hereunder after Tenant's failure to do so beyond the expiration of any applicable notice and cure period, then a late charge (the "Late Fee") on the sums so overdue or paid by Landlord, calculated at the rate of two per cent (2%) per month (the "Late Charge Rate") from the date such Rental first becomes due or the date of payment by Landlord, as the case may be, to the date on which actual payment of such sums is received by Landlord, shall become due and payable to Landlord as liquidated damages for the administrative costs and expenses incurred by Landlord by reason of Tenant's failure to make payment on or before the dates such payments are due, provided that, notwithstanding the foregoing, with respect to the first late payment of Base Rent in any Lease Year, such Late Fee shall not be imposed unless Tenant fails to make the applicable payment with five (5) days after notice from Landlord. Subject to all other provisions of this Lease, Tenant shall pay Landlord, within ten (10) days after demand, which may be made from time to time, all late charges. No failure by Landlord to insist upon the strict performance by Tenant of its obligations to pay late charges shall constitute a waiver by Landlord of its right to enforce the provisions of this Section

4.08 in any instance thereafter occurring. The provisions of this Section 4.08 shall not be construed in any way to extend the grace periods or notice periods provided for in Article 22 hereof.

ARTICLE 5

IMPOSITIONS

Section 5.01. Payment of Impositions.

(a) Obligation to Pay Impositions.

(i) Tenant shall pay, in the manner provided below, all Impositions that may be owed with respect to (i) the Premises, (ii) the sidewalks or streets adjacent to the Building, (iii) any vault, passageway or space in, over or under such sidewalk or street, (iv) any other appurtenances of the Building, (v) the Premises, (vi) any personal property or other facility used in the operation of the Premises, or (vii) the Rental (or any portion thereof) or any other amount payable by Tenant hereunder, or (viii) any document to which Tenant is a party creating or transferring an interest or estate in all or any part of the Premises, or (ix) the use and occupancy of the Premises, or (x) this transaction, provided that such Impositions shall not include real property taxes or any payment which may reasonably be deemed to be in lieu of or as a substitute (in whole or in part) or surrogate for real property taxes.

(b) Definition. "Imposition" or "Impositions" means:

(i) special assessments (including, without limitation, any special assessments for or imposed by any business improvement district or by any special assessment district) other than Taxes,

(ii) personal property taxes,

(iii) occupancy and rent taxes,

(iv) intentionally omitted,

(v) excises,

(vi) levies,

(vii) license and permit fees,

(viii) except for Taxes, any other governmental levies, fees, rents, assessments or taxes and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, now or hereafter enacted, of any kind whatsoever, and

(ix) any fines, penalties and other similar governmental charges applicable to the foregoing, together with any interest or costs with respect to the foregoing, excluding therefrom any such fines, penalties or charges which may be imposed to the extent resulting from Landlord's acts or omissions in its proprietary capacity only.

(x) service charges with respect to police protection, fire protection, street and highway construction, maintenance and lighting, and sanitation and water supply which affect the Premises and are generally applicable to all commercial buildings in the area surrounding the Premises.

(c) Payments of Impositions.

(i) Subject to the provisions of Section 33.01 hereof, Tenant shall pay to the appropriate regulatory authority or agency each Imposition or installment thereof not later than the date the same may be paid without interest or penalty. However, if by law, at Tenant's option, any Imposition may be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the Imposition in such installments and shall be responsible for the payment of such installments when due with such interest as may be required by law.

(ii) If Tenant twice fails within any twenty-four (24) month period to make any payment of an Imposition (or installment thereof) on or before the date due, Tenant shall, at Landlord's request, and notwithstanding (c)(i) above, pay all Impositions or installments thereof thereafter payable by Tenant not later than ten (10) days before the due date thereof. However, if Tenant thereafter makes all such payments as required in this paragraph (ii) for twenty-four consecutive months without failure, the Imposition payment date in (c)(i) above shall again become applicable, unless and until there are two further failures. Nothing in this paragraph shall be construed to limit Landlord's remedies as set forth elsewhere in this Lease, or at law or in equity upon failure by Tenant to timely pay any Imposition.

Section 5.02. Evidence of Payment.

Tenant shall furnish Landlord, within thirty (30) days after the date when an Imposition is due and payable, official receipts of the appropriate taxing authority or other proof reasonably satisfactory to Landlord, evidencing the payment thereof.

Section 5.03. Evidence of Non-Payment.

Any certificate, advice or bill of the appropriate official designated by law to make or issue the same (or to receive payment of any Imposition) asserting non-payment of an Imposition shall be prima facie evidence that such Imposition is due and unpaid at the time or date of the making or issuance of such certificate, advice or bill.

Section 5.04. Apportionment of Imposition.

Any Imposition relating to a fiscal period of the taxing authority, a part of which fiscal period is included within the Term and a part of which is included in a period of time after the Expiration Date, shall be apportioned pro rata between Landlord and Tenant as of the Expiration Date (unless the Expiration Date has occurred as a result of an Event of Default, in which case Tenant shall not be entitled to an apportionment except for the purpose of applying such amount as a credit pursuant to Section 22.03(b) hereof).

Section 5.05. Taxes.

Provided the City shall be Landlord, Landlord shall pay, cancel, or otherwise satisfy and discharge of record any and all Taxes on or before the due date thereof (which may be by bookkeeping entry, interdepartmental direction or other manner or procedure selected by Landlord). If the City shall cease to be Landlord, prior to any conveyance of the Premises, the Landlord shall have obtained a separate tax lot for the Premises so that the Premises are taxed and assessed separately from any other premises and any new Landlord shall pay any and all Taxes on or before the due date thereof, it being understood that under no circumstances shall Tenant be responsible for the payment of Taxes. If Landlord shall have failed to pay or discharge the Taxes as required hereunder and Tenant shall not have timely commenced a proceeding to contest the same as provided in Section 33.01 hereof, or if Tenant shall have timely commenced such a proceeding to contest the Taxes but failure to pay the Taxes during the pendency of such proceeding will or is reasonably likely to result in the imminent loss or forfeiture of the Premises and the termination of Tenant's interest under this Lease or Tenant would or is reasonably likely by reason thereof be subject to any civil or criminal penalty or liability, then Tenant may pay such unpaid Taxes together with any interest or penalties thereon and deduct such payment from the next Rental due, with interest until repaid or credited in full at the rate (the "City's Payment Rate") which is the lesser of the New York City Department of Finance Penalty Rate (18%) or the interest rate specified in Section 3-a(1) of the General Municipal Law of the State of New York, as it may be amended from time to time.

Section 5.06. Landlord's Cooperation in Securing Tax Abatement.

Landlord and Lease Administrator shall cooperate with Tenant in obtaining for Tenant the benefit of all City and State of New York incentive or abatement programs available to Tenant, including any with respect to real estate or leasehold occupancy taxes, empire and empowerment zones, sales and use taxes on materials, machinery and equipment incorporated at the Premises, employee hiring and payroll and the like.

Section 5.07. Intentionally Omitted.

Section 5.08. Survival.

The provisions of this Article 5 shall survive any termination of this Lease.

ARTICLE 6

USE AND DEVELOPMENT OF PREMISES

Section 6.01. Permitted Uses. Tenant shall use and occupy the Premises for the purpose of receiving, processing, packaging, preparation, storage, sale and distribution of fresh, frozen, processed and/or prepared produce and food products and related inventory and equipment in connection with Tenant's and its Affiliates' business, and related administrative functions, including ancillary office use and related truck parking and maintenance (each a

“Permitted Use” and, collectively, the “Permitted Uses”). Tenant and Tenant’s servants, employees, agents, visitors, and licensees shall observe faithfully, and comply strictly with, any reasonable restrictions on use as Landlord may from time to time adopt, provided same do not materially interfere with Tenant’s Permitted Uses. Notice of any additional restrictions shall be given at least thirty (30) days in advance of the date such restriction is proposed to become effective. Notwithstanding anything contained in this Section to the contrary, Landlord shall not be liable to Tenant for violation of the same by any other tenant, its servants, employees, agents, visitors or licensees. In addition to the foregoing, Tenant shall be entitled to exclusive signage rights on the Land, including free-standing, billboard or pylon signage and signage on the exterior façade and/or roof of the Building and/or Rail Shed. Tenant shall be permitted to install the maximum signage permitted under applicable Laws, provided same comply with applicable Requirements, including, but not limited to, those of the Public Design Commission of the City of New York, and provided that such signage contain no noxious content and/or content that is political in nature, and Landlord shall not take or permit any action to diminish Tenant’s signage rights hereunder as to size, height, location or the like.

Section 6.02. Requirements for Conduct of Business Tenant acknowledges that the Building and the Premises are part of a “public market” under § 260 *et seq.* of the New York Agriculture and Markets Law and of a “public wholesale market” under § 22-251(h) of the New York Administrative Code. Tenant further acknowledges and agrees that it shall comply with the requirements as required pursuant to the general provisions of Article 14 hereof.

Section 6.03. Unlawful Use; No Representation of Landlord.

(a) During the Term, Tenant shall not use or occupy the Premises or any part thereof (or permit anyone claiming by, through, or under Tenant to use or occupy the Premises, or any part thereof) to be used or occupied, for any unlawful, illegal, or hazardous business, use or purpose or in any way in violation of any of the Requirements, any certificate of completion or occupancy affecting the Premises or this Lease or in such manner as may make void or voidable any insurance then in force with respect to the Premises, the Building or the Premises. Immediately upon the discovery of any such unlawful, illegal or hazardous business, use or purpose, Tenant shall take all necessary steps, legal and equitable, to compel the discontinuance thereof. Tenant shall not keep anything in the Premises which may cause or be apt to cause structural injury to the Premises or any part thereof, or as will constitute a public or private nuisance, or anything except as now or hereafter permitted by the Fire Department, Board of Fire Underwriters, Fire Insurance Rating Organization and other authority having jurisdiction, and then only in such manner and such quantity so as not to make it difficult or impossible to obtain fire insurance for the Premises or increase the rate for fire insurance applicable to the Building, nor, prior to the Full Vacate Date, use the Premises in a manner which will increase the insurance rate for the Building or any property located therein over that otherwise in effect. If by reason of Tenant’s failure to comply with the foregoing the fire insurance rate shall, at any time prior to the Full Vacate Date, be higher than it otherwise would be, then Tenant shall be obligated to pay such additional cost which shall have been charged because of such failure by Tenant.

(b) Any installation on any floor of the Premises shall be placed and maintained by Tenant, at Tenant’s expense, in settings sufficient, in Landlord’s reasonable judgment, to absorb and prevent vibration, noise and annoyance.

(c) Tenant shall use its best efforts, at Tenant's expense, to contain any noxious odors that may arise from Tenant's use of the Premises in accordance with this Section.

(d) Any installation on or activity conducted at the Premises shall incorporate advances in the art of noise control and odor control, as applicable, developed for the kind and level of noise or odor, as applicable, emitted or produced by such installations or activity, all in accordance with or required by any applicable regulations issued by the New York City Department of Environmental Protection of the City, or its successor, or any other relevant agency or authority.

(e) Landlord represents that the Building and the Premises are part of a "public market" under § 260 *et seq.* of the New York Agriculture and Markets Law and of a "public wholesale market" under § 22-251(h) of the New York Administrative Code and that the Permitted Use is a valid public market use under applicable law. Landlord makes no representation as to the legality of the actual or intended particular manner of the use of the Premises by Tenant. If any use or proposed use is determined to be illegal by a court of competent jurisdiction or an administrative law judge, Tenant agrees that neither Landlord nor Administrator nor any of their respective agents, officers and employees, or any person whatsoever, shall be liable for any damages arising out of or related to such illegal use or proposed use.

## ARTICLE 7

### INSURANCE

Section 7.01. Insurance Requirements. At all times during the Term, Tenant, at its sole cost and expense, shall carry and maintain in full force and effect, or cause to be carried and maintained in full force and effect, insurance coverage of the following types or insuring the described risks and in the minimum limits set forth below. For clarification, notwithstanding any reference to the "Premises" hereinbelow, prior to the Full Vacate Date, nothing herein shall make Tenant responsible to carry insurance covering any damage to any portion of the Land, Building (or components thereof) or Exterior Areas not yet demised to Tenant hereunder or which are otherwise reserved to Landlord to maintain, repair or restore.

(a) Liability Insurance. Commercial General Liability insurance protecting against all liability with respect to the Premises and the operations related thereto, whether conducted on or off the Premises, for bodily injury, death, personal injury and property damage, in an amount not less than Five Million Dollars (\$5,000,000) per occurrence and in the aggregate, and designating Tenant as "named insured," and Guarantor, Landlord, Lease Administrator and Apple as "additional insureds." If during any year, it appears that the amount of liability resulting from insured occurrences may exceed any annual aggregate applicable to the insurance required by this subsection, Tenant shall procure and maintain for the remainder of such year insurance against future-arising claims that satisfy the requirements of this subsection in all respects, including required amounts. The Commercial General Liability Insurance required hereby shall:

(i) include a broad form property damage liability endorsement with fire legal liability limit of not less than One Hundred Thousand Dollars (\$100,000) subject to adjustment for inflation;

(ii) contain blanket contractual liability insurance covering written contractual liability, and specifically covering Tenant's indemnification obligations under Article 18 hereof;

(iii) contain independent contractors coverage;

(iv) contain a thirty (30) day notice of cancellation or non-renewal clause, specifically requiring notice of cancellation or non-renewal for non-payment of premium, and for any material reduction in coverage;

(v) contain an unintentional errors and omissions clause;

(vi) contain coverage for suits arising from the use of reasonable force to protect persons and property;

(vii) contain a cross liability endorsement;

(viii) contain no exclusion for Water Damage or Sprinkler Leakage Legal Liability or any other hazard customarily covered by such insurance.

(ix) contain no exclusions, except as specifically authorized herein, and contain no deductibles unless specifically approved in each instance by Landlord.

(b) Property and Other Insurance. Insurance protecting Tenant and Landlord against loss of or damage to the Premises by fire and all other risks of physical loss or damage now or hereafter embraced by extended coverage and an "All Risk" endorsement in the broad form, in the amount of the full Replacement Value of the Premises (without depreciation or obsolescence clause). Such insurance shall designate the Recognized Mortgagee, or if none exists, the Lease Administrator as loss payee and shall include the following coverages and clauses:

(i) if not otherwise included within the "All Risk" coverage specified above, coverage against damage by explosion caused by steam pressure-fired vessels, by earthquake and/or by hurricane;

(ii) contingent liability from operation of building laws;

(iii) demolition cost for undamaged portion coverage;

(iv) provision for a deductible of not more than Two Hundred Fifty Thousand Dollars (\$250,000) per loss (One Hundred Thousand Dollars (\$100,000) for demolition);

(v) increased cost of construction coverage specifying that the proceeds of such insurance shall be available to pay all costs of demolition (for which a sublimit in a fixed dollar amount, to be agreed upon by Landlord and Tenant from time to time, shall be set, and failing such agreement, in an amount to which a licensed architect or engineer issues a written certification or opinion to Landlord and Tenant that in its professional judgment is adequate to cover all demolition costs), including the costs of debris removal, grading and fencing and all increased costs of construction in the event that any insured hazard results in a loss;

(vi) an agreed or stipulated amount endorsement negating any co-insurance requirements;

(vii) flood coverage to the maximum extent available under the National Flood Insurance Act of 1968, as amended, with a sublimit of not less than ten percent (10%) of the value of the Improvements; and

(viii) no exclusions unless approved in writing by Landlord or Lease Administrator, which approval shall not be unreasonably withheld or delayed.

If Tenant elects to insure Tenant's Trade Fixtures and other personal property used in connection with the Premises, the Replacement Value shall be increased in the amount of such personal property, and payments on Tenant's claims for loss of Tenant's Property shall be paid to Tenant after notice to Lease Administrator.

(c) Business Interruption Insurance. Business Interruption Insurance insuring Annual Base Rent and Construction Period Deferred Rent payable by Tenant under this Lease in an amount at least equal to the aggregate amount of Annual Base Rent and Construction Period Deferred Rent payable for a period of not less than two (2) Lease Years.

(d) Statutory Workers' Compensation and Disability Benefits Insurance. Statutory Workers' Compensation, and New York Disability Benefits Insurance, in statutory amounts, as required by applicable law, and any other insurance required by law covering all persons employed by Tenant, contractors, subcontractors, or any entity performing work on or for the Premises, including Employers' Liability coverage in an amount not less than \$1,000,000.

(e) Boiler and Machinery Insurance. Boiler and Machinery Insurance, covering all boilers, unfired pressure vessels, air conditioning equipment, elevators, piping and wiring, located on any portion of the Premises, whether or not same is a Trade Fixture, all steam, mechanical and electrical equipment, including, without limitation, in all its applicable forms, including Broad Form, extra expense and loss of use in an amount not less than the full replacement cost of such equipment, and which shall designate Guarantor, Landlord and Lease Administrator as additional insureds.

(f) Automobile Liability Insurance. Automobile Liability insurance covering owned and non-owned vehicles with limits as reasonably designated by Landlord from time to time but in any event with limits of not less than Three Million Dollars (\$3,000,000) combined single limit per occurrence with respect to personal and bodily injury, death and property damage and which shall designate Guarantor, Landlord and Lease Administrator as additional insureds.

(g) Construction Insurance. From the commencement of Construction Work required in connection with the Tenant's Work, and from the commencement of any other Construction Work, Tenant shall carry or cause to be carried by the applicable contractor, and maintain in full force and effect until Final Completion of such Construction Work, Construction Insurance in the broadest form reasonably available in an amount not less than Two Million Dollars (\$2,000,000) combined single limit/Five Million Dollars (\$5,000,000) annual aggregate for bodily injury and property damage protecting Tenant, Landlord, Lease Administrator, Apple and the general contractor against all insurable legal liability claims resulting from Construction Work being performed by or for general contractors and subcontractors engaged to work on the Premises. Without limiting the generality of the foregoing, the following coverages shall be provided:

(i) Automobile liability insurance in an amount not less than One Million Dollars (\$1,000,000) covering any automobile or other motor vehicle used in connection with Construction Work being performed on or for the Premises.

(ii) Products Liability/Completed Operations coverage;

(iii) a broad form property damage endorsement;

(iv) explosion, collapse and underground property damage coverage;

(v) independent contractors coverage;

(vi) blanket contractual liability covering written and oral contractual liability, and specifically covering Tenant's indemnification obligations under Article 18 hereof;

(vii) specific contractual liability specifically covering any indemnification obligation of Tenant under this Lease in favor of Landlord, Lease Administrator and Apple;

(viii) an endorsement providing that excavation and foundation work are covered and that the "XCU exclusions" have been deleted;

(ix) no exclusions other than those included in the basic forms described unless approved by Lease Administrator;

(x) Builder's Risk Insurance (standard "All Risk") written on a completed value (non-reporting) basis, insuring Tenant, Landlord, Lease Administrator, Apple, the general contractor or construction manager, if any, and all subcontractors employed by Tenant or the general contractor or construction manager, if any, as their respective interests may appear. Such insurance policy (1) shall contain a written acknowledgment by the insurance company that its right of subrogation has been waived with respect to all of the named insureds and additional insureds in such policy and an endorsement stating that "permission is granted to complete and occupy", and (2) if any off-site storage location is used, shall cover, for full insurable value, all materials and equipment at any off-site storage location intended, or while in transit, for use with respect to the Premises; and

(xi) Statutory Worker's Compensation, Employer's Liability, New York State Disability Benefits and other statutory forms of insurance in form and limits as required by law covering all persons employed by Tenant. Tenant shall also require any and all of its contractors and subcontractors to maintain such Worker's Compensation, Employers Liability, New York State Disability Benefits and other statutory forms of insurance in form and limits as required by law covering all persons employed by them, as the case may be; it being understood and agreed that, with respect to Worker's Compensation, Landlord shall not be named or identified as an additional insured.

(xii) Pollution/Environmental Liability Insurance covering bodily injury and property damage, including loss of use of damaged property or property that has not been physically injured, which in any event shall not be less than three million dollars (\$3,000,000) per occurrence unless otherwise approved in writing by Landlord which approval will not be unreasonably withheld, conditioned or delayed. Such insurance shall provide coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants (including, without limitation, any Hazardous Substances ) in violation of applicable environmental laws, including any loss, cost or expense incurred as a result of any cleanup of pollutants (including, without limitation, any Hazardous Substances) or in the investigation, settlement or defense of any claim, suit or proceeding against Landlord, Lease Administrator and/or Apple arising from the activities and operations under this Lease. Such insurance shall name Guarantor, Landlord, Lease Administrator and Apple as additional insureds on a primary and non-contributory basis. Subject to the provisions of Section 7.07 herein, Landlord reserves the right, based upon its reasonable evaluation of the risk and exposures from the proposed

Improvements or Work and/or during work on such to require an additional increase in the amount of the minimum limits of the Pollution/Environmental Liability Insurance as warranted by the risk and exposure. The insurance coverage required in this Section 7.01(g)(xii) is not intended to be duplicative of that required in Section 7.01(h). Coverage must not exclude transport of Hazardous Substances to and from the Premises and all related events which may occur at the Premises.

(h) Pollution/Environmental Liability Insurance. Tenant shall maintain Pollution Environmental Liability Insurance covering the following two distinct and separate risks and coverages:

(i) The risk associated with any loss, cost, claims, causes of action, damages and remediation obligations imposed by any Governmental Authority which may arise as a result of any environmental condition at the Premises that is unknown as of on the Commencement Date. Coverage shall be procured by Tenant with a policy limit of Three Million (\$3,000,000.00) Dollars and provide coverage to the maximum extent readily available for a continuous coverage period of at least five (5) years beginning on the Full Vacate Date, and at least an additional five (5) years beginning on the date on which construction of any of the Optional Work commences. The policy shall include coverage for any clean up or other environmental remediation program required by applicable law in light of the commercial use of the Premises for the Permitted Uses.

(ii) The risk associated with any actual, alleged, or threatened emission, discharge, dispersal, seepage, release or escape of pollutants (including, without limitation, any Hazardous Substances in violation of applicable Environmental Laws) or in the investigation, settlement or defense of any claim, suit or proceeding against any of the additional insureds arising out of or in connection with Tenant's use or occupancy of the Premises as referred to in this Section 7.01(h) and transport to and from the Premises. Such coverage shall be procured by Tenant with a policy limit of Three Million (\$3,000,000.00) Dollars.

The policy for the two coverages prescribed above shall name Guarantor, Recognized Mortgagee, the City, Landlord, Apple and any other Lease Administrator as additional insureds, and both of said coverages shall be on a primary and non-contributory basis. Coverage (ii) of this Section 7.01(h), in so far as they relate to bodily injury and property damage and clean up shall apply to both on and off the Premises and shall include, without limitation, coverage for improper or inadequate: (i) environmental management practices by or on behalf of Tenant or Subtenants in violation of applicable law; (ii) storage of chemicals and Hazardous Substances; and (iii) loading, unloading, transportation, and/or off-site disposal of Hazardous Substances. Coverage must not exclude transportation (owned and non-owned vehicles) of the Hazardous Materials to and from the Premises and all related events which may occur in the Premises.

Section 7.02. Cooperation in Collection of Proceeds.

Tenant and Landlord shall cooperate with each other in good faith in connection with the collection of any insurance moneys that may be due in the event of loss, and Tenant and Landlord shall execute and deliver such proofs of loss and other instruments as may be required of Tenant or Landlord, respectively, for the purpose of obtaining the recovery of any such insurance moneys.

Section 7.03. General Requirements Applicable to Policies.

(a) Insurance Companies. All of the insurance policies required by this Article shall be procured from companies licensed or authorized to do business in the State of New York that have a rating in the latest edition of "Best's Key Rating Guide" of "A-VII" or better or another comparable rating reasonably acceptable to Landlord or Lease Administrator.

(b) Term. Tenant shall procure policies for all insurance required by this Lease for periods of not less than one (1) year and shall keep and maintain such insurance at all times during the Term. Tenant shall provide Landlord evidence of renewals thereof from time to time and as soon as is practicable.

(c) Waiver of Subrogation. All policies of insurance required under this Lease (except for the Statutory Coverages required by Section 7.01(d) hereof) shall include a waiver of the right of subrogation with respect to all the named insureds and additional insureds.

(d) Required Insurance Policy Clauses. Each policy of insurance required to be carried pursuant to the provisions of this Article shall contain (i) a provision that no act or omission of Tenant, including, without limitation, any use or occupation of the Premises for any purpose or purposes more hazardous than those permitted by the policy, shall invalidate the policy or affect or limit the obligation of the insurance company to pay the amount of any loss sustained by Landlord, Lease Administrator or Apple, (ii) an agreement by the insurer that such policy shall not be cancelled, materially modified in a manner that would compromise the coverage theretofore provided under the policy, or denied renewal without at least thirty (30) days' prior written notice to Landlord and Lease Administrator, including, cancellation or non-renewal for non-payment of premium (upon ten (10) days' prior written notice), and (iii) a provision that notice of accident or claim to the insurer by Tenant shall be deemed notice by all Persons having rights in said policy, provided that a copy of any such notice by Tenant to the insurer shall have been delivered to Lease Administrator.

(e) Notices from the insurer or Tenant to Landlord and Lease Administrator shall be delivered by hand or sent by registered or certified mail, return receipt requested, or by Airborne Express, Federal Express, Express Mail or other overnight mail service that provides a receipt to the sender. All notices and correspondences from the insurer to Landlord must be delivered to the following addresses or to such other addresses as Landlord or Lease Administrator may notify the insurer of from time to time:

To Landlord:

Commissioner  
New York City Department of Small Business Services  
110 William Street  
New York, New York 10038

with a copy to:

New York City Law Department  
100 Church Street  
New York, New York 10007  
Attention: Chief, Economic Development Division

To Lease Administrator:

New York City Economic Development Corporation  
Property Management Department  
110 William Street  
New York, New York 10038  
Attention: Senior Vice President for Asset Management

(f) Primary Protection. All insurance policies required by this Article 7 shall be primary protection. Except as otherwise expressly provided herein, Landlord shall not be called upon to contribute to any loss.

(g) Adjustments for Claims. All property insurance policies required by this Article shall provide that all adjustments for claims at or above the Threshold Amount with the insurers shall be made by Landlord and/or Lease Administrator and Tenant unless permission is granted by Landlord to Tenant or the Recognized Mortgagee to adjust. All other insurance policies required by this Article shall provide that an adjustment for claims will be made with Tenant and Recognized Mortgagee to the extent of their respective interest in the proceeds. Notwithstanding the foregoing or any other provision hereof to the contrary, Landlord agrees that to the extent proceeds are less than the Threshold Amount, Depository shall be entitled to deliver any such proceeds on hand to Tenant upon request without notice or approval by Landlord. Upon demand of the other, Landlord and Tenant shall confirm in writing to each property insurer that to the extent required hereunder all insurance proceeds shall be endorsed or paid over to Depository, as their trustee.

Section 7.04. Evidence of Insurance. Prior to Tenant entering into possession of the Premises and at least thirty (30) days prior to the expiration of any of the policies to be maintained or caused to be maintained by Tenant, Tenant shall deliver or cause to be delivered to Lease Administrator certificates of insurance, in form reasonably satisfactory to Landlord, providing for thirty (30) days' prior written notice (ten (10) days for non-payment) to Landlord and Lease Administrator by the insurance company of cancellation or non-renewal of a policy or replacement or renewal of any policies expiring during the Term. From time to time during the Term if there is a claim or dispute as to coverage, or for auditing purposes, at Landlord's or Lease Administrator's written request, Tenant shall deliver a copy of each entire original policy required hereby.

Section 7.05. Compliance With Policy Requirements. Tenant shall not violate or permit to be violated any of the conditions, provisions or requirements of any insurance policy required by this Article. Tenant shall perform, satisfy and comply with

or cause to be performed, satisfied and complied with all conditions, provisions and requirements of all such insurance policies on Tenant's part to be performed, and shall give, and shall cause its contractors to give, the insurer, Landlord and Lease Administrator notice of all claims, accidents and losses promptly, but in any event no later than five (5) business days after Tenant, or any of its contractors, as the case may be, acquires actual knowledge of the same.

Section 7.06. Separate Insurance. Tenant shall not carry separate liability or property insurance concurrent in form or contributing in the event of loss with that required by this Lease to be furnished by Tenant, unless Landlord, Lease Administrator and Apple are included therein as additional insureds with respect to property insurance. Tenant shall immediately notify Landlord that it carries any such separate insurance and shall cause the evidence thereof to be delivered to Landlord.

Section 7.07. Increases in Coverage and Additional Insurance. Landlord shall have the right, at any time and from time to time (but not more often than once every three years), to reasonably modify, increase or supplement the insurance coverages, limits, sublimits, minimums and standards required by this Article 7 to conform such requirements to the insurance coverages, limits, sublimits, minimums and standards that at the time are commonly carried by owners of premises comparable to the Premises, or are commonly carried by businesses of the size and nature of the business conducted at the Premises. From time to time, Landlord may require Tenant to increase or cause to be increased the amount of coverage provided under the policies of insurance required hereunder, or change the types of insurance required hereunder, provided that in any such event, Landlord reasonably demonstrates the need for such increase of coverage. The amount of any such increased coverage shall not exceed the amount of similar coverage that are commonly carried by owners of comparable property or in connection with similar businesses.

Section 7.08. No Representation as to Adequacy of Coverage. The requirements set forth herein with respect to the nature and amount of insurance coverage to be maintained or caused to be maintained by Tenant hereunder shall not constitute a representation or warranty by Landlord that such insurance is in any respect adequate.

Section 7.09. Blanket and/or Master Policies. The insurance required by the provisions of this Article may, at Tenant's option, be effected by blanket and/or umbrella policies issued to Tenant covering the Premises and other properties owned or leased by Tenant, provided such policies otherwise comply with the provisions of this Lease and allocate to the Premises the specified coverage, including, without limitation, the specified coverage for all insureds required to be named as "named insureds" or "additional insureds" hereunder, without possibility of reduction or coinsurance by reason of, or because of damage to, any other properties named therein. If the insurance required by this Lease shall be effected by any such blanket or umbrella policies, Tenant shall furnish to Landlord and Lease Administrator certified copies of such policies together with schedules annexed thereto setting forth the amount of insurance applicable to the Premises and proof reasonably satisfactory to Landlord and Lease Administrator

that the premiums for at least the first (1st) year of the term of each of such policies (or installment payments then required to have been paid on account of such premiums) shall have been paid. Notwithstanding anything contained in this Section 7.09, the Premises may not be insured by a blanket or umbrella policy unless consented to by Senior Lender and Recognized Mortgagee.

Section 7.10. Intentionally omitted.

Section 7.11. Other Insurance Not Required Under this Lease. Tenant may effect for its own account any insurance not required under the provisions of this Lease, provided same shall not directly or indirectly result in a diminution of the insurance coverage specified in Section 7.01 hereof. If any such insurance, as permitted above, shall affect Landlord's insurance coverage, prior to purchase thereof Tenant shall provide a copy of the policy to Landlord for its approval.

Section 7.12. Modification By Insurer. Without limiting any of Tenant's obligations or Landlord's or Lease Administrator's rights under this Article 7, in the event that an insurer modifies, in any material respect, any insurance policy that Tenant is required to maintain in accordance with this Lease, Tenant shall give notice to Landlord and Lease Administrator of such modification within thirty (30) days after Tenant's receipt of notice thereof.

Section 7.13. Interpretation. All insurance terms used in this Article 7 shall have the meanings ascribed by the Insurance Services Offices.

## ARTICLE 8

### DAMAGE, DESTRUCTION AND RESTORATION

Section 8.01. Obligation of Tenant to Restore.

(a) Subject to Landlord's right to elect otherwise in paragraph (b) of this Section 8.01, if all or any part of the Premises shall be destroyed or damaged, in whole or in part, by fire or other casualty of any kind or nature (including any casualty for which insurance was not obtained or obtainable), foreseen or unforeseen, Tenant shall give to Landlord prompt notice thereof, and whether or not such damage or destruction shall have been insured, and whether or not Insurance Proceeds, if any, shall be sufficient to pay the cost of repairs, alterations, restorations, replacements and rebuilding made necessary by such casualty (collectively "Restoration"), Tenant, with reasonable promptness and reasonable diligence, shall repair, alter, restore, replace and rebuild (collectively "Restore") the same, at least to the extent of the value and as nearly as reasonably possible to the character of the Premises immediately existing prior to such occurrence, and in accordance with the requirements set forth in Section 13.02 hereof. If

Tenant shall fail or neglect to Restore the Premises or the portion thereof so damaged or destroyed with reasonable diligence or having so commenced such Restoration shall fail to complete the same with reasonable diligence in accordance with the terms of this Lease or if, prior to the completion of any such Restoration by Tenant, this Lease shall expire or be terminated for any reason, Landlord may, after giving Tenant ten (10) days' notice, complete the same at Tenant's expense.

Notwithstanding anything to the contrary contained in this Section 8.01, prior to the Full Vacate Date, Tenant shall not be responsible for the restoration of any portion of the Building or Land which is not yet occupied by Tenant. Further, Tenant shall not be responsible for the restoration of the Rail Shed prior to completion of the Required Work except for any work necessary to ensure that the Rail Shed is free of dangerous conditions. If, prior to the Full Vacate Date, all or substantially all of the Building is destroyed or damaged by fire or other casualty of any kind or nature, Tenant shall have the option to either:

(i) terminate this Lease upon written notice to Landlord, given not more than sixty (60) days after the date of such casualty and Tenant shall quit and surrender the Premises forthwith, subject to the applicable provisions of this Lease; or

(ii) in the event that all other tenants occupying the Building at the time of such casualty elect to exercise their right to terminate their respective leases, Tenant may request upon written notice, given no more than sixty (60) days after the date of such casualty, that Landlord accelerate the Full Vacate Date to the date on which Landlord shall have the right to take full, vacant possession, free and clear, from all other tenants occupying the Building at the time of such casualty. Tenant shall then have the right to take full possession of the Building and shall have the obligation to replace the Building subject to square footage and use requirements described in Article 2 and Article 6 hereof and Landlord's approval of plans and specifications for a new Building, as prepared by a licensed third-party architect selected and paid for by Tenant and approved by Landlord which approval shall not be unreasonably withheld or delayed (an "Approved Architect"). Tenant shall also have the right, subject to the rights of any Recognized Mortgagee, to all Insurance Proceeds that are paid to Depository and to Landlord in connection with such casualty, provided that Tenant applies such Insurance Proceeds to the construction of the new Building.

(b) If Landlord has terminated this lease pursuant to Section 22 of this Lease, Landlord may elect, subject to the rights of any Recognized Mortgagee, to engage a contractor of its own choosing to perform a Restoration of the Premises using the Insurance Proceeds. So long as Tenant maintained the property coverages required hereunder, if the Insurance Proceeds are insufficient to pay for the Restoration, Tenant shall have no obligation to Landlord for any costs of such Restoration not covered by the Insurance Proceeds.

(c) All Restoration work performed in, on or for the Premises shall be performed in accordance with the provisions of this Lease. Tenant shall complete any Restoration work on the Premises within two (2) years from the date of any casualty, subject to delay due to insurance adjustment and force majeure.

(d) Prior to the making of any Restoration, Tenant shall furnish Landlord with an estimate of the cost of such Restoration prepared by an Approved Architect. Notwithstanding anything to the contrary contained in this Section 8.01, Landlord, at Landlord's sole discretion, may terminate this Lease upon sixty (60) days' notice, if the Insurance Proceeds are insufficient to cover the cost of the Restoration and Tenant does not, within such sixty (60) day period after written request by Landlord, agree in writing to fund the amount of any such deficiency and can demonstrate that it has the financial resources to complete such Restoration.

(e) If (A) the Building is so damaged or destroyed by casualty that in the estimation of the Approved Architect it will take more than eighteen (18) months to restore, or (B)(i) thirty (30) percent or more of the Building or (ii) a majority of the refrigerated or cold storage area of the Building, is damaged or destroyed by casualty at any time during the last three (3) years of the Initial Term or during the last two (2) years of the Renewal Term, then in any such case, Tenant, at its sole discretion, may terminate this Lease upon written notice to Landlord, given not more than ninety (90) days after the date of such casualty, and the provisions of Section 8.02(d) shall apply with respect to Insurance Proceeds, and the Lease shall terminate and expire as if the date specified were the Expiration Date, and Tenant shall quit and surrender the Premises forthwith, subject to the applicable provisions of this Lease.

Section 8.02. Treatment of Insurance Proceeds.

(a) Proceeds of any insurance required to be maintained by Tenant under this Lease shall be, promptly upon receipt by Tenant or Landlord, deposited with the Depository (except as otherwise expressly permitted hereunder as to proceeds below the Threshold Amount, which may be retained by Tenant). Insurance proceeds payable in excess of the Threshold Amount shall be applied to the payment of the cost of such Restoration in accordance with Article 8 hereof. If Landlord is permitted hereunder and elects to cause the Restoration to be performed by its own contractor, then the Insurance Proceeds shall be payable to Landlord or Administrator. If Tenant is required or permitted to perform the Restoration, the Administrator shall consent to the withdrawal of monies from the Insurance Proceeds held by Depository as necessary. Tenant shall apply any casualty insurance proceeds so received in accordance with the provisions of this Lease. Insurance proceeds payable with respect to a property loss on account of the Premises up to the Threshold Amount shall be paid to or retained by Tenant for use in connection with repair or restoration; to perform initial immediate repairs, to preserve and protect the Premises and/or in mitigation of further damages or dangerous conditions at the Premises, in Tenant's reasonable discretion. Subject to and in accordance with the provisions of this Section and Section 8.03 hereof, after approval of the Restoration estimate as set forth in Section 8.01(e) above, Tenant shall submit to Administrator invoices or receipts for the Restoration as the work progresses showing the cost of labor and material incorporated in the Restoration, or incorporated therein since the last previous application, paid for or which is then payable by Tenant and certified by an architect. Administrator shall cause to be paid to Tenant, as Tenant makes such submissions from time to time, the Insurance Proceeds in installments in accordance with this Article. Subject to paragraph (d) of this Section 8.02, upon completion of and payment for the Restoration by Tenant, the balance of any and all Insurance Proceeds shall, subject to the rights of any Recognized Mortgagee, be paid over to Tenant.

(b) If any vendor's, mechanic's, laborer's, or materialman's lien is filed against the Premises or any part thereof, or if any public improvement lien is created or permitted to be created by Tenant and is filed against Landlord, Tenant shall not be entitled to receive any further installment until such lien is bonded, satisfied or otherwise discharged.

(c) If the Insurance Proceeds are insufficient for the purpose of paying for the Restoration, Tenant shall nevertheless be required to make the Restoration and pay any additional sums required for the Restoration. If Tenant fails to make the Restoration, such failure shall be a Default for which Landlord may declare an Event of Default and terminate this Lease pursuant to Article 22.

(d) If Landlord makes the Restoration to the extent permitted in 8.01(b) hereof, or if Landlord terminates the Lease pursuant to Section 8.01(d) or due to the occurrence of an Event of Default, Landlord shall have the right, subject to the rights of any Recognized Mortgagee under Section 10.03(a)(iii) of this Lease, to retain all Insurance Proceeds. Tenant shall sign all checks submitted to it by Landlord or participate in such manner as shall be necessary to convert the jointly-held account to an account solely in Landlord's name and the Insurance Proceeds shall be paid over to Landlord as its sole property.

Section 8.03. Conditions to Disbursements of Insurance Proceeds.

The following shall be conditions precedent to each disbursement paid to Tenant as provided in Section 8.02 above:

(a) there shall be submitted to Landlord the certificate of the Tenant's architect aforesaid stating (i) that the sum then requested to be withdrawn either has been paid by Tenant and/or is justly due (in which case Tenant undertakes to receive such sum in trust and to immediately pay such amounts due) to contractors, subcontractors, materialmen, engineers, architects or other persons (whose names and addresses shall be stated) who have rendered or furnished services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of said persons in respect thereof, and stating in reasonable detail the progress of the work up to the date of said certificates; (ii) that no part of such expenditures has been made the basis for any previous submission for which Insurance Proceeds have been drawn down, or is being made the basis for any pending request for the disbursement of Insurance Proceeds; (iii) that the sum then requested does not exceed the reasonable value of the services and materials described in the certificate; and (iv) the architect's then current estimate of the cost of completing the Restoration;

(b) there shall be furnished to Landlord lien waivers and releases from the contractors, subcontractors, laborers or materialmen who performed work or furnished materials for the Restoration with respect to such work performed or materials furnished.

(c) the balance of money on deposit in the joint account shall not be reduced below the amount specified in the architect's estimate of the cost of completing the Restoration.

(d) there shall be furnished to Landlord an official search, or a certificate of a title insurance company or other such assurances reasonably satisfactory to Landlord, showing that there has not been filed any vendor's, mechanic's, laborer's or materialman's statutory or other similar lien affecting the Premises or any part thereof, or any public improvement lien

created or permitted to be created by Tenant affecting Landlord, which will not be discharged upon payment of the amount then requested to be disbursed, or if a search shows any such lien, then there shall be retained in the undisbursed Insurance Proceeds an amount sufficient to complete the Restoration plus an amount equal to the mechanic's lien or liens shown on the search report; and

(e) at the time of the making of such payment, Tenant shall not be in Default including, but not limited to, with regards to the payment of Rental.

Section 8.04. Restoration Costs in Excess of Insurance Proceeds.

If the estimated cost of any Restoration required by the terms of this Article 8 exceeds the net Insurance Proceeds, then, prior to the commencement of any further Restoration, Tenant shall deposit with Depository or with Landlord cash or a surety bond, or other security, reasonably satisfactory to Landlord in the amount of such excess, to be held and disbursed in accordance with the provisions of Section 8.02 hereof, or held as security for the completion of the work as the case may be, free of public improvement, vendor's, mechanic's, laborer's or materialman's statutory or other similar liens. If Tenant is contesting the underlying claim of any mechanic's lienors and the estimated cost of completing the Restoration plus the cost of satisfying all outstanding mechanic's liens being contested in good faith exceeds undisbursed Insurance Proceeds, Tenant shall deposit with Landlord cash or a surety bond or other security, reasonably satisfactory to Landlord, to be held and applied as above.

Section 8.05. No Rights of Tenant to Surrender Upon Destruction; No Abatement of Rental.

Except as otherwise provided in Sections 8.01(b), (d), and (e) hereof, this Lease shall not terminate or be forfeited or be affected in any manner by reason of damage to or total, substantial, or partial destruction of the Premises or any part thereof or by reason of the untenability of the same or any part thereof, for or due to any reason or cause whatsoever, and Tenant, notwithstanding any law or statute present or future, waives any and all rights to quit or surrender the Premises or any part thereof. Tenant expressly agrees that its obligations hereunder, including, without limitation, the payment of Rental payable by Tenant, shall continue as though the Premises had not been damaged or destroyed and without abatement, suspension, diminution or reduction of any kind. Landlord and Tenant intend that the foregoing is an "express agreement to the contrary" as provided in Section 227 of the Real Property Law of the State of New York.

ARTICLE 9

CONDEMNATION

Section 9.01. Certain Definitions.

(a) "Taking" shall mean a taking of the Premises or any part thereof for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of

condemnation or eminent domain or by agreement among Landlord, Tenant and those authorized to exercise such right, irrespective of whether the Taking affects the whole or "Substantially All of the Premises" or a lesser portion thereof.

(b) "Substantially All of the Premises" shall be deemed to mean such portion of the Premises as would leave remaining after a Taking a balance of the Premises which would not, in Tenant's good faith determination, readily and reasonably accommodate a facility to support the Permitted Uses described in Section 6.01(a) hereof as used by Tenant prior to the applicable Taking on a commercially reasonable basis due either to the area so taken or the location of the part so taken in relation to the part not so taken in light of Tenant's specific needs.

(c) "Date of Taking" shall be deemed to be the date on which title to the whole or Substantially All of the Premises or a lesser portion thereof, as the case may be, shall have vested in any lawful power or authority pursuant to the provisions of applicable federal, state, or local condemnation law or the date on which the right to the temporary use of the same has so vested in any lawful power or authority as aforesaid.

#### Section 9.02. Permanent Taking.

(a) "Taking of the Whole etc." If during the Term there shall be a Taking of the whole or Substantially All of the Premises (other than a Temporary Taking), the following consequences shall result:

(i) this Lease and the Term shall terminate and expire on the Date of Taking or, at Tenant's option, upon sixty (60) days notice to Landlord, up to 120 days prior to the Date of Taking, and the Rental shall be apportioned to the Date of Taking or such earlier expiration date as may be established by the Tenant pursuant to the immediately preceding clause, and all Rental accrued up to and including the Date of Taking (or such earlier expiration date) shall be paid and/or adjusted on the Date of Taking (or such earlier expiration date); and

(ii) the entire award payable in respect of such Taking shall be paid to Landlord less an amount equal to the unamortized value (on a straight line basis over a fifteen (15) year period) as of the date of the Taking of the Work that Tenant has constructed pursuant to Section 13.01(a)(v) and such amount shall be paid, subject to the rights of any Recognized Mortgagee, to Tenant. Notwithstanding the foregoing, and to the extent awarded, , subject to the rights of any Recognized Mortgagee, Tenant shall be entitled to any award, (whether prosecuted in Tenant's or Landlord's name, for or made on account of Trade Fixtures, moving and other relocation-related expenses, and damages for interruption of business not covered by applicable insurance, and for any other expenses incurred or to be incurred by Tenant as a result of the subject Taking as permitted by law and not otherwise prohibited by this Article of the Lease

(b) "Partial Taking." Shall be deemed to mean a Taking of less than Substantially All of the Premises (other than a Temporary Taking), the following consequences shall result:

(i) this Lease and the Term shall continue without diminution of any of Tenant's obligations hereunder, except that this Lease shall terminate as to the portion of the

Premises so taken, and from and after the Date of Taking, a just proportion of Base Rent as fixed by mutual agreement of Landlord and Tenant, according to the extent and nature of such Taking, shall abate for the remainder of the Term; and

(ii) If the Partial Taking occurs within the first ten (10) Lease Years of the Initial Term, or the first five (5) years of any Renewal Term, Tenant shall receive the total amount of any award, provided that Tenant shall, at its sole cost and expense, proceed with diligence to effect a Restoration of the remaining portion of the Premises not so taken, only to the extent the award, if any, shall be sufficient for the purpose of paying for such Restoration, in full; but under any circumstance neither Landlord, Lease Administrator nor Apple shall be called upon to restore any remaining portion of the Premises not so taken, or to pay any costs or expenses thereof. To the extent the amount of any award exceeds the cost of a Restoration in connection thereto, Tenant shall deliver such excess amount of award to Landlord.

(iii) If the Partial Taking occurs after the first ten (10) Lease Years of the Initial Term, or after the first five (5) years of any Renewal Term, Tenant may, but is not obligated to, perform a Restoration. If Tenant chooses not to restore the Premises, Tenant shall have the option for ninety (90) days from said Partial Taking to terminate this Lease on thirty (30) days written notice to Landlord; provided however that Tenant shall not receive any return of Base Rent previously paid and Tenant must clear the Premises to the satisfaction of Lease Administrator. Upon such election, Tenant shall, subject to the rights of any Recognized Mortgagee under Section 10.03(a)(iii) of this Lease, deliver the award (less expenses incurred in connection with this Article) to Landlord. If Tenant chooses to perform the Restoration, Tenant shall do so in accordance with the provisions of this Article, and to the extent the amount of any such award exceeds the cost of a Restoration in connection thereto, Tenant shall deliver such excess amount of award to Landlord.

#### Section 9.03. Temporary Taking.

(a) Not extending beyond Term. If during the Term there shall be a Taking for the temporary use of the whole or Substantially All of the Premises or a lesser portion thereof for a period not extending beyond the Term (the Initial Term or a Renewal Term, as may be applicable) (a "Temporary Taking"), the following consequences shall result:

(i) this Lease and the Term shall continue without reduction or diminution of any of Tenant's obligations hereunder and Tenant shall continue to pay in full the Rental payable by Tenant hereunder without reduction or abatement, but Tenant shall be entitled to receive for itself any award or payments for such use to the extent provided in Section 9.03(a)(iii) hereof; *provided, however*, that (A) if a Temporary Taking shall extend for a period longer than one (1) week, then such portion of Base Rent as is reasonably allocable to the portion of the Premises taken shall be deferred until an award with respect to such Temporary Taking is actually received and Tenant shall diligently proceed to obtain such award, and (B) if a Temporary Taking shall be made or caused by the City alone or in conjunction with any Governmental Authority, and such Taking shall extend for a period longer than one (1) week, then such portion of Base Rent as is reasonably allocable to the portion of the Premises taken shall be abated until an award with respect thereto is actually received by Tenant and shall be further abated to the extent it is not covered by an award with respect to such Temporary Taking and Tenant shall diligently proceed to obtain such an award;

(ii) if such Taking requires structural changes or alterations to the Premises or any part thereof, Landlord shall restore the remaining portion of the Premises not so taken to a self-contained rental unit (but excluding Tenant's property and fixtures) after receiving the condemnation award proceeds, with reasonable promptness and reasonable diligence, subject to Unavoidable Delays, provided that if the condemnation award proceeds are not sufficient to pay the full costs of such restoration, Landlord shall have the right to terminate this Lease upon prompt notice to Tenant. Landlord and Tenant shall then establish a date on which the Lease shall terminate and the Lease shall terminate and expire as if the date specified were the Expiration Date, and Tenant shall quit and surrender the Premises forthwith.

(iii) the award or payment payable with respect to such Taking shall be deposited with and held by the Depository to the extent it exceeds the Threshold Amount (and amounts below such Threshold Amount shall be paid to or retained by Tenant, subject to the rights of any Recognized Mortgagee) and (x) shall first be disbursed by the Depository to Landlord on account of any Rental then due and payable by Tenant (except to the extent payable by insurance), and the balance shall be disbursed to Tenant, subject to the rights of any Recognized Mortgagee; *provided however*, that if Landlord shall be required to effect a restoration pursuant to Section 9.03(a)(ii) hereof, then (y) a portion of such award or payment equal to the estimated cost of such restoration shall instead be retained by the Depository for the purpose of paying the restoration and shall be disbursed by the Depository to Landlord with any balance remaining thereafter to be applied in accordance with Section 9.03(a)(iii)(x) hereof.

(b) Extending Beyond Term. If during the Term there shall be a Taking for the temporary use of the whole or Substantially All of the Premises or a lesser portion thereof for a period extending beyond the then-applicable Term, the consequences specified in clauses (i), (ii) and (iii) of Section 9.03(a) hereof shall result, except that the award or payment payable with respect to such Taking shall be apportioned between Landlord and Tenant as of the last day of the Term. The amount of the award or payment attributable to the period up to and including the last day of the Term shall be paid and applied in accordance with the provisions of Section 9.03(a)(iii) hereof, and the portion of the award attributable to the period after the last day of the Term shall belong to Landlord; *provided, however*, that the amount of any award or payment allowed or retained to pay for a restoration which shall not have been previously applied for that purpose, shall remain the property of, and shall be paid over to Landlord if this Lease shall terminate for any reason prior to completion of the restoration in accordance with the provisions of this Article, subject to the rights of any Recognized Mortgagee under Section 10.03(a)(iii) of this Lease. Notwithstanding anything to the contrary herein set forth, Tenant shall have the right to terminate this Lease upon prompt notice to Landlord in the event such Temporary Taking extends beyond the then applicable Term. Landlord and Tenant shall then establish a date on which the Lease shall terminate and the Lease shall terminate and expire as if the date specified were the Expiration Date, and Tenant shall quit and surrender the Premises forthwith, subject in all other respects to the other provisions of this Section.

Section 9.04. Governmental Action Not Resulting in a Taking.

In case of any governmental action not resulting in a Taking but creating a right to compensation therefor, such as the changing of the grade of any street upon which the Premises abut, then this Lease shall continue in full force and effect without reduction or abatement of Rental; *provided, however*, that if such governmental action results in changes or alterations of the Premises, then Landlord shall effect a restoration with respect thereto. Any award payable in the case of such governmental action shall be paid to and held by the Depository and shall be applied first to Landlord by Depository for the purpose of paying for the cost of the restoration. Any balance of the award remaining after completion of the restoration shall be shared by Tenant and Landlord based upon the value of their respective interests in the Premises at that time, subject to the rights of any Recognized Mortgagee.

Section 9.05. Collection of Awards.

Each of the parties shall execute documents that are reasonably required to facilitate collection of any awards made in connection with any condemnation proceeding referred to in this Article and shall cooperate with each other to permit collection of the award.

Section 9.06. Landlord's Right To Award on Termination.

Notwithstanding anything to the contrary contained herein, the amount of any award or payment allowed or retained to effect a restoration (or which are otherwise payable to Tenant) which shall not have been previously applied to that purpose shall become the property of and shall be paid over to the Landlord, if this Lease shall terminate for any reason in accordance with the provisions of this Article 9 prior to completion of said restoration.

Section 9.07. Tenant's Appearance at Condemnation Proceedings.

Tenant shall have the right to appear in any condemnation proceedings and to participate in any and all hearings, trials, and appeals in connection therewith in connection with a claim for compensation for Tenant's Trade Fixtures, relocation and other expenses and claims permitted by this Article and applicable law. Tenant shall not file any claim for compensation for the leasehold demised to Tenant hereunder.

Section 9.08. Intention of the Parties.

The existence of any present or future law or statute notwithstanding, and except as otherwise may be expressly provided in this Article, Tenant waives all rights to quit or surrender the Premises or any part thereof by reason of any Taking of less than Substantially All of the Premises. It is the intention of Landlord and Tenant that the provisions of this Article 9 shall constitute an "express agreement to the contrary" as provided in Section 227 of the Real Property Law of the State of New York and shall govern and control in lieu thereof.

ARTICLE 10

ASSIGNMENTS, SUBLEASES AND TRANSFERS

Section 10.01. Tenant's Right to Assign, Transfer, Etc.

(a) Limitations on Right to Assign, Transfer or Enter into a Sublease. Except as provided in this Article 10, Tenant shall not, without the prior consent of Landlord, in its sole discretion in each instance, at any time during the Term enter into a Capital Transaction.

(b) Definitions.

(i) "Assignment" means the sale, exchange, assignment or other disposition of all or any portion of Tenant's interest in this Lease or the leasehold estate created hereby whether by operation of law or otherwise.

(ii) "Assignee" means an assignee under an Assignment.

(iii) "Capital Transaction" means an Assignment, Transfer, Sublease or any other transaction by which any of the benefits of ownership or control of the leasehold estate created hereby are transferred in a manner which would constitute the functional equivalent of an Assignment, Transfer or Sublease (but shall not include a pledge or collateral assignment of Equity Interests or subrents by Tenant or any direct or indirect parent company to a Recognized Mortgagee or Senior Lender).

(iv) "Change of Control" means, other than pursuant to a public sale (i.e., a PO or transfer under Section 10.02(a)(iii) below), that any Person or "group" (within that meaning of Section 13(d) or Section 14(d) of the Securities Exchange Act of 1934, as amended) (i) acquires by Transfer of more than 50% of the Equity Interest of Tenant or (ii) acquires the power (whether or not exercised) to elect a majority of the directors of Tenant or, if Tenant is a partnership or limited liability company or general partner or managing member thereof.

(v) "Equity Interest" means, with respect to any entity, (A) the beneficial ownership of (i) outstanding stock, or the right to buy outstanding stock, of such entity if such entity is a corporation, a real estate investment trust or a similar entity, (ii) a capital, profits, or partnership interest in such entity, or the right to buy such an interest, if such entity is a partnership or joint venture, (iii) interest in a trust, or the right to buy such an interest, if such entity is a trust, (B) any right of a mortgagee to participate in cash flow, gross or net profits, gain or appreciation, or (C) any other beneficial interest that is the functional equivalent of any of the foregoing.

(vi) "Sublease" means any sublease (including a sublease or any further level of subletting), occupancy, license, franchise or concession agreement applicable to the Premises or any part thereof.

(vii) "Subtenant" means any subtenant operator, licensee, franchisee, concessionaire or other occupant of the Premises or any portion thereof.

(viii) "Permitted Person" shall mean any Person which meets the following conditions: (A) such Person submits to the City's "Vendex" background investigation system (or any successor system serving the same function) sixty days prior to the anticipated date of the proposed Capital Transaction for the purpose of determining whether such Person is a Prohibited Person; (B) such Person is found not to be a Prohibited Person; and (C) such Person is not disqualified by the Market Rules.

(ix) "Transfer" means any disposition of an Equity Interest in Tenant or in any direct or indirect constituent entity of Tenant, where such disposition directly or indirectly produces any change in the direct or indirect beneficial ownership of an interest in, or control of, Tenant. The term "Transfer" also includes any (i) transaction or series of transactions, including, without limitation, the issuance of additional Equity Interests, or (ii) direct or indirect revision of the beneficial ownership structure or control of Tenant or any direct or indirect constituent entity of Tenant, which, in either case, produces any change in the direct or indirect beneficial ownership of an interest in, or control of, Tenant.

(x) "Transferee" means a Person to whom a Transfer is made.

Section 10.02. Tenant.

(a) Tenant's Right to Assign or Transfer. Notwithstanding the provisions of Section 10.01(a) above, Tenant shall be permitted to enter into the following Assignments or Transfers without Landlord's prior written consent:

(i) the assignment of this Lease by Tenant to an Affiliate or subsidiary (other than a Prohibited Person), excluding any single purpose entity unless the Guaranty remains in effect (otherwise such single purpose entity assignment shall require the approval of Landlord, not to be unreasonably withheld or delayed);

(ii) the assignment of this Lease or Transfer of Equity Interest of Tenant through a merger, consolidation or other business combination or a sale of all or substantially all of its assets;

(iii) a Transfer of any direct or indirect Equity Interests in Tenant through one or more underwriters in connection with any initial public offering or follow-on offering of shares in the public markets (each a "PO") or otherwise through a registered broker-dealer on any recognized stock exchange or "over-the-counter market";

(iv) the issuance of additional direct or indirect Equity Interests in Tenant to one or more financial or strategic investors (other than to a Prohibited Person) or key employees of Tenant (other than to a Prohibited Person);

(v) transfers of beneficial interests to or among the principals and their families for estate planning purposes (other than to a Prohibited Person);

(vi) a merger or consolidation of Tenant or its Affiliates with another entity (other than with a Prohibited Person);

(vii) a sale of substantially all of the Equity Interests in Tenant and its Affiliates or all or substantially all of the assets of Tenant and its Affiliates (other than to a Prohibited Person); or

(viii) any conveyance pursuant to and in accordance with Section 10.03 hereof which would constitute an Assignment or a Transfer.

In the case of any other Assignment, Landlord may impose any conditions to its consent that Landlord determines, in its reasonable discretion, may be necessary or appropriate, including, without limitation, requiring that any Person that is a transferee, assignee or Subtenant of Tenant hereunder, or that occupies or makes use of the Premises, or that merges or consolidates with Tenant (other than if Tenant is the surviving entity), assume, perform and observe each and every term, covenant and condition on the part of Tenant to be performed or observed under this Lease and make all representations and warranties made by Tenant hereunder. Any Assignment or Transfer entered into without Landlord's consent to the extent required in this Lease, or which in any other respect fails to comply with the provisions of this Lease, shall have no validity and shall be null and void and without any effect.

The above provisions, restrictions and requirements of this Section 10.02(a) hereof shall not apply to Capital Transactions with (i) a Person that is a wholly owned subsidiary of Tenant, (ii) a Person that is the majority owner (including members of such owner's family) of the beneficial interests of Tenant, (iii) a Person that is wholly owned by one or more of the beneficial owners of Tenant, or (iv) any Person or Persons if such Capital Transaction is a Transfer of Equity Interest (direct or indirect) in Tenant with such Person or Persons that does not, in the aggregate over a three (3) year period, result in a Change of Control.

(b) Sublease Restrictions.

Tenant may not enter into any Sublease without Landlord's prior written consent, such consent not to be unreasonably withheld, delayed or conditioned, except that subleasing to Affiliates or subsidiaries (other than to a Prohibited Person) of Tenant shall be permitted without such written consent. Licensing of minor areas of desk space, not to exceed 5,000 rentable square feet in the aggregate, to persons with whom Tenant has a material business relationship for a period not to exceed 365 days shall be permitted and shall not be considered a sublease. Subleasing to any current tenants to implement the Project in phases (at Tenant's option) is pre-approved. The subletting of the entire Premises by Tenant to Dairyland pursuant to an operating sublease immediately following the commencement of this Lease is hereby pre-approved. The Bazzini License and the terms thereof are hereby pre-approved, provided that all rental payments paid by Bazzini over Tenant's Base Rent shall be paid to Landlord.

Tenant acknowledges and agrees that Landlord may withhold its consent to any proposed Sublease on the following grounds, provided that the following shall not be deemed an exhaustive list of the grounds upon which Landlord may reasonably withhold its consent to a proposed Sublease.

(A) Tenant may not enter into and shall not have in effect at any given time, in total (i) Subleases with more than three (3) Persons who are not Affiliates at a time (other than to service providers), or (ii) Subleases with any Person that is not an Affiliate (except for (x) Subleases of any or all of the Rail Shed and (y) Subleases that do not, in the aggregate, demise more than twenty percent (20%) of the gross leaseable floor area of the Building);

(B) Tenant may not enter into any Subleases with any Prohibited Person; and

(C) Tenant may not enter into a Sublease if: (w) Landlord or Administrator, in its reasonable discretion, is not satisfied as to the reputation and financial responsibility of the proposed Subtenant (such review of the proposed Subtenant's financial responsibility will only be required in the event that such proposed Subtenant requires a subordination, non-disturbance and attornment agreement), and the business of the proposed Subtenant will be conducted in the Premises in a manner inconsistent with the character and reputation of Hunts Point Food Distribution Center; (x) the effective date of the proposed Sublease occurs during the last two (2) years of the Term; (y) the proposed Subtenant (other than an Affiliate) is a tenant, subtenant or occupant of the Hunts Point Food Distribution Center, or a subsidiary, division or affiliate of any such tenant or occupant, or is a party with whom Landlord is negotiating to lease space in the Hunts Point Food Distribution Center;

Subject to Landlord's prior written consent, such consent not to be unreasonably withheld, delayed or conditioned, Tenant may enter into one or more Subleases with any Person that is not an Affiliate and each of which is not a Prohibited Person for (x) any or all of the Rail Shed and (y) portions of the Building that do not, in the aggregate, demise more than twenty percent (20%) of the gross leasable floor area of the Building, provided that:

(1) Tenant shall furnish Landlord with the name of each proposed Subtenant and the individual principals in such proposed Subtenant's business entity; such proposed Subtenant and principals submit to the City's "Vendex" background investigation (or successor system serving the same function) at least forty-five (45) days prior to the proposed commencement date of a Sublease;

(2) Landlord advises Tenant that a proposed Subtenant is not a Prohibited Person; and

(3) Tenant shall furnish Landlord with a schedule of Subleases at any time upon Landlord's demand, but in any event, no more frequently than once per year, Tenant shall deliver to Landlord, within fifteen (15) days of such demand, (A)(i) a schedule of all Subleases giving the names of all Subtenants, a description of the space that has been sublet, expiration dates, rentals and such other information as Landlord reasonably may request, together with an affidavit that such schedule of Subleases is true, accurate and complete, and (ii) a copy of all Subleases and any amendments thereto, or (B) an affidavit that no change has occurred since the Subleases schedule last submitted, except as reflected thereon. In addition, upon entering into a Sublease Tenant shall deliver to Landlord, within fifteen (15) days after the date of such Sublease, the information and documents(s) described in clause (b)(ii) above.

For purposes of this proviso, Subtenant shall mean Subtenant and its Affiliates.

(c) Tenant's Obligations. During the Term, Tenant shall cause Subtenant to comply with its obligations under its Sublease as such obligations relate to the obligations of Tenant hereunder. A violation or breach of any of the terms, provisions or conditions of this Lease that results from, or is caused by, an act or omission by a Subtenant shall not prevent such

violation or breach from being an Event of Default hereunder nor relieve Tenant of Tenant's obligation to cure such violation or breach, provided that Landlord shall provide Tenant with a reasonable period to cause such violation or breach to be cured.

(d) Excess Rental. During the Initial Term and either Renewal Term, should Tenant need to sublet any portion of the Premises to an unaffiliated party, Landlord and Tenant share 50/50 in the distribution of any net proceeds of sublease revenue after Tenant's investment costs (including, without limitation, brokerage commissions and attorneys fees related to such sublease, the value of any rent concessions granted to such subtenant, and the costs of preparing the space for occupancy) have been amortized. If upon expiration of the First Renewal Term, Tenant is subleasing fifty (50) percent or more of the Premises to an unaffiliated party, Landlord will have the right of first refusal to deny the option of the Second Renewal Term.

(e) Security Assignment.

(i) Assignment of Subleases to Landlord. As security for Tenant's obligations hereunder, subject to the rights of any Recognized Mortgagee, Tenant hereby collaterally assigns, transfers and sets over unto Landlord, all of Tenant's right, title and interest in and to all Subleases and hereby confers upon Landlord, its agents and representatives, a right of entry in, and sufficient possession of, the Premises to permit and ensure the collection by Landlord of all sums payable under the Subleases and enforcement of all other rights of Tenant under the Subleases. The exercise of such right of entry and qualified possession by Landlord shall not constitute an eviction of Tenant from the Premises or any portion thereof. If such right of entry and possession is denied to Landlord, its agents or representatives, Landlord, in the exercise of this right, may use all requisite force to gain and enjoy the Premises with neither responsibility for, nor liability to Tenant, its servants, employees, guests or invitees, or any Person whatsoever. This assignment, although presently effective, shall be operative only upon the occurrence and during the continuance of an Event of Default under the Lease by Tenant beyond the expiration of any applicable notice and cure period and not before and shall, in any event, be subject and subordinate to the rights of any Recognized Mortgagee hereunder or, unless and until this Lease and the rights of any Recognized Mortgagee under a separate agreement with Landlord are terminated.

(ii) Collection of Subrent by Landlord. Upon the occurrence of an Event of Default under the Lease, Landlord may collect rent and all other sums due under any Subleases and apply the net amount collected to any rent or other payment required to be paid by Tenant hereunder. No such collection shall be, or shall be deemed to be, a waiver of any agreement, term, covenant or condition of this Lease nor the recognition by Landlord of any Subtenant as a direct tenant of Landlord nor a release of Tenant from performance by Tenant of its obligations under this Lease.

(iii) Assignment of Lease and Sublease Priority. The Landlord agrees, that the rights of the Recognized Mortgagee under any Permitted Leasehold Mortgage and any assignment of leases or subleases by Tenant of leases and rents covering the Premises and the rents, issues, and profits therefrom shall be superior in right to that of the Landlord hereunder and that any interest that Landlord may have in such personal property or subleases, as the case may be, whether granted pursuant to the Lease or by statute, shall be subordinate to the interest of the Recognized Mortgagee, provided that this Lease is in full force and effect.

(f) Schedule of Subleases. At any time upon Landlord's written demand, and in any event, no less frequently than once per year nor more frequently than twice per year, Tenant shall deliver to Landlord, within fifteen (15) days of such demand, (i) a schedule of all Subleases giving the names of all Subtenants, a description of the space that has been sublet, expiration dates, rentals and such other information as Landlord reasonably may request, and (ii) copies of all Subleases and any amendments thereto. In addition, upon entering into a Sublease at any time Tenant shall deliver to Landlord, within fifteen (15) days after the date of such Sublease, the information and documents(s) described in clauses (i) and (ii). Upon reasonable request of Landlord, Tenant shall permit Landlord and its agents and representatives to inspect original counterparts of all Subleases at reasonable times upon reasonable prior notice.

Section 10.03. Leasehold Mortgages.

(a) Tenant shall not encumber its interest in this Lease with any mortgage or other security. The foregoing notwithstanding, from time to time during the Term, and without the prior written consent of Landlord, Tenant may enter into a leasehold mortgage (a "Permitted Leasehold Mortgage"), with an Institutional Lender (which shall thereafter constitute a Recognized Mortgagee), subject to the following terms and conditions:

(i) No Permitted Leasehold Mortgage shall be secured by interests in any real property other than Tenant's Leasehold interest in the Premises and the Subleases.

(ii) Tenant or Recognized Mortgagee shall promptly deliver to Landlord, in the manner herein provided for the giving of notice to Landlord, a true copy of the Permitted Leasehold Mortgage and of any assignment thereof and shall notify Landlord of the address of the successor Recognized Mortgagee to which notices may be sent.

(iii) Notwithstanding any provision in the Lease to the contrary, in the event of any casualty to or condemnation of the Premises or any portion thereof during such time as a Recognized Mortgagee shall be the holder of a Permitted Leasehold Mortgage encumbering Tenant's interest herein, the Recognized Mortgagee shall be entitled to receive all insurance proceeds and/or condemnation awards allocated to the improvements located upon the Premises or the Tenant's leasehold interest and shall have the obligation, to restore the Building and the Premises as required, under and pursuant to the terms and conditions of this Lease, provided such obligation shall only be to the extent that such insurance proceeds and/or condemnation awards are paid to the Recognized Mortgagee.

(b) With respect to any Permitted Leasehold Mortgage made in accordance with the provisions of 10.03, each of the following provisions shall apply:

(i) When giving notice to Tenant with respect to any default under the provisions of Section 22.01 and 22.02, Landlord will also serve a copy of such notice upon the Recognized Mortgagee, and no such notice to Tenant shall be effective unless a copy of such notice is so served upon the Recognized Mortgagee, which service shall be in the manner herein provided for the giving of notice to the holder of a Recognized Mortgagee;

(ii) Landlord will not exercise any right, power or remedy with respect to any default hereunder unless Tenant or a Recognized Mortgagee shall have failed to remedy such default within any applicable grace period set forth in this Agreement (which grace period shall commence, with respect to a Recognized Mortgagee, upon receipt by Recognized Mortgagee of the notice of default) and for an additional 30 days thereafter (the "Mortgagee Grace Period"), provided that (i) if such default is of such a nature that it cannot, with the exercise of due diligence, be cured within the cure period and the Mortgagee Grace Period, the provisions of subsection (iv) below shall apply.;

(iii) In case Tenant shall default under any of the provisions of this Lease, the Recognized Mortgagee shall have the right to make good such default whether the same consists of the failure to pay rent or the failure to perform any other matter or thing which Tenant is hereby required to do or perform, and Landlord shall accept such performance on the part of the Recognized Mortgagee as though the same had been done or performed by Tenant;

(iv) In the case of any Event of Default by Tenant (including any of the Events of Default set forth in Section 22.01 hereof other than in the payment of money hereunder or other than a default which may be cured by the payment of money hereunder), Landlord will take no action to effect a termination of the term of this Lease by the service of a notice of termination by reason of any such default without first giving to the Recognized Mortgagee reasonable time within which either (X) to obtain possession of the Premises (including possession by a receiver) and cure such default in the case of a default which is susceptible of being cured when the Recognized Mortgagee has obtained possession, or (Y) to institute foreclosure proceedings and complete such foreclosure, or otherwise acquire Tenant's interest under this Lease, with diligence and continuity in the case of a default which is not so susceptible of being cured by the Recognized Mortgagee; provided, however, that the Recognized Mortgagee shall not be required to continue such possession or continue such foreclosure proceedings if the default which would have been the reason for serving such a termination notice shall be cured; and provided, further, that nothing herein shall preclude Landlord from exercising any rights or remedies under this Lease with respect to any other default by Tenant during any period of such forbearance. Notwithstanding anything contained herein to the contrary, a Recognized Mortgagee shall not be required to cure or remedy any default which is not so susceptible of being cured by Recognized Mortgagee (including, but not limited to, Tenant's bankruptcy or wrongful assignment of the Lease or subletting of the Premises), and upon foreclosure or other acquisition of Tenant's interest in this Lease by a Recognized Mortgagee or its designee, all such defaults under this Lease shall be deemed to have been fully cured as to Recognized Mortgagee, its designee and its successors and assigns, provided that the foregoing shall not waive or release Tenant with respect to such default;

(v) Landlord and Tenant agree not to enter into any modification of this Lease, or accept surrender of this Lease without the consent of any then-existing Recognized Mortgagee without first providing such Recognized Mortgagee with the notice and opportunity to cure Tenant defaults as provided under this Section 10.03(b), without which consent such modification or surrender shall be void and of no effect; provided, that Landlord shall not be

liable for damages, lost profits or other monetary sum to any Recognized Mortgagee or successor thereto or assign thereof for breach of this covenant (it being agreed that Recognized Mortgagee shall have the right to obtain injunctive relief and specific performance with respect to any violation of this covenant).

(c) The provisions of this Section 10.03 are conditioned on the following:

(1) The Recognized Mortgagee shall, within thirty (30) days after notice of such default:

(x) notify Landlord of its election to proceed with due diligence promptly to acquire possession of the Premises or to foreclose the Permitted Leasehold Mortgage or otherwise to extinguish Tenant's interest in this Lease; and

(y) deliver to Landlord an instrument in writing duly executed and acknowledged wherein such Recognized Mortgagee agrees that:

commencing with the giving of the notice by the Recognized Mortgagee referred to in clause (1) above and during the period that such Recognized Mortgagee shall be in possession of the Premises and so long as it remains in possession and/or during the pendency of any such foreclosure or other proceedings and until the interest of Tenant in this Lease shall terminate or such proceeding shall be discontinued, as the case may be, it will pay or cause to be paid to Landlord all sums from time to time becoming due under this Lease for Rental or any item of additional rent; and

if delivery of possession of the Premises shall be made to such Recognized Mortgagee, whether voluntarily or pursuant to any foreclosure or other proceedings or otherwise, such Recognized Mortgagee, promptly following such delivery of possession, shall perform all the covenants and agreements herein contained on Tenant's part to be performed (including, but not limited to payment of Rental and additional rent) to the extent that Tenant shall have failed to perform the same to the date of delivery of possession, as aforesaid, except such covenants and agreements which cannot with the exercise of due diligence be performed by such Recognized Mortgagee.

(2) Any Recognized Mortgagee may become the legal owner and holder of Tenant's leasehold estate by foreclosure of its Permitted Leasehold Mortgage or as a result of the assignment of this Lease in lieu of foreclosure, whereupon such Recognized Mortgagee shall immediately become and remain liable under this Lease to the extent it remains in possession.

(3) In the event of the termination of this Lease or of any succeeding lease made pursuant to the provisions of this Section 10.03 prior to its stated expiration date by reason of a default of Tenant, or rejection of this Lease by Tenant in a bankruptcy proceeding, or otherwise, notice thereof shall be given by Landlord to Recognized Mortgagee, and Landlord agrees that it will, upon request enter into a new lease of the Premises with the Recognized Mortgagee or, at the request of such Recognized Mortgagee, to an entity formed by or on behalf of such Recognized Mortgagee, for the remainder of the Term, effective as at the date of such termination, at the Annual Base Rent and other Rental then in effect and upon the covenants, agreements, terms, provisions and limitations herein contained, provided:

(i) such Recognized Mortgagee makes written request upon Landlord for such new lease within forty-five (45) days from the date of such termination and such written request is accompanied by payment to Landlord of all amounts then due to Landlord;

(ii) such Recognized Mortgagee pays or causes to be paid to Landlord, at the time it makes said written request, any and all sums which would be due under this Lease but for such termination and pays or causes to be paid any and all expenses, including reasonable counsel fees, court costs and disbursements incurred by Landlord in connection with any such default and termination as well as in connection with the execution and delivery of such new lease, less the net income collected by Landlord subsequent to the date of termination of this Lease and prior to the execution and delivery of the new lease, any excess of such net income over the aforesaid sums and expenses to be applied in payment of the rent thereafter becoming due under said new lease; and

(iii) such new lease executed and delivered in accordance with the provisions of this subsection (3) shall provide that by entering into such new lease the tenant thereunder shall be deemed to have recognized the Subtenants under each and every Sublease which immediately prior to the termination of the Term of this Lease was superior to the lien of the Permitted Leasehold Mortgage (or which was the subject of a subordination, non-disturbance and attornment agreement) as though such Sublease had never been terminated but had continued in full force and effect after the termination of the Term of this Lease.

(4) Upon the execution and delivery of such new lease in accordance with the provisions of Section 10.03(c)(3), all Subleases which theretofore may have been assigned and transferred, whether by operation of law or other to Landlord shall thereupon be assigned and transferred without recourse by Landlord to the Recognized Mortgagee, as the new tenant, and the provisions thereof shall apply with equal force.

(5) With respect to such new leases or if under any such new lease made in accordance with the provisions of Section 10.03(c)(3), an Institutional Lender in a fiduciary capacity shall be tenant thereunder, each and every obligation shall be binding upon it solely in its fiduciary capacity and shall have no force and effect against such Institutional Lender in its individual capacity.

(6) Any provision of this Lease requiring Tenant to deposit monies, post a bond or furnish security to Landlord, shall not be applicable to an Institutional Lender which may be either Tenant hereunder or the holder of a Permitted Leasehold Mortgage in the process of obtaining possession of the Premises through foreclosure or otherwise, and which, in either case, in lieu of depositing such monies, posting such bond or furnishing such security, executes an instrument in which such Institutional Lender agrees to perform the obligations with respect to which such deposit, bond or other security would otherwise be required.

(d) Notwithstanding anything to the contrary set forth herein, a Recognized Mortgagee or other person succeeding to the leasehold interest of the Tenant through or subsequent to a foreclosure, assignment of lease in lieu of foreclosure or any other similar or related enforcement proceeding (an "Enforcement Proceeding") shall not be liable under this Lease unless and until such time as it becomes the owner of the Tenant's interest in this Lease (the "Leasehold Interest"), and then only for such obligations of the Tenant which accrue during the period while it remains the owner of such Leasehold Interest. No Recognized Mortgagee (or its nominee or designee as may have acquired the Leasehold Interest) shall become personally liable under the agreements, terms, covenants or conditions of this Lease unless and until it becomes the holder of the Leasehold Interest. Upon any assignment of this Lease by a Recognized Mortgagee, or such nominee or designee, the assignor (but not the assignee or any subsequent assignor, purchaser or transferee) shall be relieved of any further liability which may accrue hereunder from and after the date of such assignment provided that the assignee shall execute and deliver to Landlord a recordable instrument of assumption wherein such assignee shall assume and agree to perform and observe the covenants and conditions contained in this Lease on Tenant's part to be performed and observed, it being the intention of the parties that once the Recognized Mortgagee (or such nominee or designee) shall succeed to Tenant's interest under this Lease, a subsequent assignment by such Recognized Mortgagee (or such nominee or designee) shall effect a release of such Recognized Mortgagee's liability hereunder. If a Recognized Mortgagee acquires the Leasehold Interest under this Lease, Landlord agrees that any judgments, claims or lawsuits obtained against the Recognized Mortgagee shall be satisfied solely out of the Recognized Mortgagee's interest in the Premises.

(e) Any provision of this Lease which purports to permit prepayment without indemnity is hereby deleted in its entirety. No prepayment of the obligations secured by any Permitted Leasehold Mortgage shall be permitted without the payment of all sums due thereunder, including but not limited to the prepayment fees due in connection therewith.

(f) The Tenant's interest in the Lease and its leasehold estate are freely mortgageable and assignable by the Tenant to the Recognized Mortgagee. Notwithstanding the provisions of this Lease, including without limitation the provisions of Section 10.02 above, the Recognized Mortgagee and/or their successors, designees and assigns shall have the right, subsequent to an Enforcement Proceeding, to assign and sublet the Lease and the Leasehold Interest in this Lease without the consent of the Landlord provided that no such assignment, sublease or transfer shall be made to a Prohibited Person.

(g) Landlord shall, without charge, at any time and from time to time, within thirty (30) days after receipt of written request therefor from Tenant or from any Recognized Mortgagee or purchaser (or prospective Recognized Mortgagee or purchaser) of the leasehold estate, deliver, in recordable form, a duly executed and acknowledged certificate or statement to the parties requesting said certification or statement or to such other party, firm or corporation designated by Tenant or such Recognized Mortgagee, certifying:

(1) that this Lease is in full force and effect, or, if there has been any modifications, that the same is in full force and effect as modified, and stating any such modification;

- (2) the expiration date of the term of this Lease;
- (3) that the use charges are currently \$        ;
- (4) the dates to which the use charges and other charges payable hereunder by Tenant have been paid, and the amount of use charges and other charges, if any, paid in advance;
- (5) whether or not Tenant is in default under this Lease and, if so, specifying the nature thereof; and
- (6) as to Landlord's knowledge, any other matters relating to the status of this Lease as shall be reasonably requested by Tenant or any such Recognized Mortgagee or purchaser (or prospective Recognized Mortgagee or purchaser) from time to time.

(h) Tenant's interest in this Lease and the leasehold Estate are freely assignable by Tenant to such Recognized Mortgagee and a Recognized Mortgagee and/or their successors, designees and assigns shall have the right to assign and sublet Tenant's interest in this Lease and the leasehold estate without the consent of Landlord.

(i) Recognized Mortgagee, its successor, designees and/or assigns, shall have the right, but not the obligation, to exercise any and all rights of Tenant under this Agreement, either on their own behalf or on behalf of Tenant, and Landlord shall accept such performance as if exercised by Tenant.

Section 10.04. Sandwich Financing Lease.

In lieu of a Permitted Leasehold Mortgage, Tenant may request that Landlord execute a direct lease with an entity that would qualify as a Recognized Mortgagee under Section 10.03 of this Lease (the "Sandwich Financing Lessee"). Such Sandwich Financing Lessee shall be obligated to enter into a direct sublease with Tenant as security for any loan. Such Sandwich Financing Lessee shall be obligated to satisfy all terms, conditions, covenants, and agreements contained in this Lease, including, but not limited to, the payment of all Rental required hereunder. Notwithstanding the foregoing, the Guarantor shall remain directly liable to Landlord for all of the terms, conditions, covenants, and agreements contained in this Lease.

Section 10.05. Landlord.

Subject to Tenant's rights under Article 3 hereof, Landlord may transfer or assign its interests in the Premises and its interest under this Lease to any Person (other than a Prohibited Person), in whole or in part, at any time, in its sole discretion is capable of performing the Landlord's obligations hereunder. In such event, from and after the date of such assignment

or transfer, the term Landlord shall mean the assignee or transferee, and the assignor or transferor shall be, and hereby is, entirely freed and relieved of all agreements, covenants and obligations of Landlord hereunder to be performed on or after the date such transferee or assignee under such transfer or assignment has expressly assumed and agreed to carry out any and all agreements, covenants and obligations of Landlord hereunder occurring from and after the date of such assignment or transfer. Prior to any such assignment or transfer the Landlord shall have separately assessed the Premises and they shall have received their own tax lot designation so that the Premises are taxed separate and apart from any other parcel. Additionally, in the event that a mortgage on the fee estate underlying the Premises shall be made by the Landlord, the holder of such a mortgage shall enter into a non-disturbance agreement with the Tenant and the Recognized Mortgagee, whereby it is agreed that the Tenant and any other tenant under any of the foregoing shall not be joined as a party defendant in any foreclosure action which may be instituted by any such mortgagee by reason of a default under such fee mortgage and furthermore that the Lease shall not terminate by reason thereof and that upon any such foreclosure the fee mortgagee shall assume the obligations of the Landlord under the Lease. The Landlord shall deliver a copy of said non-disturbance agreement in form and content satisfactory to the Recognized Mortgagee upon its execution.

## ARTICLE 11

### TENANT ORGANIZATION

#### Section 11.01. Validity of Capital Transactions; Reporting.

Upon the written request of Landlord, but not more frequently than once during each Lease Year during the Term, Tenant shall deliver to Landlord a certificate, subscribed by a duly authorized representative, expressly referring to this Section 11.01, and setting forth the names, addresses and beneficial and record interest of all holders of all Equity Interests as of the first day of January of such Lease Year.

REPAIRS, MAINTENANCE, ETC.Section 12.01. Maintenance of the Premises, Etc.

Tenant shall take good care of the Premises, including, without limitation, to the extent they are a part of the Premises, the ceiling, floor, interior walls (except, prior to the Full Vacate Date, the Demising Wall), roof, lighting, vaults, sidewalks (to the extent ever constructed), curbs and the water, sewer and gas connections, HVAC system, pipes and mains appurtenant thereto only to the extent located within the Premises, and meters or submeters that exclusively serve the Building even if located outside of the Building. Tenant shall not commit and shall use all reasonable precautions to prevent, waste, damage or injury to the Premises (and, prior to the Full Vacate Date, all Common Facilities). All repairs and maintenance shall be made at no cost or expense to Landlord and shall be made in compliance with the Requirements and all materials therefor shall be substantially equal in quality and class to the conditions existing upon Commencement of the Term. As used in this Section, the term "repairs" shall include all necessary (a) replacements, (b) removals, (c) alterations, and (d) additions. Tenant shall have no obligation to make any repairs necessitated by Landlord's wrongful acts or omissions and it shall be Landlord's obligation, cost and expense to make any such repairs. Landlord and Lease Administrator, or any representative of Landlord and Lease Administrator, reserve the right to inspect the Premises to ensure proper maintenance and operation.

Notwithstanding anything to the contrary contained in this Section 12.01, (i) for all purposes of this Lease, the term Premises shall only mean the Existing Space until such time as the Full Vacate Date shall occur and Landlord shall have tendered possession of the balance of the Building to Tenant, (ii) in addition, the requirements and standard for the care and maintenance of the Premises shall not apply to the Rail Shed until such time as the Required Work applicable thereto is complete, provided that Tenant shall keep the Rail Shed free from nuisance and dangerous conditions, and (iii) prior to the Full Vacate Date, Landlord shall maintain the Premises and Common Facilities to the extent required in Section 12.05 hereof.

Section 12.02. Removal of Equipment.

Tenant shall not, without the consent of Landlord, remove or dispose of any Equipment unless such Equipment (a) is promptly replaced by Equipment of substantially equal utility and quality, or (b) is removed for repairs, cleaning or other servicing, provided Tenant reinstalls such Equipment on the Premises with reasonable diligence; except, however, Tenant shall not be required to replace any Equipment that has become obsolete, or that performed a function that has become obsolete, unnecessary or undesirable in connection with the operation of the Premises.

Section 12.03. Free of Dirt, Etc.

Tenant, at its sole cost and expense, shall at all times keep reasonably clean and free from dirt, rubbish, obstructions and encumbrances the Premises, including, after the Full Vacate Date, the Exterior Areas and the Common Facilities.

Section 12.04. No Obligation of Landlord to Repair or to Supply Utilities; Gas; Water.

(a) Except as otherwise expressly set forth herein, Landlord shall not be required to supply any facilities, services or utilities whatsoever to the Premises, and Landlord shall not have any duty or obligation to make any alteration, change, improvement, replacement, restoration or repair to the utility facilities and service at the Premises, and Tenant assumes the full and sole responsibility for the condition, operation, alteration, change, improvement, replacement, restoration, repair, maintenance and management of such facilities and service. Tenant shall pay directly to the companies supplying such utility services all charges for such utility services, as the same shall become due. Tenant shall, at its sole cost and expense, install meters for all such utility services including but not limited to, water, gas and electricity, and shall thereafter maintain such meters in good working order and repair and Tenant, at its sole cost and expense, shall procure all permits, approvals and licenses necessary to secure delivery of such utility services.

(b) Landlord and Lease Administrator shall have no obligation to provide any utility services to the Premises; and neither Landlord nor Lease Administrator shall have any responsibility or liability to Tenant or any third party in the event any such utility services are not provided to the Premises, or any part thereof, or maintained.

Section 12.05. Maintenance of the Common Facilities.

Prior to the Full Vacate Date, Landlord shall maintain and repair, or cause to be maintained and repaired the Common Facilities and the roof, roof membrane and any exterior portions or structural components of the Building and the Exterior Areas. From and after the Full Vacate Date, Tenant shall maintain and repair, or cause to be maintained and repaired, the entirety of the Premises, including the entire Building and Exterior Areas and there shall no longer be any areas constituting Common Facilities. Neither a default by any other tenant in the Building nor the existence of a vacancy in any other commercial space within the Building shall excuse Landlord from its obligation to maintain the Common Facilities pursuant to this Section 12.05 prior to the Full Vacate Date.

Section 12.06. Intentionally Omitted.

Section 12.07. Roof Warranty.

Landlord will assign or otherwise convey the existing twenty (20) year manufacturer's roof warranty (a copy of which, along with letters confirming the manufacturer's recognition of Tenant's ability to enforce the warranty, is annexed hereto as Exhibit E ) to Tenant. To the extent that any such warrant is not assignable by its terms, Landlord will take commercially reasonable steps to cause the applicable manufacturer to consent to an assignment thereof and, if necessary or if the warranty remains unassignable despite the efforts of Landlord, enforce the terms of such warranty diligently and in good faith to Tenant's benefit.

## ARTICLE 13

### TENANT'S WORK

Section 13.01. The Project.

Tenant shall redevelop the Building and such of the Exterior Areas and the Rail Shed in a manner approved by Landlord and Lease Administrator and necessary and appropriate to create a functioning facility for the Permitted Use (the "Project"). The Project will include the following "Work":

(a) The Required Work. Tenant shall (i) combine the current tenant spaces into one cohesive facility and refurbish the Building (the "Building Redevelopment") and (ii) redevelop the Rail Shed for additional cold storage or packaging and distribution space, including ancillary office space, or other Permitted Uses (the "Rail Shed Redevelopment") (the Building Redevelopment and Rail Shed Redevelopment shall collectively be referred to as the "Required Work"). At minimum, Tenant shall invest Seven Million Dollars (\$7,000,000) into the Project, pertaining to the Required Work. The Project shall adhere to zoning requirements applicable to the Premises (as same may be amended time to time, including variances obtained by Tenant's efforts). Title to any Capital Improvements constructed at the Premises as a result of the Project shall vest in the City upon their completion without any payment or allowance whatsoever to Tenant. Tenant shall obtain all approvals required for the Project, and Landlord and Lease Administrator shall cooperate therewith. The scope of work for the Required Work is attached as Exhibit B hereto.

(b) The Optional Work. Tenant may undertake a Building Expansion, in one or more stages, into the Exterior Areas currently used for parking (the "Optional Work") to the extent permitted under applicable Requirements.

(c) Substantial Completion of the Work. Subject to force majeure events, Tenant shall achieve Substantial Completion of the Building Redevelopment within twenty four (24) months of the Full Vacate Date and Tenant shall achieve Substantial Completion of the Rail Shed Redevelopment within thirty-six (36) months of the Commencement Date.

(d) Site Preparation Costs. Tenant shall be responsible for site preparation costs for the Project, including demolition.

(e) Approvals. Tenant is responsible for obtaining all zoning and other approvals necessary to apply for and obtain construction permits and certificates of occupancy for the Project, including, but not limited to, New York City Department of Buildings building permits and public design approval. All costs for all approvals shall be borne by the Tenant. Tenant is responsible for obtaining, and shall diligently pursue, any approvals required by the City Environmental Quality Review process. Landlord and Lease Administrator shall cooperate with Tenant in obtaining these approvals but all costs incurred will be paid by Tenant.

#### Section 13.02. Landlord's Approval.

Tenant shall promptly notify Landlord of Tenant's plans to perform any Restoration or Capital Improvement and include in such notice a detailed description of the proposed Capital Improvement or Restoration, including a signed and sealed copy of the plans and specifications, copies of any required permits, and copies of any additional insurance policies obtained in conjunction herewith. Within twenty (20) days of Landlord's receipt of such notice, Landlord shall consent to or deny Tenant's request, or request additional documentation on which to base its response. Should Landlord fail to respond within such twenty (20) day period, Tenant shall send a second notice. Landlord's failure to respond within five (5) business days to such second notice shall be deemed Landlord's approval of such Capital Improvement or Restoration as per the plans and specifications. At Tenant's option, title to any and all Capital Improvement or Restoration shall vest in Landlord or Tenant, provided that upon the expiration or termination of the Term of this Lease, title thereto shall automatically vest in Landlord, such vesting to be self-operative and effective without the need for any further documentation or agreement. For the purposes of this Lease, the definitions of "Capital Improvement" and "Restoration" will not include minor and routine repairs and maintenance. Tenant shall be permitted to install electric truck engine block warmers in parking areas of the Premises and Landlord's approval shall not be required therefor. Further, Tenant shall be permitted, as a part of its Work, to remove any railroad spurs, ties and any related apparatus and/or grading material located upon the Premises.

Tenant shall have the right to claim all deductions related to Capital Improvements on the Premises pursuant to generally accepted accounting principles and the Internal Revenue Code of 1986 (as amended to date).

In the event of a major emergency repair requiring Landlord's approval, such major repair may be made without Landlord's prior written consent. Documentation reflecting the situation and action taken must be submitted within ten (10) days following the emergency and Tenant may be required to retroactively correct major repairs made in an emergency context.

Section 13.03. Performance of Restorations and Work.

(a) All Restorations and Work shall be made in accordance with this Section 13.03.

(b) (i) All Restorations, and any Capital Improvement having a total cost in excess of Two Hundred and Fifty Thousand (\$250,000), shall be performed in accordance with plans and specifications approved by the Landlord or the Administrator. Tenant shall submit proposed plans and specifications for any Restoration or permitted Capital Improvement to the Administrator and shall promptly make any and all changes thereto as may be reasonably requested by the Administrator. Within twenty (20) business days of Landlord's receipt of such proposed plans and specifications, Landlord shall consent to or deny Tenant's request, or request additional documentation on which to base its response. Should Landlord fail to respond within such 20 day period, Tenant shall resend such proposed plans and specifications. Landlord's failure to respond within five (5) business days to such second submittal of the proposed plans and specifications shall be deemed approval of such Capital Improvement or Restoration as per the proposed plans and specifications. Tenant shall resubmit revised plans and specifications for the Administrator's review until the Administrator has approved a complete set of plans and specifications for the applicable Restoration or Capital Improvement; and

(ii) If any proposed Capital Improvement or Restoration has an estimated cost of \$250,000 or more, Tenant shall submit to Administrator at least thirty (30) days before commencement of such proposed Capital Improvement or Restoration all of the following:

(A) a stipulated sum or cost-plus contract, with a guaranteed maximum price, or other form of contract approved by Administrator, in form assignable to Landlord, made with a reputable and responsible contractor approved by Administrator, providing for the completion of the Capital Improvement or Restoration, in accordance with the plans and specifications approved by Administrator pursuant to subsection (b) above, as well as evidence reasonably satisfactory to Administrator of the availability of sufficient funds to complete the Capital Improvement or Restoration in accordance with the approved plans;

(B) a collateral assignment to Landlord of the contract so furnished, the assignment to be duly executed and acknowledged by Tenant and accepted by the contractor, and by its terms to be effective upon any termination or expiration of this Lease. The assignment shall also include that the benefit of all payments made on account of such contract, including payments made before the effective date of the assignment, shall accrue to Landlord. The assignment may include a provision that in order for the assignment to become effective Landlord must assume Tenant's remaining obligations under the assigned contract other than accrued obligations;

(C) funds sufficient to reimburse Landlord for the reasonable fees and expenses of any outside registered architect or licensed professional engineer selected by Landlord to review the plans and specifications therefor and to inspect the Capital Improvement or Restoration on behalf of Landlord; and

(D) payment and performance or completion bonds covering the Work or Restoration.

(c) In addition, all Work and Restorations shall be performed in accordance with or comply with the following:

(A) Tenant shall promptly commence and diligently prosecute to completion any Restoration or Capital Improvement;

(B) all work entailed by any such Restoration or Capital Improvement shall be performed in a good and workmanlike manner and in compliance with all applicable Requirements;

(C) Tenant shall not make any Capital Improvement or Restoration which would materially reduce or impair the value or utility or materially change or impair the use or usability of the Premises or any part thereof as a market under former Section 260 *et seq.* of the New York Agriculture and Markets Law;

(D) Tenant shall not make any Capital Improvement or Restoration which would impair the structural soundness or diminish the value of or cause permanent damage to the Premises or any part thereof;

(E) Tenant shall not make any Capital Improvement or Restoration which would give to any owner, lessee or occupant of any other property or to any other person or entity any easement, right-of-way or any other right over the Premises or any part thereof without the prior consent of Landlord;

(F) Tenant shall not make any Capital Improvement or Restoration until Tenant shall have procured and paid for, so far as the same may be required from time to time, all permits and authorizations of all municipal departments and governmental subdivisions having jurisdiction, including, but not limited to, building permits required by Landlord or by the Requirements;

(G) Tenant shall procure and maintain in full force and effect in connection with the construction work entailed in any Capital Improvement or Restoration the insurance coverages required to be maintained pursuant to Article 7 hereof, in each case naming the Guarantor, Landlord, Administrator and Apple as additional insureds; and

(H) the Premises shall at all times be free of liens, encumbrances, chattel mortgages, security agreements, financing statements and conditional bills of sale, for labor and materials supplied to the Premises; and

(I) Landlord shall have the right to inspect the Premises with respect to the Capital Improvements or Restoration at reasonable times upon reasonable notice to Tenant before entering the Premises for the purpose of such inspection, and no such inspection shall interfere with or delay the applicable Work in any material respect.

(d) Tenant shall not disrupt the business operations of any other tenant occupying the Building by interfering with cooling systems or interrupting electrical power of such tenants or materially obstructing such tenants' loading areas.

Section 13.04. Completion of Construction Work.

Upon substantial completion of a Restoration or a Capital Improvement having a total cost in excess of \$250,000, Tenant shall furnish Administrator with (a) a certification of the architect or a licensed professional engineer acceptable to Administrator (certified to Landlord and Administrator) that it has examined the applicable plans and specifications and that, in its best professional judgment, after diligent inquiry, to its best knowledge and belief, the Restoration or the Capital Improvement, as the case may be, has been substantially completed in accordance with the plans and specifications applicable thereto and, as constructed, the Restoration or Capital Improvement, as the case may be, complies with the Building Code of New York City and all other Requirements, (b) a copy or copies of the temporary or permanent (whichever is applicable, if any) Certificate(s) of Occupancy for the relevant portion of the Premises, (c) copies of official certificates evidencing compliance with all Requirements, if any and (d) the most current set of available architectural plans. Tenant shall further furnish Administrator with a complete set of "as built" plans, as of the date a temporary or permanent (whichever is applicable) Certificate of Occupancy is issued, as soon as such are prepared, but in no event later than thirty (30) days after a temporary or permanent (as applicable) Certificate of Occupancy is issued. Administrator shall have a, non-exclusive, irrevocable license to use such "as built" plans and survey for the purpose of completing the Work on the Premises without paying any additional cost or compensation therefor, subject to copyright and similar rights under applicable law of the architect and other Persons who prepared such plans and surveys.

Section 13.05 Recognized Mortgagee Rights in Project Documents.

The provisions governing the Work under this Lease and set forth in this Article 13 are in addition to and supplement the provisions set forth in the Permitted Leasehold Mortgage and the Loan Documents (as defined in the Permitted Leasehold Mortgage), including without limitation, the provisions of the Building Loan Agreement (as defined in the Permitted Leasehold Mortgage). Any assignment of construction contracts, plans and specifications or other construction related documents (as provided for in this Lease) to the Landlord shall be subject and subordinate to the assignment of such construction contract, plans and specifications and other construction related documents to the Permitted Leasehold Mortgagee pursuant to any such Loan Documents and, in the Event of a Default under the Permitted Leasehold Mortgage, the Permitted Leasehold Mortgagee shall have the right, but not the obligation, to utilize such contract, plans and specifications and other construction related documents to complete the Project prior to any use thereof by the Landlord.

REQUIREMENTS OF GOVERNMENTAL AUTHORITIESSection 14.01. Requirements.

(a) Obligation to Comply. In connection with the maintenance, management, use and operation of the Premises and Tenant's performance of each of its obligations as required pursuant to this Lease, Tenant shall, at its sole cost and expense, promptly comply with all Requirements, without regard to the nature of the work required to be done, whether extraordinary or ordinary, and whether requiring the removal of any encroachment, or affecting the maintenance, use or occupancy even though compliance with the provisions of this Section may interfere with the use and enjoyment of the Premises, and of the Premises, or involving or requiring any changes or additions in or to the Premises, and regardless of whether such changes or additions are required by reason of any particular use to which the Premises, or any part thereof, may be put by Tenant, provided that nothing herein shall make Tenant liable for the performance or costs associated with any work required that is related to the provision of utilities beyond their point of entry or connection with Tenant's service or distribution point. No actual or deemed consent to, approval of or acquiescence in any plans or actions of Tenant by Administrator, Landlord, in its proprietary capacity as Landlord under this Lease, or Landlord's designee, shall be relied upon or construed as being a determination that such are in compliance with the Requirements, or, in the case of construction plans, are structurally sufficient.

(b) Definition. "Requirements" as used in this Lease means:

(i) the Zoning Resolution of The City of New York, the Market Rules (as either of the foregoing may be amended and/or replaced) the laws referenced in Section 6.02 hereof, and any and all laws, rules, regulations, orders, ordinances, statutes, codes, executive orders, resolutions, and requirements of all Governmental Authorities (currently in force or hereafter adopted) applicable to the Premises or any street, road, avenue, service areas, or sidewalk comprising a part of the Premises, or any vault in or under the Premises, (including, without limitation, the Building Code of New York City, and any applicable equivalent, and the laws, rules, regulations, orders, ordinances, statutes, and codes, and any applicable Fire Rating Bureau or other body exercising similar functions);

(ii) any and all provisions and requirements of any property, casualty or other insurance policy required to be carried by Tenant under this Lease; and

(iii) the certificate or certificates of occupancy issued for the Premises or the Building.

DISCHARGE OF LIENS; BONDS

Section 15.01. Creation of Liens.

Tenant shall not create or cause to be created (a) any lien, encumbrance or charge upon this Lease, the leasehold estate created hereby, the income therefrom or the Premises or any part thereof, (b) any lien, encumbrance or charge upon any assets of, or funds appropriated to, Landlord, or (c) any other matter or thing whereby the estate, rights or interest of Landlord in and to the Premises or any part thereof might be impaired. Notwithstanding the foregoing, Tenant shall have the right to grant a leasehold mortgage and to execute Subleases as provided by, and in accordance with, the provisions of this Lease.

Section 15.02. Discharge of Liens.

If any mechanic's, laborer's, vendor's, materialman's or similar statutory lien (including tax liens, provided the underlying tax is an obligation of Tenant by law or by a provision of this Lease) not caused or suffered to be created by the Landlord is filed against the Premises or any part thereof, or if any public improvement lien created, or caused or suffered to be created by Tenant shall be filed against any assets of, or funds appropriated to, Landlord, then, Tenant shall, within forty-five (45) days after receipt of notice of the filing of such mechanic's, laborer's, vendor's, materialman's or similar statutory lien or public improvement lien, cause it to be vacated or discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. However, Tenant shall not be required to discharge any such liens if Tenant shall have (a) furnished Landlord with, at Tenant's option, a cash deposit, bond, letter of credit from an Institutional Lender (in form reasonably satisfactory to Landlord) or other security (such as a personal guaranty reasonably satisfactory to Landlord in an amount sufficient to discharge the lien with interest and penalties) and (b) brought an appropriate proceeding to discharge such lien and is prosecuting such proceeding with diligence and continuity; except that if, despite Tenant's efforts to seek discharge of the lien, Landlord reasonably believes such lien is about to be foreclosed and so notifies Tenant, Tenant shall immediately cause such lien to be discharged of record or Landlord may use the security furnished by Tenant in order to so discharge the lien.

Section 15.03. No Authority to Contract in Name of Landlord.

Nothing contained in this Lease shall be deemed or construed to constitute the consent or request of Landlord, express or implied, by implication or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement of, alteration to, or repair of, the Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for, or permit the rendering of, any services or the furnishing of materials that would give rise to the filing of any lien, mortgage or other encumbrance against the Premises or any part thereof or against assets of, or funds appropriated to, Landlord.

REPRESENTATIONSSection 16.01. No Brokers.

Each of Landlord and Tenant represents and warrants to the other that it has not dealt with any broker, finder or any other party entitled to a broker's or finder's fee, or other commission or compensation arising out of or in connection with the execution of this Lease. Each of Landlord and Tenant shall be liable for and shall indemnify the other (including Administrator and Apple, if applicable) against any and all brokerage commissions or other compensation due to any broker, finder or other party if such broker, finder or other party alleging that it has acted for or at the direction of such party. The provisions of this paragraph shall survive the expiration or termination of this Lease.

Section 16.02. Tenant's Acknowledgement of No Other Representations.

Tenant acknowledges, represents and confirms that it or its authorized representatives have visited the Premises and are fully familiar with the Premises, the physical condition thereof, and the reservations and restrictions described in Section 2.01 and in Article 24 of this Lease affecting the Premises. Tenant accepts the Premises in its existing condition and state of repair "as is", and Tenant further warrants and represents that: (a) except as may be otherwise expressly set forth in this Lease, no representations, statements, or warranties, express or implied, have been made by, or on behalf of, Landlord or Administrator with respect to the Premises or the transactions contemplated by this Lease, the status of title thereto, the physical condition thereof, the zoning or other laws, regulations, rules and orders applicable thereto, the use that may be made of the Premises, or the absence of "hazardous substances" (as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 USCA § 9601 *et seq.*) on or under the Premises, except that Landlord does represent and warrant to Tenant that, to the best of its knowledge, the Premises is not the subject of any ongoing legal proceeding or governmental environmental investigation pertaining to the alleged presence of a "hazardous substance", (b) Tenant has relied on no such representations, statements or warranties, and (c) except as may be otherwise expressly set forth in this Lease, Landlord shall not be liable in any event whatsoever for any latent or patent defects in the Premises.

Section 16.03. Tenant's Representations, Warranties, and Covenants.

Tenant represents, warrants, and covenants that: (a) none of the shareholders or officers of (i) Tenant, or (ii) to Tenant's knowledge, any entity having an ownership interest in Tenant, or in such other entity, are Prohibited Persons, and (b) no officer, agent, employee or representative of the City of New York has received or will receive any payment or other consideration for the making of this Lease and that no officer, agent, employee or representative of the City of New York has or will have any interest, directly or indirectly, in this Lease or the proceeds thereof. Tenant further represents, warrants and covenants that a true and accurate copy of the most current Organizational Documents of the Tenant have been submitted to the Landlord and that Tenant will, upon demand of Landlord, certify a list of its members and/or stockholders holding more than a 5% interest in Tenant, officers and directors. Tenant further represents, warrants, and covenants that at no time during the Term shall it admit into the Tenant entity as a member, stockholder or beneficial owner thereof any person who is a Prohibited Person, and it shall not engage a Prohibited Person to be an officer or director. Tenant covenants that, within thirty (30) days of demand by Landlord, Tenant will terminate the membership or stock ownership interest in Tenant (or any entity having an ownership interest in Tenant) and any

other involvement as a member, stockholder, officer or director of Tenant, of any Person which is a Prohibited Person or is subject to action under Section 36.03 hereof. The termination of any stock ownership interest shall be effected by assignment of such stock ownership interest, redemption or purchase of such stock ownership interest by the Tenant entity or by any other means satisfactory to Landlord so long as such stock ownership interest is not acquired directly or indirectly by any Person within the category of Prohibited Persons or by any Person subject to action under Section 36.03 hereof. Failure of Tenant to effect a termination of such person's or entity's ownership interest and involvement as a member, stockholder, officer or director in the Tenant entity shall constitute an Event of Default under Article 22 of this Lease. Landlord acknowledges that Dairyland is a public company and that Tenant cannot dictate, control or determine all holders of Equity Interests in such public company.

ARTICLE 17

LANDLORD NOT LIABLE FOR INJURY OR DAMAGE, ETC.

Landlord shall not be liable for any injury or damage to Tenant and Tenant shall not impede or seek recovery against Landlord in any action or claim brought by a third party for injury occurring on, in or about the Premises or the Property, nor for any injury or damage to the Premises or to any property belonging to Tenant or to any other Person that may be caused by fire or other casualty, by breakage, or by the use, misuse or abuse of any portion of the Premises or the Property or that may arise from any other cause whatsoever.

Landlord shall not be liable to Tenant and Tenant shall not impede or seek recovery against Landlord in any action or claim brought by a third party for any failure of water supply, gas or electric current, nor for any injury or damage to any property of Tenant or of any Person or to the Premises caused by or resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, flood, wind or similar storm or disturbance or by or from water, rain or snow which may leak or flow from the street, sewer, gas mains or subsurface area or from any part of the Property, or body of water under or adjacent to the Property, or by or from leakage of gasoline or oil from pipes, appliances, sewer or plumbing works therein or from any other place, nor for interference with light or other incorporeal hereditaments by any Person, or caused by any public or quasi-public work.

Notwithstanding anything to the contrary contained in this Article 17, Landlord shall be liable, subject to Landlord's rights under all other provisions of this Lease, for any injury or damage to Tenant, the Premises or any property located at the Premises belonging to Tenant or any Subtenant resulting directly from Landlord's or Landlord's agents, employees, servants, contractors or invitees, gross negligence or willful misconduct in connection with the performance of Landlord's obligations pursuant to this Lease, including, without limitation, Section 12.05.

ARTICLE 18

INDEMNIFICATION

Section 18.01. Obligation to Indemnify.

Tenant shall not do or permit any act or thing to be done upon the Premises, or any portion thereof, which subjects Landlord, the Administrator or Apple to any liability or responsibility for injury or damage to Persons or property or to any liability by reason of any violation of law or of any Requirement, but shall exercise such control over the Premises so as to protect fully Landlord, the Administrator and Apple against any such liability. To the fullest extent permitted by law, Tenant shall indemnify and save Landlord, the Administrator, Apple, and their respective officers, directors, employees, agents and servants (collectively, the "Indemnitees") harmless from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, reasonable architects' and attorneys' fees and disbursements, that may be imposed upon or incurred by or asserted against any of the Indemnitees by reason of any of the following:

(a) Construction Work. Tenant's construction work or any other work or act done in, on, or about the Premises or any part thereof by Tenant or Tenant's employees, agents, contractor's or invitees;

(b) Control. The control or use, non-use, possession, occupation, alteration, condition, operation, maintenance or management of the Premises or any part thereof or of any street, parcel, sidewalk, curb, vault, or space comprising a part thereof or immediately adjacent thereto if under the control of or caused by Tenant, including, without limitation, any penalties imposed by any Governmental Authorities in respect of any violation in connection with any of the foregoing;

(c) Acts or Failure to Act of Tenant/Subtenant. Any act or failure to act on the part of Tenant or any Subtenant or any of its or their respective partners, joint venturers, officers, shareholders, directors, agents, contractors, servants, employees, licensees or invitees with respect to management and/or control of the Premises;

(d) Accidents, Injury to Person or Property. Any accident, injury (including death at any time resulting therefrom) or damage to any Person or property occurring in, on, or about (i) the Premises or any part thereof, or (ii) in, on, or about any street, parcel, sidewalk, curb, vault, or space immediately adjacent to the Premises (to the extent that any such accident, injury or damage is attributable to the owner of the Premises);

(e) Lease Obligations. Tenant's failure to make any payment or to perform or comply with any of the other covenants, agreements, terms or conditions contained in this Lease on Tenant's part to be kept, observed, performed or complied with and/or the exercise by Landlord or its designee of any remedy provided in this Lease with respect to such failure;

(f) Lien, Encumbrance or Claim Against Premises. Any lien or claim that may be alleged to have arisen against or on the Premises, or any lien or claim created or permitted to be created by Tenant or any Subtenant or any of its or their partners, joint venturers, officers, shareholders, directors, agents, contractors, servants, employees, licensees or invitees against any assets of, or funds appropriated to, Landlord or any liability that may be asserted against Landlord with respect thereto;

(g) Default of Tenant. Any failure on the part of Tenant to keep, observe and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in any construction agreements, the Subleases or other contracts and agreements affecting the Premises, on Tenant's part to be kept, observed or performed;

(h) Execution, Delivery and Recording Fees. Any tax attributable to the execution, delivery or recording of this Lease or a memorandum thereof;

(i) Contest and Proceedings. Any contest or proceeding brought or permitted to be brought pursuant to the provisions of Article 33 hereof; or

Notwithstanding anything to the contrary set forth in this Article 18, Tenant shall not be required to indemnify any of the Indemnitees to the extent such liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges or expenses, including, without

limitation, reasonable architects' and attorneys' fees and disbursements, arise out of Landlord's or such Indemnitee's or Landlord's or such Indemnitees' agents, employees, contractors, or servant's negligence or misconduct. In addition, the liability of Tenant to indemnify, as hereinabove set forth, shall not extend to any matter against which an Indemnitee shall be effectively protected by insurance, provided, however, that if any such liability shall exceed the amount of the effective and collectable insurance in question, the said liability of Tenant shall apply to such excess. If the obligation or liability of Tenant, as set forth in any other part of this Lease, are less than or contradictory of this indemnity clause, the provisions of this clause shall be deemed and construed to be modified by such other parts. This indemnity shall not be deemed or construed to make Tenant liable for any matter that Landlord is obligated to do or omit by this Lease. Anything herein or in this Lease to the contrary notwithstanding, in the event that a Recognized Mortgagee shall acquire title to the Premises, or shall otherwise become liable for any obligations of the Tenant to the Landlord under this Lease, the Recognized Mortgagee shall have no obligation, nor incur any liability, beyond the Recognized Mortgagee's then interest, if any, in the Premises and the Landlord shall look exclusively to such interest of the Recognized Mortgagee if any, in the Premises for the payment and discharge of any obligations imposed upon the Recognized Mortgagee hereunder and the Recognized Mortgagee is hereby released or relieved of any other liability hereunder. The Landlord agrees that with respect to any money judgment which may be obtained or secured by the Landlord against a Recognized Mortgagee, the Landlord shall look solely to the estate or interest owned by any Recognized Mortgagee in the Premises and the Landlord will not collect or attempt to collect any such judgment out of any other assets of such Recognized Mortgagee.

Section 18.02. Contractual Liability.

The obligations of Tenant under this Article shall not be affected in any way by the absence of insurance coverage, or by the failure or refusal of any insurance carrier to perform an obligation on its part under insurance policies affecting the Premises, unless such failure or refusal by such carrier is due to the failure of the applicable Indemnitee to cooperate therewith.

Section 18.03. Defense of Claim, Etc.

If any claim, action or proceeding is made or brought against any of the Indemnitees by reason of any event to which reference is made in Section 18.01 hereof, then upon demand by Landlord, Tenant shall either resist, defend or satisfy such claim, action or proceeding in such Indemnitee's name, by the attorneys for, or approved by, Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance) or by such other attorneys as Landlord shall reasonably approve. Indemnitees shall provide Tenant with full cooperation in defending against such claim. The foregoing notwithstanding, upon consultation with Tenant or Tenant's carrier's retained counsel (if applicable), such Indemnitee or another Indemnitee may engage its own attorneys to defend such Indemnitee, or to assist such Indemnitee in such Indemnitee's defense of such claim, action or proceeding, as the case may be, and Tenant shall pay the reasonable fees and disbursements of such attorneys of such Indemnitee if it is determined that Landlord is not at fault in any way.

Section 18.04. Notification and Payment.

Each Indemnitee shall promptly notify Tenant of the incurrence by or assertion against such Indemnitee, or the imposition of any cost or expense as to which Tenant has agreed to indemnify such Indemnitee pursuant to any of the provisions of this Article 18. Tenant agrees to pay such Indemnitee all amounts due under this Article 18 within twenty (20) days after receipt of a detailed notice from Landlord advising that such payment has been determined by Landlord to be Tenant's obligation, and any non-payment thereof by Tenant shall constitute a Default for which Landlord may declare an Event of Default in accordance with the provisions of Section 22.01(c) hereof. Notwithstanding the foregoing, Tenant's failure to make the indemnification payment within the aforesaid 20-day period shall not constitute a Default should Tenant elect to challenge Landlord's determination by commencing an action for declaratory judgment within the 20-day period.

Section 18.05. Release.

Notwithstanding any provision herein to the contrary, Tenant hereby releases Landlord, Administrator and Apple from any and all liability associated with (i) any disturbance of Tenant's quiet enjoyment of the Premises resulting from, arising out of or in connection with, any delay in the adjustment of an insurance claim, selecting of contractors or in completion of any construction work on Landlord's part to be performed provided, however, that none of the foregoing are designed to harass Tenant and (ii) any disturbance of Tenant's quiet enjoyment by other tenants in the Building provided Landlord, in its capacity as Landlord, is taking reasonable steps to restore Tenant's quiet enjoyment of the Premises.

Section 18.06. Hazardous Substances

Tenant shall waive any claim for damages, contribution, indemnification or otherwise against Landlord or Lease Administrator, which Tenant may now or hereafter have or discover in connection with Hazardous Substances (as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 USCA § 9601 *et seq.*) on, in, at, under, beneath, emanating from or affecting the Premises, or in connection with any voluntary or required removal or remediation thereof.

Tenant agrees to indemnify, defend, reimburse, and hold harmless Landlord and Lease Administrator from and against any and all environmental liabilities. Notwithstanding the foregoing, with regard to any environmental liabilities arising as a result of conditions existing on the Premises prior to the Commencement Date ("Pre-existing Conditions"), such indemnification shall be limited to the actual costs of any clean up and remediation that is the consequence of construction at the Premises by Tenant, and shall not in any way include the costs of: (i) any clean up and remediation required as a result of Pre-existing Conditions prior to commencement of any construction at the Premises by Tenant, (ii) any clean up and remediation required as a result of Pre-existing Conditions that is not the direct consequence of construction at the Premises by Tenant, (iii) penalties imposed by any party, (iv) consequential damages, or (v) claims brought by any third party.

Section 18.07. Survival Clause.

The provisions of this Article 18 shall survive the Expiration Date.

ARTICLE 19

NO DISCRIMINATION; EMPLOYMENT GOALS

Section 19.01. No Discrimination.

Tenant agrees that it will comply with all applicable laws, ordinances and regulations relating to civil rights and Tenant agrees that it will not refuse to hire or employ, nor bar or discharge from employment, nor discriminate against any persons in compensation or in terms, conditions or privileges of employment because of age, race, creed, color, national origin, gender, sexual orientation, marital status or handicap.

Section 19.02. Intentionally Omitted.

ARTICLE 20

LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS

Section 20.01. Landlord's Right to Perform.

If the Tenant shall at any time fail to pay for or maintain any of the insurance policies required to be provided by Tenant pursuant to Article 7 hereof, or to make any other payment or perform any other act on its part to be made or performed hereunder, including, without limitation, the obligation to cause the discharge of liens pursuant to Article 15, then Landlord, after thirty (30) days' notice to Tenant (or, in case of any emergency or any other circumstances which may materially and adversely affect Landlord or Landlord's interest in the Premises, on such notice, or without notice, as may be reasonable under the circumstances), and without releasing Tenant from any obligation of Tenant hereunder and without waiving the right to terminate this Lease upon an Event of Default in accordance with the provisions hereof or any other right or remedy permissible hereunder, may (but shall not be required to):

(a) pay for and maintain any of the insurance policies required to be furnished by Tenant pursuant to Article 7 hereof, or

(b) make any other payment or perform any other act on Tenant's part to be made or performed as in this Lease provided, and may take all such actions as may be necessary

therefor. Notwithstanding the foregoing, except as otherwise expressly provided in this Lease, neither Landlord nor any agent, employee, contractor or any other person acting on Landlord's behalf may enter upon the Premises or any portion thereof for any such purpose.

Section 20.02. Amount Paid by Landlord as Additional Rental.

All reasonable sums so paid by Landlord and all reasonable costs and expenses incurred by Landlord in connection with the performance of any such act, together with interest thereon at the Late Charge Rate from the respective dates of Landlord's making of each such payment or incurring of each such cost and expense, shall constitute, following notice from Landlord to Tenant, "Additional Rental" under this Lease and shall be paid by Tenant to Landlord with and in addition to the Base Rent payable on the first day of the month following the giving of such notice but in any event, not less than ten (10) days after Tenant's receipt of notice for such payment.

Section 20.03. Waiver, Release and Assumption of Obligations.

Landlord's payment or performance pursuant to the provisions of this Article shall not be, nor be deemed to be (a) a waiver or release of the Default or Event of Default with respect thereto (or any past or future Default or Event of Default) or of Landlord's right to terminate this Lease in accordance with the provisions hereof and/or to take such other action as may be permissible hereunder, or (b) Landlord's assumption of Tenant's obligations to pay or perform any of Tenant's past, present or future obligations hereunder.

Section 20.04. Proof of Damages.

Landlord shall not be limited in the proof of any damages that it may claim against Tenant arising out of, or by reason of, Tenant's failure to provide and keep insurance in force in accordance with the provisions of this Lease to the amount of the insurance premium or premiums not paid. However, Landlord shall be entitled to seek, and if successful, to recover, as damages for such Default or Event of Default, the uninsured amount of any loss (up to the amount(s) of the coverage(s) required pursuant to this Lease) and damage sustained or incurred by it and the reasonable costs and expenses of any suit in connection therewith, including, without limitation, reasonable attorneys' fees and disbursements.

ARTICLE 21

TENANT'S DUE DILIGENCE

Section 21.01. Premises Accepted "As Is"

Tenant shall accept Premises in "as-is" and "as-zoned" condition and acknowledges and agrees that it (i) has inspected the condition of the Premises, (ii) will not make any claim that the Premises are not suitable for the Permitted Uses, and (iii) will not make any claim regarding the condition of the Premises. Neither Tenant, Landlord, Lease Administrator nor any of their representatives have made any representations or promises with respect to the physical condition of the Premises or any other matter or thing affecting or related to the Premises, except as herein expressly set forth and no rights, easements or licenses are acquired

by Tenant by implication or otherwise except as expressly set forth in the provisions of this Lease. Nothing herein is intended to or shall alter or diminish Landlord's repair and maintenance obligations under Article 12 (and 14 hereof, to the extent same are not Tenant's responsibility).

Section 21.02 Survey of Premises

Lease Administrator will provide Tenant with the most current survey of the Premises on file with Lease Administrator, should one exist.

Section 21.03 Due Diligence

Tenant will complete its due diligence of the Premises prior to entering into Lease. Tenant, and not the Landlord or Lease Administrator, shall be solely responsible for the payment of all costs and expenses incurred in the course of all due diligence activities, planning, design and construction of the Project, including reimbursement to Lease Administrator for any such costs expended by Lease Administrator. Said expenses are non-refundable and cannot be used as a credit against any amounts due and payable under this Lease. To facilitate Tenant's due diligence, Tenant shall be granted access to the Premises through a license agreement in form and substance reasonably acceptable to the parties.

Section 21.04 Asbestos Inspection

Tenant acknowledges that it has read and reviewed the Asbestos Inspection Report provided by Landlord and attached hereto as Exhibit D (the "Asbestos Report"). The Asbestos Report is for informational purposes only. Landlord, EDC, and/or Apple will not guarantee the accuracy of the findings contained in the Asbestos Report.

ARTICLE 22

EVENTS OF DEFAULT, CONDITIONAL LIMITATIONS, REMEDIES, ETC.

Section 22.01. Definition.

Each of the following events shall be an "Event of Default" hereunder:

(a) (i) if Tenant shall fail to make any payment (or any part thereof) of Rental as and when due hereunder and such failure shall continue for a period of fourteen (14) days after notice;

(ii) if Tenant shall fail to maintain the Premises as provided in Sections 12.01 and 12.03 hereof and if such failure shall continue for a period of fourteen (14) days after notice (unless such failure requires work to be performed, acts to be done or conditions to be removed which cannot, by their nature, reasonably be performed, done or removed within such fourteen (14) day period, in which case no Event of Default shall exist as long as Tenant shall have commenced curing the same within the fourteen (14) day period and shall diligently and continuously prosecute the same to completion within a reasonable period;

(iii) failure to obtain and maintain insurance policies required by Article 7, following two (2) business days' notice from Landlord;

(iv) failure to complete the Required Work as required by Section 13 (except to the extent delayed by force majeure), as evidenced by a temporary certificate of occupancy, provided that Tenant is diligently pursuing a certificate of occupancy, following ten (10) business days' notice from Landlord;

(b) if Tenant shall enter into (or permit to be entered into) a Capital Transaction or any other transaction, in violation of the provisions of this Lease and such Capital Transaction or other transaction shall not be made to comply with the provisions of this Lease or cancelled within ten (10) business days after Landlord's notice thereof to Tenant;

(c) if Tenant shall fail to observe or perform one or more of the other terms, conditions, covenants or agreements of this Lease, including but not limited to the Required Work, and such failure shall continue for a period of thirty (30) days after Landlord's notice thereof to Tenant specifying such failure (unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot, by their nature, reasonably be performed, done or removed within such thirty (30) day period, in which case no Event of Default shall be deemed to exist as long as Tenant shall have commenced curing the same within the thirty (30) day period and shall diligently and continuously prosecute the same to completion);

(d) to the extent permitted by law, if Tenant shall make an assignment for the benefit of creditors;

(e) to the extent permitted by law, if Tenant shall file a voluntary petition under Title 11 of the United States Code or if a petition under Title 11 of the United States Code shall be filed against Tenant and an order for relief shall be entered, or if Tenant shall file a petition or an answer seeking, consenting to or acquiescing in, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, state or other bankruptcy or insolvency statute or law, or shall seek, or consent to, or acquiesce in, or suffer the appointment of, any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant, or of all or any substantial part of its properties, or of the Premises or any interest of Tenant therein, or if Tenant shall take any partnership, joint venture or corporate action in furtherance of any action described in Sections 22.01(d) or 22.01(e) or this Section 22.01(f);

(f) to the extent permitted by law, if within sixty (60) days after the commencement of a proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, state or other bankruptcy or insolvency statute or law, such proceeding shall not be dismissed, or if, within one hundred twenty (120) days after the appointment, without the consent or acquiescence of Tenant, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of

Tenant, or of all or any substantial part of its properties, or of the Premises or any interest of Tenant therein, such appointment shall not be vacated or stayed on appeal or otherwise, or if, within one hundred twenty (120) days after the expiration of any such stay, such appointment shall not be vacated;

(g) if any of the representations made by Tenant herein are or shall become false or incorrect in any material respect and Tenant shall not have notified Landlord, in writing, within ten (10) days after Tenant became, or should have become, aware of such deviation;

(h) if a levy under execution or attachment shall be made against the Premises or any part thereof, the income therefrom, this Lease or the leasehold estate created hereby and such execution or attachment shall not be vacated, stayed or removed by court order, bonding or otherwise within a period of thirty (30) days after Tenant received notice thereof.

Section 22.02. Enforcement of Performance.

If an Event of Default occurs, Landlord may elect to proceed by appropriate judicial proceedings, either at law or in equity, to enforce performance or observance by Tenant of the applicable provisions of this Lease and/or to recover damages for breach thereof.

Section 22.03. Expiration and Termination of Lease.

(a) If an Event of Default occurs, Landlord, at any time thereafter, shall have the right, at its option, to give Tenant notice stating that this Lease and the Term shall terminate on the date specified in such notice (the "Conditional Limitation Notice"), which date shall not be less than ten (10) days after the giving of the notice (such ten (10) days, the "Conditional Limitation Period"). Upon the expiration of the Conditional Limitation Period this Lease and the Term and all rights of Tenant under this Lease shall expire and terminate as if the date specified in the Conditional Limitation Notice were the Expiration Date, and Tenant shall quit and surrender the Premises forthwith. If such termination is stayed by order of any court having jurisdiction over any case described in Sections 22.01(f) or (g) hereof or by federal or state statute, then following the expiration of any such stay, or if the trustee appointed in any such case, Tenant or Tenant as debtor-in-possession fails to assume Tenant's obligations under this Lease within the period prescribed therefor by law or within thirty (30) days after entry of the order for relief or as may be allowed by the court, or if the trustee, Tenant or Tenant as debtor-in-possession fails to provide adequate protection of Landlord's right, title and interest in and to the Premises and adequate assurance of the complete and continuous future performance of Tenant's obligations under this Lease as provided in Section 22.09 hereof, Landlord, to the extent permitted by law or by leave of the court having jurisdiction over such case, shall have the right, at its election, to terminate this Lease on five (5) days notice to Tenant, Tenant as debtor-in-possession or the trustee. Upon the expiration of the five (5) day period this Lease shall cease and Tenant, Tenant as debtor-in-possession and/or the trustee immediately shall quit and surrender the Premises.

(b) If this Lease is terminated as provided in Section 22.03(a) hereof:

(i) Landlord may, without notice, re-enter and repossess the Premises;

(ii) Tenant shall pay to Landlord all Rental payable under this Lease by Tenant to Landlord to the Expiration Date (except that in the case of any Imposition, such payment should be made in accordance with Section 5.01 hereof) and Tenant shall remain liable for all Rental thereafter falling due on the respective dates when such Rental would have been payable but for the termination of this Lease;

(iii) All undisbursed Insurance Proceeds, if any, from policies required to be carried by Tenant, up to such amounts as are necessary to satisfy all of Tenant's obligations to Landlord pursuant to this Lease, shall become the property of Landlord immediately upon termination of this Lease. Tenant hereby covenants to take all actions and execute all instruments and documents necessary to effectuate the intent of this provision. The covenant set forth in this Section 22.03(b)(iii) shall survive any termination or expiration of this Lease; and

(iv) Landlord may complete all construction work required to be performed by Tenant hereunder and may repair and alter any portion(s) of the Premises in such manner as Landlord may deem necessary or advisable without relieving Tenant of any liability under this Lease or otherwise affecting any such liability, and/or let or relet the Premises or any portion thereof for the whole or any part of the remainder of the Term or for a longer period, in Landlord's name, and out of any rent and other sums collected or received as a result of such reletting Landlord shall (A) first, pay to itself in respect of services rendered by third parties the reasonable cost and expense of termination of what would otherwise have constituted the unexpired portion of the Term, reentering, retaking, repossessing, repairing, altering and/or completing construction of any portion(s) of the Premises and the reasonable cost and expense of removing all persons and property therefrom, including in such costs reasonable brokerage commissions, legal expenses and reasonable attorneys' fees and disbursements, (B) second, pay to itself in respect of services rendered by third parties the reasonable cost and expense of completing any construction work required to be performed by Tenant hereunder, (C) third, pay to itself the reasonable cost and expense sustained in respect of services rendered by third parties in securing any new tenants and other occupants, including in such costs, reasonable brokerage commissions, legal expenses and reasonable attorneys' fees and disbursements and other expenses of preparing any portion(s) of the Premises, the cost and expense of operating and maintaining same and (D) fourth, pay to itself any balance remaining, which amount shall be credited against Tenant's obligations to Landlord under this Lease. Landlord shall in no way be responsible or liable for any failure to relet any portion(s) of the Premises or for any failure to collect any rent due on any such reletting, and no such failure to relet or to collect rent shall operate to relieve Tenant of any liability under this Lease or to otherwise affect any such liability.

Section 22.04. Receipt of Moneys after Notice of Termination.

No receipt of moneys by Landlord from Tenant after the termination of this Lease, or after the giving of any notice of the termination of this Lease, shall reinstate, continue or extend the Term or affect any notice theretofore given to Tenant, or operate as a waiver of the right of Landlord to enforce the payment of Rental payable by Tenant hereunder or thereafter falling due, or operate as a waiver of the right of Landlord to recover possession of the Premises by proper remedy. After the service of notice to terminate this Lease or the commencement of any suit or summary proceedings or after a final order or judgment for the possession of the Premises, Landlord may demand, receive and collect any moneys due or thereafter falling due without in any manner affecting the notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of the use and occupation of the Premises or, at the election of Landlord, on account of Tenant's liability hereunder.

Section 22.05. Waiver of Rights.

Tenant hereby expressly waives service of any notice of intention to re-enter provided for in any statute, or of the institution of legal proceedings in connection therewith and Tenant, for and on behalf of itself and all Persons claiming through or under Tenant, also waives and releases any and all rights (a) of redemption provided by any law or statute now in force or hereafter enacted or otherwise, or (b) of re-entry, or (c) of repossession, or (d) to restore the operation of this Lease, if Tenant is dispossessed by a judgment or by warrant of a court or judge or in case of re-entry or repossession by Landlord or in case of any expiration or termination of this Lease. The terms "enter", "re-enter", "entry" or "re-entry", as used in this Lease, are not restricted to their technical legal meanings. Tenant shall execute, acknowledge, and deliver within ten (10) days after request by Landlord any instrument evidencing such waiver or release that Landlord may request.

Section 22.06. Strict Performance.

No failure by either party to insist upon the other's strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy available to it hereunder, including, without limitation, Landlord's acceptance of full or partial Rental during the continuance of any Default or Event of Default, shall constitute a waiver of any such Default or Event of Default or of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or complied with by either party, and no Default or Event of Default by Tenant, shall be waived, altered or modified except by a written instrument executed by the other party. No waiver of any Default or Event of Default shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent Default or Event of Default.

Section 22.07. Right to Enjoin Defaults or Threatened Defaults.

In the event of Tenant's Default or threatened Default, Landlord shall be entitled to enjoin the Default or threatened Default and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or by this Lease, other remedies that may be

available to Landlord notwithstanding. Each right and remedy of Landlord provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute, and the exercise or beginning of the exercise by Landlord of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute shall not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute.

Section 22.08. Intentionally deleted.

Section 22.09. Remedies Under Bankruptcy and Insolvency Codes.

If an order for relief is entered or if any stay of proceeding or other act becomes effective against Tenant or Tenant's interest in this Lease in any proceeding which is commenced by or against Tenant under the present or any future Federal Bankruptcy Code or in a proceeding which is commenced by or against Tenant seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any other present or future applicable federal, state or other bankruptcy or insolvency statute or law, Landlord shall be entitled to invoke any and all rights and remedies available to it under such bankruptcy or insolvency code, statute or law or this Lease, including, without limitation, such rights and remedies as may be necessary to protect adequately Landlord's right, title and interest in and to the Premises or any part thereof and adequately assure the complete and continuous future performance of Tenant's obligations under this Lease. Adequate protection of Landlord's right, title and interest in and to the Premises, and adequate assurance of the complete and continuous future performance of Tenant's obligations under the Lease, shall include, without limitation, all of the following requirements:

- (a) that Tenant shall comply with all of its obligations under this Lease;
- (b) that Tenant shall continue to use the Premises in the manner required by this Lease;
- (c) that Landlord shall be permitted to supervise the performance of Tenant's obligations under this Lease;
- (d) that Tenant shall hire such security personnel as may be necessary to insure the adequate protection and security of the Premises;

(e) that Tenant shall pay Landlord, within thirty (30) days after entry of such order or the effective date of such stay, as partial adequate protection against future diminution in value of the Premises and adequate assurance of the complete and continuous future performance of Tenant's obligations under this Lease, an additional sum (the "Bankruptcy Security") to be in an amount acceptable to Landlord, but in no event less than the Base Rent payable hereunder, for the then current Lease Year;

(f) that Tenant shall have and will continue to have unencumbered assets after the payment of all secured obligations and administrative expenses to assure Landlord that sufficient funds will be available to fulfill the obligations of Tenant under this Lease;

(g) that Landlord shall be granted a security interest acceptable to it in property of Tenant to secure the performance of Tenant's obligations under this Lease; and

(h) that if Tenant's trustee, Tenant or Tenant as debtor-in-possession shall assume this Lease and propose to assign it (pursuant to Title 11 U.S.C. § 365, as it may be amended) to any Person who shall have made a bona fide offer therefor, the notice of such proposed assignment, giving (i) the name and address of such Person, (ii) all of the terms and conditions of such offer, and (iii) the adequate assurance to be provided Landlord to assure such Person's future performance under the Lease, including, without limitation, the assurances referred to in Title 11 U.S.C. § 365(b), as it may be amended, shall be given to Landlord by the trustee, Tenant or Tenant as debtor-in-possession, as applicable, no later than twenty (20) days after receipt by the same of such offer, but in any event no later than ten (10) days before the date the trustee, Tenant or Tenant as debtor-in-possession shall make application to a court of competent jurisdiction for authority and approval to enter into such assignment, and Landlord shall thereupon have the prior right and option, to be exercised by notice to the trustee, Tenant or Tenant as debtor-in-possession, given at any time before the effective date of such proposed assignment, to accept an assignment of this Lease upon the same terms and conditions and for the same consideration, if any, as the bona fide offer made by such Person, less any brokerage commissions which may be payable by Tenant out of the consideration to be paid by such Person for the assignment of this Lease.

Section 22.10. Intentionally Omitted

Section 22.11. Funds held by Depository.

If this Lease shall terminate as a result of an Event of Default (and same is not then subject to continuing adjudication), any undisposed Insurance Proceeds from policies required to be carried by Tenant held by Depository up to such amounts as are necessary to satisfy all of Tenant's obligations to Landlord pursuant to this Lease shall be paid to Landlord free of any claim by Tenant, or any Person claiming through Tenant.

## ARTICLE 23

### NOTICES

Section 23.01. All Notices, Communications, Etc. in Writing.

Whenever it is provided herein that notice, demand, request, consent, approval or other communication shall or may be given to, or served upon, either of the parties by the other, or whenever either of the parties desires to give or serve upon the other any notice, demand, request, consent, approval or other communication with respect hereto or to the Premises, each such notice, demand, request, consent, approval or other communication shall be in **writing** and shall be effective for any purpose only if given by US Mail, certified, postage prepaid, return receipt requested, or by Airborne Express, Federal Express, UPS, Express Mail or other nationally recognized overnight delivery service that provides a signed receipt to the sender, and shall be deemed given and received on the date actually received or, if delivery is refused, on the date of such refusal, and addressed as follows:

(a) If to Tenant, to:

c/o Dairyland USA Corporation  
100 East Ridge Road  
Ridgefield, Connecticut 06877  
Attn: Alexandros Aldous, General Counsel and Corporate Secretary

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with a copy to

Reed Smith LLP

599 Lexington Avenue

New York, New York 10022

Attn: Joseph M. Marger, Esq./Real Estate Dept. and Constantine Karides, Esq.

or to such other address and attorneys as Tenant may from time to time designate by notice given to Landlord with the notice provisions hereof. Any notice required or permitted to be given hereunder by Tenant may be given by the attorneys for Tenant with the same force and effect as if given by Tenant directly.

(b) If to Landlord:

New York City Department of Small Business Services  
110 William Street  
New York, New York 10038  
Attention: General Counsel

with a copy to each of the following:

New York City Economic Development Corporation  
110 William Street  
New York, New York 10038  
Attention: Executive Vice President,  
Asset Management

and

Economic Development Corporation  
110 William Street  
New York, New York 10038  
Attention: General Counsel

and

The New York City Law Department  
100 Church Street  
New York, New York 10007  
Attn.: Chief, Economic Development Division

or to such other address(es) and attorneys as Landlord may from time to time designate by notice given to Tenant in accordance with the notice provisions hereof.

#### ARTICLE 24

##### NO SUBORDINATION

Section 24.01 Landlord's interest in the Premises and in this Lease, as the same may be modified, amended or renewed, shall not be subject or subordinate to (a) any mortgage now or hereafter existing, (b) any other liens or encumbrances hereafter affecting Tenant's interest in this Lease and the leasehold estate created hereby, or (c) any Sublease or any mortgages, liens or encumbrances now or hereafter placed on any Subtenant's interest in the Premises.

Section 24.02 This Lease and the leasehold estate of Tenant created hereby and all rights of Tenant hereunder are and shall be subject to the reservations and restrictions set forth in Section 2.01 of this Lease and the following:

(a) Any state of facts that are shown on the survey provided to Tenant by Lease Administrator pursuant to Section 21.02 of this Lease and attached as Exhibit A;

(b) Any building restrictions and regulations now or hereafter in force and present and future zoning laws, ordinances, resolutions and regulations of all boards, bureaus, commissions and bodies of any municipal, county, state or federal sovereigns now having or hereafter acquiring jurisdiction of the Premises and the use and improvement thereof;

(c) Rights, easements, licenses or privileges to use vaults, areas, tunnels, ramps or structures under highways, roads, streets, avenues or sidewalks on which the Premises abut, and consents or grants prior to the date of this Lease for the erection of any structures on, under or above said highways, roads, streets, avenues or sidewalks and any grants, easements, licenses or consents with respect to present or future sewers, public utility lines, pipes, conduits and equipment provided, however, that this subparagraph (b) shall not constitute a waiver of Tenant's rights under Article 9 hereunder provided further that no such Easements, in the aggregate, shall materially and adversely affect the value or utility of Tenant's leasehold estate or prohibit or materially interfere with access to, or use of, the Premises for the Permitted Uses.

(d) Violations of law, ordinances, regulations, restrictions, orders or requirements, if any, whether or not of record and whether or not the same might be disclosed by an examination and inspection or search of the Premises, noted or issued by any federal, state, municipal or other governmental department or authority having jurisdiction, as the same may exist on the Commencement Date of this Lease (it being understood that the existence of any such violations prior to July 27, 2001, if not attributable to Tenant's acts or omissions, shall not become Tenant's obligation to discharge by virtue of this paragraph) provided that no such Violations shall prevent Tenant's access to or use of the Premises for the Permitted Uses or prevent Tenant from obtaining (or material impair Tenant's ability to obtain) permits for the Required Work;

(e) Dedications, restrictions, covenants, consents, easements and agreements of record, if any, made or given by any prior owners of the Premises, provided that no such dedications, restrictions, covenants, consents, easements and agreements of record shall materially and adversely affect the value or utility of Tenant's leasehold estate or prohibit or materially interfere with access to, or use of, the Premises for the Permitted Uses;

(f) The condition and state of repair of the Premises on the Commencement Date of this Lease;

(g) Any encroachments existing on the Commencement Date of this Lease that are disclosed on the survey or constitute an exception to Title, or are visible upon reasonable inspection;

(h) An easement reserved for Landlord, its tenants and designees to repair, maintain or perform work on or under any present or future utility lines on the Premises or Common Facilities, including, without limitation, electrical lines, provided that same shall not materially and adversely affect the value or utility of Tenant's leasehold estate or prohibit or materially interfere with access to, or use of, the Premises for the Permitted Uses;

(i) An easement for the City, its agents and representatives, to construct, install, replace, repair and/or perform any other work on any present or future sewer, water line or any other public utility or improvement, including, but not limited to, an extension of a sewer easement for the New York City Department of Environmental Protection labeled as the "Easement to the City of New York to be Retained" in Exhibit A, provided that same shall not materially and adversely affect the value or utility of Tenant's leasehold estate or prohibit or materially interfere with access to, or use of, the Premises for the Permitted Uses; and

(j) An easement for the City, its agents and representatives, or Consolidated Edison or its agents or representatives, to monitor and perform any work related to a voluntary clean-up program, provided that same shall not materially and adversely affect the value or utility of Tenant's leasehold estate or prohibit or materially interfere with access to, or use of, the Premises for the Permitted Uses.

## ARTICLE 25

### STREET WIDENING

#### Section 25.01. Proceedings for Widening Street.

If any proceedings are instituted or orders made for the widening or other enlargement of any street contiguous to the Premises requiring removal of any projection or encroachment from the Premises on, under or above any such street, or any changes or alterations upon the Premises, or in the appurtenant sidewalks, grounds, parcels, areas, vaults, gutters, alleys, curbs or other appurtenances, subject to Tenant's rights pursuant to this Lease, Tenant shall cooperate in a reasonable and prompt manner with such requirements, at Tenant's sole cost and expense. If Tenant shall fail to so reasonably cooperate with such requirements then such failure, following thirty (30) days notice, shall constitute an Event of Default hereunder; provided that nothing herein shall be deemed to imply or constitute a waiver of Tenant's right to contest in good faith and by appropriate proceeding any proposed taking or the amount of compensation therefor as provided in Sections 25.02 and 33.02 below.

#### Section 25.02. Contest of Proceedings.

Tenant shall be permitted to contest in good faith any proceeding or order to which Section 25.01 pertains, provided that such contest shall be brought in accordance with the provisions of Section 33.02 hereof as though Tenant were contesting a Requirement thereunder. Tenant may directly contest such proceeding or order in accordance with the provisions of Section 33.02.

#### Section 25.03. Distribution of Award.

Any award made or damages paid in connection with such proceedings shall be deemed to be an award made in connection with a Partial Taking (other than a temporary Taking) and shall be first paid to Tenant to the extent of its reasonable costs and expenses actually incurred in effecting compliance therewith and the remainder shall be paid, distributed and applied in accordance with provisions of Section 9.02(b) hereof.

ARTICLE 26

EXCAVATIONS AND SHORING

In accordance with Section 26-229 of the Administrative Code of the City, if any excavation is contemplated for construction or other purposes upon property adjacent to the Premises, Tenant, at its option, shall either:

(a) afford to Landlord, or, at Landlord's option, to the Person or Persons causing or authorized to cause such excavation, the right to enter upon the Premises in a reasonable manner upon reasonable notice for the purpose of doing such work, at Landlord's or such other Person's expense, as may be necessary to preserve any of the walls of the Premises from injury or damage and to support them by proper foundations. If so requested by Tenant, such entry and work shall be done in the presence of a representative of Tenant, provided that such representative is available when the entry and work are scheduled to be done, and in all events such work shall be performed with reasonable diligence, in accordance with, and subject to, any applicable Requirements and, to the fullest extent possible, in a manner reasonably designed to minimize any interference with the on-going operations of Tenant and Subtenants; or

(b) perform or cause to be performed, at Landlord's expense, unless otherwise agreed in writing, all such work as may be necessary to preserve any of the walls of the Building from injury or damage and to support them by proper foundations.

Tenant shall not, by reason of such excavation or work (except to the extent Landlord, Administrator or the agents of either were grossly negligent in their performance of such work), have any claim against Landlord for damages or for indemnity or for suspension, diminution, abatement or reduction of the Rental payable by Tenant hereunder.

ARTICLE 27

INTENTIONALLY OMITTED

ARTICLE 28

CONSENTS AND APPROVALS

Section 28.01. Effect of Granting or Failure to Grant Approvals or Consents.

All consents and approvals which may be required under this Lease shall not be unreasonably withheld, conditioned or delayed, except where it is expressly provided herein that such consent or approval is to be given in Landlord's sole discretion or in Landlord's judgment, determination or at Landlord's option, and shall, as a condition of their effectiveness, be in writing. The granting of any consent or approval by a party to perform any act requiring consent or approval under the terms of this Lease, or the failure on the part of a party to object to any such action taken without the required consent or approval, shall not be deemed a waiver by the party whose consent was required of its right to require such consent or approval for any further similar act.

SURRENDER AT END OF TERM

Section 29.01. Surrender of Premises.

Upon the Expiration Date (or upon a re-entry by Landlord upon the Premises pursuant to Article 22 hereof), Tenant, without any payment or allowance whatsoever by Landlord, shall surrender the Premises to Landlord in reasonably good order, condition and state of repair, reasonable wear and tear, and casualty for which Tenant is not responsible to restore under this Lease, excepted, and free and clear of all Subleases, liens and encumbrances of any Person claiming by, through or under Tenant. Tenant hereby waives any notice now or hereafter required by law with respect to vacating the Premises on the Expiration Date. Notwithstanding anything in this Article 29 or elsewhere in this Lease, Tenant shall have no liability for any restoration of the Premises upon the expiration of this Lease or to otherwise remove any fixtures, Alterations or betterments to the Premises, it being agreed that Tenant's obligation shall be to remove Tenant's Personal Property only.

Section 29.02. Delivery of Subleases, Etc.

Upon the Expiration Date (or upon a re-entry by Landlord upon the Premises pursuant to Article 22 hereof), Tenant shall, upon written request of Landlord, deliver to Landlord, to the extent any Subleases are still in force and effect, (i) executed counterparts of all Subleases, (ii) any service and maintenance contracts then affecting the Premises, (iii) any warranties and guarantees which Tenant has received in connection with any work or services performed or Equipment installed in or on the Premises, and to the extent same are assignable, a duly executed assignment thereof, without recourse except as provided in Section 37.06(b), to Landlord, and (iv) all maintenance records for the Premises in Tenant's possession and control, and any and all other documents of every kind and nature whatsoever relating to the operation and the condition of the Premises which are in Tenant's control at such time (or copies thereof, to the extent Tenant is required by law or Accounting Principles to retain the originals).

Section 29.03. Trade Fixtures and Tenant's Property.

Tenant, or any Subtenant which entered into a Sublease in accordance with the provisions of this Lease, may remove their respective Trade Fixtures and Tenant's Property but upon removal of any Trade Fixture or Tenant's Property from the Premises, Tenant shall immediately and at its sole expense repair and restore, or cause to be repaired and restored, the affected portion of the Premises to a completed and functional condition, reasonable wear and tear excepted, and repair any damage to the Premises occurring during such removal. Any Trade Fixtures or Tenant's Property which shall remain on the Premises after the Expiration Date (or upon a re-entry by Landlord upon the Premises pursuant to Article 22 hereof) and after the removal of Tenant or such Subtenant from the Premises, may, at the option of Landlord, be deemed to have been abandoned by Tenant or such Subtenant, and either may be retained by

Landlord as its property or be disposed of at Tenant's expense without accountability, in such manner as Landlord may see fit. Landlord shall not be responsible for any loss or damage occurring to any such Trade Fixtures or Tenant's Property.

Section 29.04. Survival Clause.

The provisions of this Article shall survive the Expiration Date.

ARTICLE 30

ENTIRE AGREEMENT

This Lease, together with the Exhibits hereto, contains all of the promises, agreements, conditions, inducements and understandings between Landlord and Tenant concerning the Premises, and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, expressed or implied, between them other than as expressly set forth herein or as may be expressly contained in any enforceable written agreements or instruments executed simultaneously herewith by the parties hereto.

ARTICLE 31

QUIET ENJOYMENT

Landlord covenants that, as long as Tenant faithfully shall perform the agreements, terms, covenants and conditions hereof, Tenant shall and may, subject to the exceptions, reservations, terms and conditions of this Lease, peaceably and quietly have, hold and enjoy the Premises for the Term without molestation or disturbance by or from Landlord or any Person claiming through or under Landlord. This covenant shall run with the land and shall bind Landlord (and all assigns and successors of Landlord) and shall inure to the benefit of Tenant (and all assigns and successors of Tenant).

ARTICLE 32

USE OF DEVELOPMENT RIGHTS

Tenant agrees that Landlord may execute any declaration of zoning lot restrictions, zoning lot development agreement, and other necessary documents that are entered into for the purpose of utilizing the development rights attributable to the Premises in excess of those assigned to the Project without the joinder, waiver, consent or other act of Tenant, provided that such documents do not compromise Tenant's Permitted Use of Premises, or reduce the floor area available on the zoning lot for Tenant's Permitted Uses.

ADMINISTRATIVE AND JUDICIAL PROCEEDINGS, CONTESTS, ETC.Section 33.01. Imposition Contest Proceedings.

Tenant shall have the right to contest, at its sole cost and expense, the amount or validity, in whole or in part, of any Imposition (which, pursuant to this Lease are Tenant's obligation to comply with) by appropriate proceedings diligently conducted in good faith, in which event, notwithstanding the provisions of Section 5.01 hereof, payment of such Imposition may be postponed if, and only as long as:

(a) neither the Premises nor any part thereof, could be, by reason of such postponement or deferment, in the judgment of Landlord, in danger of being forfeited and Landlord is not in danger of being subjected to criminal liability or penalty or civil liability or penalty in excess of the amount for which Tenant has furnished security as provided in Section 33.01(b) by reason of nonpayment thereof; and

(b) Tenant has either (i) deposited cash, or (alternatively, at Tenant's option) given to Landlord a letter of credit in form and substance reasonably satisfactory to Landlord, issued by an Institutional Lender located in New York City, in the amount so contested and unpaid together with all interest and penalties in connection therewith and all charges relating to such contested Imposition that may or might, in Landlord's judgment, be assessed against, or become a charge on, the Premises or any part thereof in or during the pendency of such proceedings, or (ii) provided other equivalent security in form, substance and amount, and on terms, satisfactory to Landlord. Upon the termination of such proceedings, Tenant shall pay the amount of such Imposition or part thereof as finally determined in such proceedings, the payment of which was deferred during the prosecution of such proceedings, together with any costs, fees (including, without limitation, reasonable attorneys' fees and disbursements), interest, penalties or other liabilities which are Tenant's obligation to pay pursuant thereto in connection therewith, and, upon such payment, deposited with it with respect to such Imposition, together with the interest, if any, earned thereon and Landlord shall return any form of security being held by it together with interest, if any, earned thereon. If Tenant shall not pay the amounts referred to in the preceding sentence of this paragraph, then Depository shall, at Landlord's direction, disburse any moneys deposited with it by Tenant pursuant to the first sentence of this paragraph directly to the Person to whom or to which such Imposition is payable, and the Landlord shall likewise be entitled to apply the proceeds of any security deposited with it by Tenant pursuant to said sentence to such Person in payment of said amounts. Tenant shall remain liable for any unpaid balance of said amounts remaining after application by Depository or Landlord as aforesaid, and Tenant shall pay said balance to Landlord or the Person entitled to receive it within ten (10) days after Landlord's demand. If at any time during the continuance of such proceedings Landlord, in its sole judgment, shall deem insufficient the amount or nature of the security deposited, Tenant, within ten (10) days after Landlord's demand, shall make an additional deposit with Depository of such additional sums or deliver to Landlord such other acceptable security as Landlord may request, and upon failure of Tenant to so do, the amount theretofore deposited (or made available by alternative security), together with the interest, if any, earned thereon, may be applied by Depository (or Landlord, if it is the holder of the

security) to the payment, removal and discharge of such Imposition and the interest and penalties in connection therewith and any costs, fees (including, without limitation, reasonable attorneys' fees and disbursements) or other liability accruing in any such proceedings and the balance, if any, remaining thereafter, together with the interest, if any, earned thereon and remaining after application by Depository or Landlord as aforesaid, shall be returned to Tenant or to the Person entitled to receive it. If there is a deficiency, Tenant shall pay the deficiency to Landlord or the Person entitled to receive it, within ten (10) days after Landlord's demand.

Section 33.02. Requirement Contest.

Tenant shall have the right to contest the validity of any Requirement or the application thereof (including any proceeding under Article 25 hereof). During such contest, compliance with any such contested Requirement may be deferred by Tenant on the condition that before instituting any such proceeding, Tenant, except to the extent that compliance with such Requirement is the obligation of Landlord pursuant to operation of Section 12.05 of this Lease, shall furnish a cash deposit to Depository or, alternatively at Tenant's option, furnish to Landlord a letter of credit or other security, securing compliance with the contested Requirement and payment of all interest, penalties, fines, civil liabilities, fees and expenses in connection therewith, all such forms of security to be satisfactory to Landlord in form, substance, amount, and identity of the issuing party. Any such proceeding instituted by Tenant shall be commenced as soon as is possible after the issuance of any such contested Requirement and shall be prosecuted with diligence to final adjudication; settlement, compliance or other mutually acceptable disposition of the Requirement so contested. The furnishing of any bond, deposit, letter of credit or other security notwithstanding, Tenant shall comply with any such Requirement in accordance with the provisions of Section 14.01(a) hereof if the Premises, or any part thereof, are in danger of being forfeited or if Landlord is in danger of being subjected to criminal liability or penalty, or civil liability in excess of the amount for which Tenant shall have furnished security as hereinabove provided, by reason of noncompliance therewith, or if failure to comply is hazardous to persons or property or would violate any mortgage or insurance policy provisions.

Section 33.03. Landlord's Participation in Contest Proceedings.

Landlord shall not be required to join in any action or proceeding brought by Tenant referred to in this Article or permit the action to be brought by Tenant in Landlord's name unless the provisions of any law, rule or regulation at the time in effect require that such action or proceeding be brought by and/or in the name of Landlord. If so required, Landlord shall join and cooperate in such proceedings or permit them to be brought by Tenant in Landlord's name, in which case Tenant shall pay all costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by Landlord in connection therewith.

ARTICLE 34

INVALIDITY OF CERTAIN PROVISIONS

If any term or provision of this Lease or the application thereof to any Person or circumstances shall, to any extent, be invalid and unenforceable, the remainder of this Lease, and the application of such term or provision to Persons or circumstances other than those as to which it is held invalid and unenforceable, shall not be affected thereby and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

ARTICLE 35

FINANCIAL REPORTS

Section 35.01. Financial Records/Audit.

Upon written request from Landlord, Administrator, Apple or any City agency or other Governmental Authority, Tenant shall furnish to Landlord at any time that the Premises are used such that, if Tenant owned fee title to the Premises, the Premises would be "income-producing property" as that term is used in City Administrative Code Section 11-208.1 (or successor thereto), income and expense statements substantially similar to those required by such code section (or successor thereto) as if Tenant were the "owner" of the Premises as such term is used in said Section 11-208.1, such statements to be submitted within the time periods and to the address provided for in said Section 11-208.1 and such statements to be submitted notwithstanding that the City holds fee title to the Premises. Landlord and/or Lease Administrator may request to review and audit current and past financial statements for the Project, which Tenant shall produce, subject to reasonable prior notice. Notwithstanding any of the foregoing to the contrary, so long as Tenant or the Guarantor or its parent company is either a public company or a publicly reporting and filing company, to the extent financial information as to Tenant or Guarantor which Tenant would be otherwise required to deliver hereinabove is available to Landlord via EDGAR or other online service, then Landlord agrees that it shall obtain such financial information through such service and Tenant shall not be required to make the physical deliveries required hereinabove, provided that if Landlord requests financial information that is unavailable on such online services, Tenant shall deliver such financial information to Landlord with the understanding that such financial information shall be kept confidential by Landlord.

Section 35.02. Survival Clause.

The obligations of Tenant under this Article shall survive the Expiration Date.

INVESTIGATIONS, SOLICITATIONS, ETC.

Section 36.01. Cooperation by Tenant.

Tenant shall cooperate fully and faithfully with any investigation, audit or inquiry with respect to this Lease or the Premises conducted by any Governmental Authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a Governmental Authority that is a party in interest to this Lease. If:

(a) any Person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other Governmental Authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State of New York or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, EDC or any local development corporation, or any public benefit corporation organized under the laws of the State of New York, or

(b) any Person refuses to testify with respect to this Lease or the Premises for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a Governmental Authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of a Governmental Authority that is a party in interest in, and is seeking testimony concerning the award of, or performance under this Lease,

then the commissioner or agency head whose agency is a party in interest to the submitted bid, submitted proposal, transaction, contract, lease, permit or license shall convene a hearing, upon not less than five (5) days written notice to the parties involved, to determine if any penalties should attach for the failure of a Person to testify.

Section 36.02. Intentionally Omitted

Section 36.03. Penalties.

The penalties which may attach after a final determination by the commissioner or agency head may include but shall not exceed:

(a) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any Person, or any entity of which such Person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City or EDC; and/or

(b) The cancellation or termination of any and all such existing City or EDC contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Lease, nor the proceeds of which pledged, to an unaffiliated and unrelated Institutional Lender for fair value prior to the issuance of the notice scheduling the hearing, without the City or EDC incurring any penalty or damages on account of such cancellation or termination.

Section 36.04. Criteria for Determination.

The commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in subsections (a) and (b) below. He or she may also consider, if relevant and appropriate, the criteria established in subsections (c) and (d) below in addition to any other information which may be relevant and appropriate:

(a) The entity's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge or disassociation of any Person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

(b) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

(c) The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.

(d) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under Section 36.03 above, provided that the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in Section 36.02 above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

Section 36.05. Definitions.

As used in this Article:

(a) The term "license" or "permit" shall mean a license, permit, franchise or concession not granted as a matter of right.

(b) The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as partner, director, officer, principal, or employee.

(c) The term "entity" shall mean any firm, partnership, corporation, association or Person that receives monies, benefits, licenses, leases or permits from or through the City or otherwise transacts business with the City.

(d) The term "member" shall mean any Person associated with another Person or entity as a partner, director, officer, principal or employee.

Section 36.06. Failure to Report Solicitations.

(a) In addition to and notwithstanding any other provision of this Lease, in the event any director, officer, or Vice President of Tenant fails to promptly, after becoming aware thereof, report in writing to the Commissioner of Investigation of the City any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Lease by the Tenant, or affecting the performance of this Lease (a "Failure to Report a Solicitation"), Tenant shall be in Default under this Lease.

(b) The first time a Failure to Report a Solicitation occurs, Tenant may cure such Default by, within ten (10) days of the discovery of such Failure to Report a Solicitation, (i) paying, to Landlord, a fine in the amount of Thirty-Six Thousand Dollars (\$36,000) and (ii) instituting a system, acceptable to the City, to prevent such Failure to Report a Solicitation from occurring in the future.

(c) The second time a Failure to Report a Solicitation occurs, Tenant may cure such Default by, within ten (10) days of the discovery of such Failure to Report a Solicitation, paying, to Landlord, a fine in the amount of Seventy-Two Thousand Dollars (\$72,000).

(d) The third time a Failure to Report a Solicitation occurs, the commissioner or agency head may in his or her sole discretion terminate this Lease upon not less than three (3) days written notice.

ARTICLE 37

MISCELLANEOUS; INDICTMENT

Section 37.01. Captions.

The captions of this Lease are for the purpose of convenience of reference only, and in no way define, limit or describe the scope or intent of this Lease or in any way affect this Lease.

Section 37.02. Table of Contents.

The table of contents is for the purpose of convenience of reference only, and is not to be deemed or construed in any way as part of this Lease.

Section 37.03. Reference to Landlord and Tenant.

The use herein of the neuter pronoun in any reference to Landlord or Tenant shall be deemed to include any individual Landlord or Tenant. The use herein of the words "successors and assigns" or "successors or assigns" of Landlord or Tenant shall be deemed to include the heirs, legal representatives and assigns of any individual Landlord or Tenant.

Section 37.04. Person Acting on Behalf of a Party Hereunder.

If more than one Person is named as, or becomes a party hereunder, the other party may require the signatures of all such Persons in connection with any notice to be given or action to be taken hereunder by the party acting through such Persons. Each Person acting through or named as a party shall be fully and jointly and severally liable for all of such party's obligations hereunder. Any notice by a party to any Person acting through or named as the other party shall be sufficient and shall have the same force and effect as though given to all Persons acting through or named as such other party.

Section 37.05. Indictment.

(a) Procedures and Requirements. If any grand jury impaneled by any federal or state court files an indictment with such court charging Tenant or any principal of Tenant (such indicted Person referred to hereafter as the "Indicted Party") with having committed an intentional felony in connection with the Premises, construction or operations thereon, or any other matter in connection to the Premises, then Landlord shall convene a hearing (the "Hearing") before a panel of three persons consisting of (i) the City's Deputy Mayor for Finance and Economic Development (or a successor in function designated by the City's Mayor), (ii) the President of EDC (or a successor in function designated by the City's Mayor), and (iii) the Corporation Counsel of the City, or the respective duly authorized designees of any of them, or such substitute persons as the City's Mayor may designate (the "Hearing Officers"). Such Hearing shall be held upon not less than forty-five (45) days written notice to the Indicted Party and Tenant for the purpose of determining whether it is in the best interest of the City to require the Indicted Party to assign its interest in this Lease or in Tenant, as the case may be. At the Hearing, Tenant and the Indicted Party shall have the opportunity to be represented by counsel and to make a presentation to the Hearing Officers orally and in writing. The Hearing Officers shall consider and address in reaching their determination (x) the nexus of the conduct charged in the indictment to this Lease, (y) the deleterious effect which an assignment of the Indicted Party's interest in this Lease or in Tenant, as the case may be, would have on the economic development interests of the City which this Lease is intended to promote, and (z) other relevant matters. The Hearing Officers shall render a decision in writing within thirty (30) days of the last day of the Hearing. If the Hearing Officers decide by a majority vote that it is in the best interest of the City to require an assignment by the Indicted Party, then Landlord shall notify the Indicted Party and Tenant of the Hearing Officers' decision within five (5) days of the date thereof. The Indicted Party shall assign its interest in this Lease or in Tenant, as the case may be, within six (6) months of the date of the notice of such decision by the Hearing Officers to a Permitted Assignee who is not an affiliate of the Indicted Party acting either in its own behalf or as an independent trustee in accordance with Section 37.05(c) below for the benefit of the Indicted Party for the purpose of actively managing this Lease or the Indicted Party's interest in

Tenant, as the case may be. The Indicted Party may receive the consideration, if any, for such assignment in installment payments, provided that such consideration shall be for a sum certain and that, except as hereinafter provided, following such assignment the Indicted Party shall have no further interest in the Premises or in any profits arising therefrom. If the Indicted Party has sought review of the Hearing Officers' decision by appropriate lawful means, the time for the assignment of the Indicted Party's interest, if required by the Hearing Officers' decision, shall be stayed until such review has been completed.

(b) Failure to Assign. Any failure of (i) the Indicted Party to assign its interest in this Lease or in Tenant, as the case may be, or (ii) a Permitted Assignee who is not affiliated with the Indicted Party, acting as a trustee, to assign the Indicted Party's interest in this Lease or in Tenant, as the case may be, following a Conviction within the time and in the manner provided hereunder, shall be deemed to be a material Default by Tenant hereunder and shall permit Landlord to obtain injunctive or equitable relief to compel an assignment, or other appropriate remedies, but shall not permit Landlord to terminate this Lease. Upon the occurrence of such Default, Landlord shall have all of the rights and remedies provided hereunder in the case of a Default by Tenant.

(c) Assignment to Trustee. If the Indicted Party assigns its interest in Tenant or in this Lease to a trustee as provided in Section 37.05(a) hereof, the trust agreement between the Indicted Party and the trustee shall be reasonably satisfactory to Landlord, and the trust agreement shall provide as follows:

1. If (x) the Indicted Party is found not guilty of the felony for which it is indicted by a court of competent jurisdiction or (y) the felony charges against such Indicted Party are dismissed, then the trustee shall reassign the Indicted Party's interest in Tenant or in this Lease, as the case may be, to the Indicted Party;

2. If (x) the Indicted Party is found guilty of the felony for which it is indicted by a court of competent jurisdiction and either the period for appeal of such verdict has expired or such verdict is affirmed by the court having ultimate jurisdiction to hear an appeal of such determination or (y) the Indicted Party pleads guilty to the felony for which it is indicted or another intentional felony or pleads "no contest" to the felony for which it is indicted or another intentional felony (either (x) or (y) above, a "Conviction"), then the trustee shall assign this Lease or the Indicted Party's interest in Tenant, as the case may be, within six (6) months of the date of the Conviction to a Permitted Assignee who is not affiliated with the Indicted Party; and

3. During the pendency of any such trust, the Indicted Party shall exercise no control over the Premises but may make contributions in connection with operations at the Premises and receive distributions therefrom.

(d) Application. This Section 37.05 shall apply only for so long as the City or any agency or instrumentality thereof shall be Landlord hereunder.

Section 37.06. Limitation on Liability.

(a) Landlord Exculpation. The liability of Landlord, or of any other Person who has at any time acted as Landlord or Administrator hereunder, for damages or otherwise, shall be limited to Landlord's interest in the Premises, the proceeds of any insurance policies covering or relating to the Premises which are payable to Landlord, and any awards payable to Landlord in connection with any condemnation of part or all of the Premises. In no event, however, shall Landlord's interest in the Premises include: (i) any rights, claims, or interests of Landlord that at any time may exist pursuant to a loan document to which the Landlord is a party or any note or mortgage given to Landlord in connection with the Premises; (ii) any rights, claims, or interests of Landlord that at any time may arise from or be a result of Landlord's governmental powers or rights or Landlord's actions in its governmental capacity; (iii) any rents, issues, or proceeds from or in connection with the Premises, or that would otherwise be within Landlord's interest in the Premises, from and after such time as such items have been received by the Landlord; or (iv) any proceeds resulting from a levy under execution or attachment against Landlord's fee interest in the Premises (it being understood and agreed that Tenant shall not seek to effect such a levy under execution or attachment). None of the directors, officers, partners, joint venturers, principals, shareholders, employees, agents or servants of Landlord or EDC shall have any liability (personal or otherwise) hereunder or be subject to levy, execution or other enforcement procedure for the satisfaction of any remedies of Tenant available hereunder.

(b) Tenant's Exculpation. Except for (i) liability of Tenant for conversion, fraud, fraud of creditors, breach of trust, or intentional damage to the Premises, (ii) liability of Tenant when Landlord is acting in or pursuant to its governmental capacity, (iii) liability with respect to Tenant's obligation to pay any and all additional rental and any other Rental that has accrued prior to termination of this Lease but not yet been paid, and (iv) liability of Tenant arising in connection with Tenant's obligation to indemnify the Landlord and Administrator, the liability of Tenant hereunder for damages or other monetary amounts or otherwise by reason of any Event of Default under this Lease shall be limited to Tenant's interest in the Premises, including, without limitation, (A) rents or profits collected or collectible after an Event of Default has occurred (in the case of non-payment of any Rental) or notice of an Event of Default has been given (in the case of Defaults other than non-payment of Rental); (B) the proceeds of any insurance policies payable to Tenant covering or relating to the Premises, including, without limitation, Insurance Proceeds; (C) any awards payable to Tenant in connection with any condemnation of the Premises or any part thereof; (D) any other rights, privileges, licenses, franchises, claims, causes of action or other interests, sums or receivables appurtenant to the Premises; and (E) any security pledged hereunder by Tenant from time to time. None of the directors, officers, partners, joint venturers, principals, shareholders, employees, agents or servants of Tenant shall have any liability (personal or otherwise) hereunder beyond Tenant's interest in the Premises, and no other property or assets of Tenant or any of the directors, officers, partners, joint venturers, principals, shareholders, employees, agents or servants of Tenant shall be subject to levy of execution or other enforcement procedure for the satisfaction of Landlord's remedies hereunder.

(c) Governs Lease. The provisions of this Section 37.06 shall govern every other provision of this Lease. The absence of explicit reference to this Section 37.06 in any particular provision of this Lease shall not be construed to diminish the application of this Section 37.06 to such provision. This Section 37.06 shall survive the Expiration Date.

(d) Other Remedies. Nothing in this Section 37.06 is intended to limit the remedies available to any party under this Lease other than by limiting the enforcement of those remedies to a party's interest in the Premises, in the manner and to the extent provided in this Section 37.06. Nothing in this Section 37.06 is intended to prevent or preclude any person from obtaining injunctive or declaratory relief with respect to any claim arising under this Lease or in connection with the Premises.

Section 37.07. Remedies Cumulative.

Each right and remedy of either party provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease, or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by either party of any one or more of the rights or remedies provided for in this Lease, or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by such party of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

Section 37.08. Merger.

Unless Landlord and Tenant sign and record an agreement to the contrary, there shall be no merger of this Lease or the leasehold estate created hereby with the fee estate in the Premises or any part thereof by reason of the same Person acquiring or holding, directly or indirectly, this Lease and the leasehold estate created hereby or any interest in this Lease or in such leasehold estate as well as the fee estate in the Premises.

Section 37.09. Performance at Tenant's Sole Cost and Expense.

Except to the extent otherwise expressly provided for elsewhere in this Lease, all of Tenant's obligations hereunder shall be performed at Tenant's sole cost and expense.

Section 37.10. Relationship of Landlord and Tenant.

This Lease is not to be construed to create a partnership or joint venture between the parties, it being the intention of the parties hereto only to create a landlord and tenant relationship.

Section 37.11. Waiver, Modification, Etc.

No covenant, agreement, term or condition of this Lease shall be changed, modified, altered, waived or terminated except by a written instrument of change, modification, alteration, waiver or termination executed by Landlord and Tenant. No waiver of any breach or Event Default shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach or Event of Default thereof.

Section 37.12. Intentionally Omitted.

Section 37.13. Governing Law.

This Lease shall be governed by, and be construed in accordance with, the laws of the State of New York.

Section 37.14. Claims.

Any and all claims asserted by or against Landlord arising under this Lease or related hereto shall be heard and determined either in the courts of the United States ("Federal Courts") located in the City of New York or in the courts of the State of New York ("New York State Courts") located in the City of New York. To effect this agreement and intent, Landlord and Tenant agree and, where appropriate, shall require each contractor and Subtenant to agree, as follows:

(i) If Landlord initiates any action against Tenant in Federal Court or in New York State Court, service of process may be made on Tenant either in person, wherever Tenant may be found in the manner required by applicable law.

(ii) With respect to any action between Landlord and Tenant in New York State Court, Tenant hereby expressly waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of forum non conveniens, (ii) to remove to Federal Court outside New York City, and (iii) to move for a change of venue to New York State Court outside New York City.

(iii) With respect to any action between Landlord and Tenant in Federal Court located in New York City, Tenant expressly waives and relinquishes any right it might otherwise have to transfer the action to a Federal Court outside the City of New York.

(iv) If Tenant commences any action against Landlord in a court located other than in the City and State of New York, then, upon request of Landlord, Tenant shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, then Tenant shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

Section 37.15. Successors and Assigns.

The agreements, terms, covenants and conditions herein shall be binding upon, and inure to the benefit of, Landlord and Tenant and, except as otherwise provided herein, their respective successors and assigns.

Section 37.16. Effect of Other Transactions.

No Sublease or Capital Transaction, whether executed simultaneously with this Lease or otherwise, and whether or not consented to by Landlord, shall be deemed to modify this Lease in any respect.

Section 37.17. City as Landlord.

The obligations of the City in its governmental capacity are not to be construed as obligations of the City in its proprietary capacity as Landlord under this Lease.

Section 37.18. Waivers.

To the extent permitted by applicable Law, Landlord and Tenant each hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, and/or any claim for injury or damages. In the event Landlord commences any proceeding for nonpayment of Rental or any other sums required to be paid by Tenant under the terms of this Lease, Tenant will not interpose any counterclaim of whatever nature or description in any such proceedings, except to the extent the failure to raise any issue or claim in the instant proceeding would or is reasonably likely to preclude raising such issue or claim in a separate or subsequent proceeding.

Section 37.19. Designee.

References to Landlord in this Lease shall be deemed to refer also to any designee named by Landlord to act in its behalf with respect to this Lease. Actions to be taken by the Administrator hereunder may instead, at Landlord's option, be taken by Landlord or Landlord's designee.

Section 37.20. Counterparts.

This Lease may be executed in one or more counterparts each of which shall be an original but all of which when taken together shall constitute one and the same instrument.

(the remainder of this page is intentionally left blank)

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

THE CITY OF NEW YORK

By: /s/ Andrew Schwartz  
Deputy Commissioner of the  
Department of Small Business Services

Approved as to Form:

/s/ James McSpiritt  
Acting Corporation Counsel

DAIRYLAND HP LLC,  
a Delaware limited liability company

By: DAIRYLAND USA CORPORATION,  
a New York corporation  
Sole Member and Manager

By: /s/ Christopher Pappas  
Name: Christopher Pappas  
Title: Chief Executive Officer

STATE OF NEW YORK        )  
                                  :SS.:  
COUNTY OF NEW YORK    )

On this 26 day of April, in the year 2012, before me, a Notary Public in and for said State, personally appeared the Commissioner of the Department of Small Business Services of the City of New York, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to within the foregoing instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

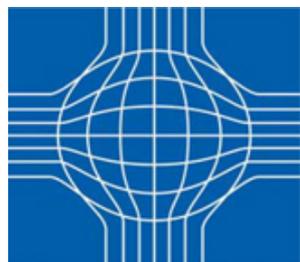
/s/ Denise Motta  
Notary Public  
Denise Motta  
Commissioner of Deeds, City of New York  
NO. 4-6420  
Certificate Filed in New York County  
Commission Expires November 1, 2012

STATE OF NEW YORK        )  
                                  :SS.:  
COUNTY OF NEW YORK    )

On this 16th day of April, in the year 2012, before me, a Notary Public in and for said State, personally appeared Christopher Pappas, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to within the foregoing instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

/s/ Raquel Mehlman  
Notary Public  
Raquel Mehlman  
Notary Public State of New York  
New York County  
LIC. #01ME6193851  
Comm. Exp. 9/22/2012





**MERCATOR**  
Land Surveying, LLC

**Metes & Bounds  
Description**

February 29, 2012

Being a part of Lot 500 Block 2781 and Lot 1 Block 2770 situate, lying, and being in the Borough of the Bronx, City and State of New York, bounded and more particularly described as:

COMMENCING at the intersection of the northerly line of Food Center Drive with the easterly right-of-way line of Halleck Street (100 ft. wide), and running thence:

- A. Along the northerly right-of-way line of Food Center Drive, N 78°17'45" E, 1446.07' to a point, thence;
- B. Continuing along the same, N 86° 55' 54" E, 180.95' to a point of curvature, thence;
- C. Continuing along the same, with a curve to the left, having a radius of 264.00', an arc length of 39.78', a central angle of 8° 38' 00" to a point of tangency, thence;
- D. Continuing along the same, N 78° 17' 54" E, 128.52' to a point of curvature, thence;
- E. Continuing along the same, with a curve to the right having a radius of 300.00', an arc length 119.70', and a central angle of 22° 51' 39" to a point on the curve, thence;
- F. Along an existing leasehold, N 36° 29' 08" E, 89.22' to a point, thence;
- G. Continuing along the same, N 13° 12' 58" E, 67.43' to a point, thence;
- H. Continuing along the same, N 78° 21' 32" E, 39.24' to the point of TRUE beginning, thence;
1. Along the existing leasehold, N 11° 38' 28" W Length: 707.60' to a point, thence;
2. Continuing along the same, N 78° 21' 32" E, 17.00' to a point, thence;
3. Continuing along the same, N 11° 56' 13" W, 310.20' to a point, thence;
4. Continuing along the same, N 23° 01' 04" W, 95.50' to a point, thence;
5. Continuing along the same, N 37° 28' 49" W, 85.25' to a point, thence;
6. Continuing along the same, N 41° 35' 56" E, 26.80' to a point, thence;
7. Continuing along the same, N 56° 23' 24" W, 21.30' to a point, thence;
8. Continuing along the same, N 24° 55' 08" E, 29.63' to a point being 100.37', more or less, upland the US Pierhead and Bulkhead line, thence;
9. Along the proposed leasehold line, S 66° 30' 05" E, 95.49' to a point thence;
10. Continuing along the same, S 60° 56' 09" E, 49.88' to a point, thence;
11. Continuing along the same, S 48° 26' 03" E, 67.13' to a point, thence;
12. Continuing along the same, S 63° 04' 48" E, 28.21' to a point, thence;
13. Continuing along the same, S 82° 41' 13" E, 70.27' to a point, thence;

14. Continuing along the same, S 80° 25' 11" E, 57.46' to a point, thence;
15. Continuing along the same, S 38° 59' 27" E, 241.02' to a point, thence;
16. Continuing along the same, S 69° 12' 44" E, 134.92' to a point, thence;
17. Continuing along the same, S 24° 13' 05" E, 627.35' and to a point on an existing leasehold line and being 31.98', more or less, from the US Pierhead and Bulkhead line, thence;
18. Along the leasehold line, S 50° 34' 54" W, 654.52' to a point, thence;
19. Continuing along the same, N 39° 25' 06" W, 32.00' to a point on the Block Line (2770 & 2781), thence;
20. Along the Block Line, S 50° 34' 54" W, 13.65' to a point, thence;
21. Along the existing lease line, N 23° 27' 41" W, 144.21' to a point, thence;
22. Continuing along the same, S 78° 21' 32" W, 7.30' to the point of TRUE Beginning

Containing 50,142 Sq. Ft. or 13.3182 Acres more or less.

The premises is subject to easements and encumbrances as shown a survey by Mercator Land Surveying, dated February 17, 2012.

TOGETHER with a non-exclusive ingress/egress easement to Food Center Drive bounded and more particularly described as:

Beginning at the aforesaid point of TRUE Beginning and running thence;

1. Along an existing leasehold, N 78° 21' 32" E, 7.30' to a point, thence;
2. Continuing along the same, S 23° 27' 41" E, 57.38' to a point on a curve, thence;
3. Along the proposed easement with a non-tangent curve to the left having a radius of 100.00', and arc length of 107.93', a central angle of 61° 50' 18", and a chord bearing S 22° 46' 53" W, 102.77' to a point of tangency, thence;
4. Continuing along the same, S 8° 08' 16" E, 40.97' to a point on a curve being the northerly right-of-way line of Food Center Drive, thence;
5. Along the right-of-way line with a curve to the left having a radius of 300.00', an arc length of 111.48', a central angle of 21° 17' 25', and a chord bearing N 68° 11' 44" W, 110.84' to a non-tangent point, thence;
6. Along an existing leasehold, N 36° 29' 08" E, 89.22' to a point, thence;
7. Continuing along the same, N 13° 12' 58" E, 67.43' to a point, thence;
8. Continuing along the same, N 78° 21' 32" E, 39.24' to the point of TRUE beginning.

Containing 11,509 Sq. Ft. or 0.2640 Acres more or less.

**Mercator Land Surveying, LLC**

J. R. Lemuel Morrison, LS  
NY Lic Surveyor #50404

# 200-240 Food Center Drive

As of Full Vacate Date

	Premises (~13.2 acres)
	Building (233,489 sf)



# Existing Space

200-240 Food Center Drive

-  Dairyland Leasehold (200, 240 FCD)  
138,536 sf
-  Dairyland Leasehold (Rail Shed)  
57,083 sf
-  Exterior Area: Dairyland Loading  
Docks/ Parking



Drawing not drawn to scale

# Leasehold Interests Upon Lease Commencement

200-240 Food Center Drive

-  R. Best Leasehold (220 FCD)  
30,767 sf  
Exp. 5/31/2013
-  R. Best Sublease (240 FCD)  
7,103sf  
Exp. 3/31/2013
-  Dairyland Leasehold (200, 240 FCD)  
138,536 sf
-  Dairyland Leasehold (Rail Shed)  
57,083 sf
-  Exterior Area: Dairyland Loading Docks/ Parking
-  Exterior Area: R. Best Loading Docks/ Parking



Drawing not drawn to scale

EXHIBIT B

TENANT'S WORK

The project (the "Project") is divided into (i) the renovation of the existing warehouse (the "Warehouse Renovation") and (ii) the new construction of a cooler on the same footprint as the Rail Shed (the "New Construction").

The Warehouse Renovation portion of the Project includes the renovation of the existing 176,406 sq ft Warehouse, (excluding the Rail Shed) at 240 Food Center Drive, Bronx, NY, into several renovated areas: meat cooler, freezer, dairy-deli cooler, chocolate room, dry storage, refrigerated dock, dry dock, dock office, forklift charging area, employee amenities, and offices. The Project will be performed in three phases. See Exhibit G of AIA Document 141-2004 Standard Form of Agreement Between Owner and Design-Builder" dated 31 January 2012. (Existing Floor Plan dated 3/24/11).

The New Construction portion of the Project includes the demolition of the existing 57,083sf Rail Shed and construction of a new 34 degree Fahrenheit cooler on that footprint. This portion of the Project will require a separate building permit application and will proceed in accordance with Exhibit L to AIA Document 141-2004 Standard Form of Agreement Between Owner and Design-Builder" dated 31 January 2012. (Design-Builder's Schedule for Cooler Addition dated 2/15/12).

The Warehouse Renovation portion of the Project has three phases. Phase I (warehouse) begins after Bazzini vacates the building and after the Lease of this space allows construction in this space and includes the renovation of the former Bazzini area into five temperature zones (freezer, meat cooler, dairy cooler, chocolate cooler and ambient storage), plus forklift charging area. Phase I also includes a temporary truck dock on the north side of the Warehouse thus reducing the Phase I freezer and cooler renovation. Phase I renovation also includes that portion of the office area formerly occupied by Bazzini. Phase I is complete upon the issuance of a Partial Certificate of Occupancy which will allow Dairyland HP LLC ("Dairyland") to occupy and use this newly renovated Phase I area.

Phase II will then begin consisting of renovating the Southwest corner of the Warehouse formerly occupied by Dairyland into ambient warehouse space. This phase includes demolition of a portion of a wall in the Dairyland coolers and the separation walls between Phase I and phase II areas. Phase II is complete upon the issuance of a Partial Certificate of Occupancy which will allow Dairyland to occupy and use this newly renovated area, joined to its Phase 1 renovated area.

Phase III begins after R-Best vacates the premises on or about May 31, 2013 and after the Lease allows construction in this space. Phase III site work includes pavement striping and fencing repair only. Phase III work consists of renovation of the space that was formerly occupied by R-Best into three temperature zones (freezer, meat cooler, and dairy cooler) plus renovation of the remaining office space formerly occupied by Dairyland and R-Best. Phase III demolition work includes removing the remaining interior coolers and freezer that was in turn occupied by Dairyland, then R-Best. This will include what's called the Yucca Cooler that R. Best owns. It also includes demolition

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of the temporary walls between freezer, meat cooler, and dairy cooler (temporary walls separating Phase I from Phase III warehouse areas. Phase III includes expansion of the renovated freezer, dairy cooler, and chocolate cooler both north and south to their final limits.

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EXHIBIT C

INTENTIONALLY OMITTED

ASBESTOS INSPECTION REPORT



1430 Broadway  
10th Floor  
New York, NY 10018

212.221.7822 PHONE  
212.221.7840 FAX

[www.TRCSolutions.com](http://www.TRCSolutions.com)

October 17, 2011

**FINAL**

Ms. Kay Zias  
New York City Economic Development Corporation  
110 William Street  
New York, NY 10038

Re: Report of Limited Asbestos Building Inspection and Materials Survey  
200-240 Food Center Drive, Bronx, NY 10474  
TRC Project Number 177603.0060.0001

Dear Ms. Zias:

TRC Environmental Corporation (TRC), under Retainer Contract 33630009 with the New York City Economic Development Corporation (NYCEDC), conducted a limited asbestos building inspection and materials survey at 200-240 Food Center Drive, Bronx, New York 10474 (the "Site") in support of the proposed renovation of selected areas of the building.

The Site consists of two (2) buildings as follows:

- Approximately 176,000-square foot one-story main warehouse building
- Approximately 57,000-square foot vacant rail shed

The scope of work was limited to the areas proposed for renovation including: the interior floor and walls of the office areas and refrigeration system in the warehouse, the warehouse roof, and the rail shed.

NYCEDC coordinated access and TRC performed an initial asbestos building inspection and materials survey on September 30, 2011 and a follow up inspection on October 11, 2011. The inspection and bulk sampling were performed by Mr. Akeeb Osinaike and Mr. Stephen Pharai, both New York State Department of Labor (NYSDOL) Asbestos Inspectors and New York City Department of Environmental Protection (NYCDEP) Asbestos Investigators. Copies of certification documents are included in Appendix B.

Asbestos-containing material (ACM) is defined as material containing more than one percent (1%) asbestos. Suspect ACM was categorized into groups of homogeneous material. A homogeneous material is defined as a material that appears similar throughout in terms of color, texture and date of application. The following suspect homogeneous materials were identified and sampled:

Main Warehouse Building

- Roofing membrane (on 3 levels)
- Roof screed coat (on 3 levels)
- 2" Outer diameter (O.D.) pipe fitting insulation
- 4" O.D. pipe fitting insulation
- 6" O.D. pipe fitting insulation
- Floor tiles and underlying mastic (multiple layers)
- Suspended ceiling tiles
- Sheetrock wallboard
- Sheetrock wallboard joint compound
- Cove base mastic
- Brick mortar

Rail Shed

- Roofing membrane
- Roof screed coat

Following the identification of the above suspect homogeneous materials, representative bulk samples were collected. The figures in Appendix D show the Site layout and the sample locations and identification numbers. Multiple bulk samples were collected from each suspect homogeneous material in accordance with the Asbestos Hazard Emergency Response Act (AHERA) sampling frequency requirements. A unique sample identification number was assigned for each sample. A total of sixty-six (66) bulk samples were collected from twenty-two (22) suspect homogeneous materials. The samples were placed in containers and delivered to the laboratory following proper chain-of-custody procedures.

The bulk samples collected were submitted to EMSL Analytical, Inc. (EMSL), at 307 West 38<sup>th</sup> Street, New York, New York 10018 for analysis. EMSL is an independent laboratory accredited by the New York State Department of Health (NYSDOH) Environmental Laboratory Approval Program (ELAP), the National Voluntary Laboratory Approval Program (NVLAP) and the American Industrial Hygiene Association (refer to Appendix C). EMSL's ELAP and NVLAP approval numbers are 11506 and 101048-9, respectively. The bulk samples were analyzed by the EPA-recommended and NYSDOH ELAP-required method PLM NYS 198.1 for friable samples. Laboratory results are in Appendix A.



**SUMMARY OF INSPECTION FINDINGS AND ANALYTICAL RESULTS**

Based on the analytical results, the homogeneous materials and quantities shown in the table below are ACMs. No ACM was identified in the Rail Shed. The materials in the table below are in the Main Warehouse Building.

<u>Homogenous Material Description</u>	<u>Asbestos-Containing Material</u>	<u>Approximate Quantity</u>
2" O.D. pipe fitting insulation	150 Linear Feet (LF)	
4" O.D. pipe fitting insulation	180 LF	
6" O.D. pipe fitting insulation	180 LF	
Floor tiles and underlying mastic	12,000 Square Feet (SF) - multiple layers	
Sheetrock wallboard joint compound	950 SF	

No other suspect homogenous materials, identified and sampled in the areas proposed for renovation described above, were determined to be ACMs.

We appreciate the opportunity to be of service to the NYCEDC. Should you need further information or have any questions, please do not hesitate to contact Jennifer Miranda or myself at (212) 221-7822. Thank you.

Sincerely,

**TRC ENVIRONMENTAL CORPORATION**



Stephen Pharai  
Senior Project Manager

cc: J. Miranda, J. Peronto, D. Glass, TRC

Appendices:

- Appendix A – Laboratory Analytical Data Sheets and Chain of Custody Forms
- Appendix B – TRC Environmental Corporation Accreditation and Employee Certification
- Appendix C – EMSL Analytical, Inc. Laboratory Accreditation
- Appendix D – Figures

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**APPENDIX A**

**LABORATORY ANALYTICAL DATA SHEETS AND  
CHAIN OF CUSTODY FORMS**



**EMSL Analytical, Inc.**  
 307 West 38th Street, New York, NY 10018  
 Phone: (212) 290-0051

Attn: **Stephen Pharai**  
 TRC Environmental Consultants  
 1430 Broadway  
 10th Floor  
 New York, NY 10018

Customer ID: TRCE51  
 Customer PO:  
 Received: 09/30/11 3:37 PM  
 EMSL Order: 031132178

**Test Report: Asbestos Analysis of Bulk Material**

Fax: (212) 221-7840 Phone: (212) 221-7822  
 Project: **166703.0060.0001 / NYC EDC / 200-240 FOOD CENTER DRIVE,  
 BRONX, NY / ROOF & SELECTED INTERIOR AREAS**

EMSL Proj: NYC EDC

Sample Description	Test	Analyzed Date	Color	Non Asbestos		Asbestos	Comments
				Fibrous	Non-Fibrous		
001 031132178-0001 RM 1 / ROOF / N. SIDE / ROOF MEMBRANE 1 - / UPPER LEVEL ROOF / W/NE	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011	Black	5.3% Glass	N/A	<b>Inconclusive: None Detected</b>	Not Analyzed
002 031132178-0002 RM 1 / ROOF / CENTER / ROOF MEMBRANE 1 - / UPPER LEVEL ROOF / W/NE	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011	Black	5.1% Glass	N/A	<b>Inconclusive: None Detected</b>	Not Analyzed
003 031132178-0003 RM 1 / ROOF / S. SIDE / ROOF MEMBRANE 1 - / UPPER LEVEL ROOF / W/NE	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011	Black	<1% Glass	N/A	<b>Inconclusive: None Detected</b>	Not Analyzed
004 031132178-0004 SC 1 / ROOF / N. / ROOF SCREED COAT 1 - / UPPER LEVEL ROOF / W/NE	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011	Brown	55.00% Cellulose	45% N/A	<b>None Detected</b>	Not Analyzed Not Analyzed
005 031132178-0005 SC 1 / ROOF / CENTER / ROOF SCREED COAT 1 - / UPPER LEVEL ROOF / W/NE	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011	Brown	55.00% Cellulose	45% N/A	<b>None Detected</b>	Not Analyzed Not Analyzed
006 031132178-0006 SC 1 / ROOF / S. SIDE / ROOF SCREED COAT 1 - / UPPER LEVEL ROOF / W/NE	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011	Brown	70.00% Cellulose	30% N/A	<b>None Detected</b>	Not Analyzed Not Analyzed

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 Project: **166703.0060.0001 / NYC EDC / 200-240 FOOD CENTER DRIVE,  
 BRONX, NY / ROOF & SELECTED INTERIOR AREAS**

EMSL Proj: NYC EDC

Sample Description	Test	Analyzed Date	Color	Non Asbestos		Asbestos	Comments
				Fibrous	Non-Fibrous		
007 031132178-0007	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011	Brown	5.5% Glass	N/A	<b>Inconclusive: None Detected</b>	Not Analyzed
RM 2 / ROOF / W. SIDE / ROOF MEMBRANE 2 - / UPPER LEVEL ROOF / SE	TEM NYS 198.4 NOB	10/2/2011	Brown		N/A	<b>None Detected</b>	
008 031132178-0008	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011	Black	4.4% Glass	N/A	<b>Inconclusive: None Detected</b>	Not Analyzed
RM 2 / ROOF / S. SIDE / ROOF MEMBRANE 2 - / UPPER LEVEL ROOF / SE	TEM NYS 198.4 NOB	10/2/2011	Black		N/A	<b>None Detected</b>	
009 031132178-0009	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011	Black	2.3% Glass	N/A	<b>Inconclusive: None Detected</b>	Not Analyzed
RM 2 / ROOF / N. SIDE / ROOF MEMBRANE 2 - / UPPER LEVEL ROOF / SE	TEM NYS 198.4 NOB	10/2/2011	Black		N/A	<b>None Detected</b>	
010 031132178-0010	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011	Brown	65.00% Cellulose	35% N/A	<b>None Detected</b>	Not Analyzed
SC 2 / ROOF / W. SIDE / ROOF SCREED COAT 2 - / UPPER LEVEL ROOF / SE	TEM NYS 198.4 NOB				N/A		Not Analyzed
011 031132178-0011	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011	Brown	65.00% Cellulose	35% N/A	<b>None Detected</b>	Not Analyzed
SC 2 / ROOF / S. SIDE / ROOF SCREED COAT 2 - / UPPER LEVEL ROOF / SE	TEM NYS 198.4 NOB				N/A		Not Analyzed
012 031132178-0012	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011	Brown	65.00% Cellulose	35% N/A	<b>None Detected</b>	Not Analyzed
SC 2 / ROOF / N. SIDE / ROOF SCREED COAT 2 - / UPPER LEVEL ROOF / SE	TEM NYS 198.4 NOB				N/A		Not Analyzed

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Customer ID: TRCE51  
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 EMSL Order: 031132178

**Test Report: Asbestos Analysis of Bulk Material**

Fax: (212) 221-7840 Phone: (212) 221-7822  
 Project: **166703.0060.0001 / NYC EDC / 200-240 FOOD CENTER DRIVE,  
 BRONX, NY / ROOF & SELECTED INTERIOR AREAS**

EMSL Proj: NYC EDC

Sample Description	Test	Analyzed Date	Color	Non Asbestos		Asbestos	Comments
				Fibrous	Non-Fibrous		
013 031132178-0013 RM 3 / ROOF / N. SIDE / ROOF MEMBRANE 3 - / LOWER LEVEL / OFFICE ROOF	PLM NYS 198.1 Friable PLM NYS 198.6 NOB TEM NYS 198.4 NOB	10/2/2011	Black	3.4% Glass	N/A	<b>Inconclusive: None Detected None Detected</b>	Not Analyzed
014 031132178-0014 RM 3 / ROOF / W. SIDE / ROOF MEMBRANE 3 - / LOWER LEVEL / OFFICE ROOF	PLM NYS 198.1 Friable PLM NYS 198.6 NOB TEM NYS 198.4 NOB	10/2/2011	Black	5.8% Glass	N/A	<b>Inconclusive: None Detected None Detected</b>	Not Analyzed
015 031132178-0015 RM 3 / ROOF / S. SIDE / ROOF MEMBRANE 3 - / LOWER LEVEL / OFFICE ROOF	PLM NYS 198.1 Friable PLM NYS 198.6 NOB TEM NYS 198.4 NOB	10/2/2011	Black	4.7% Glass	N/A	<b>Inconclusive: None Detected None Detected</b>	Not Analyzed
016 031132178-0016 SC 3 / ROOF / N. SIDE / ROOF SCREED COAT 3 - / LOWER LEVEL / OFFICE ROOF	PLM NYS 198.1 Friable PLM NYS 198.6 NOB TEM NYS 198.4 NOB	10/2/2011	Brown	65.00% Cellulose	35% N/A	<b>None Detected</b>	Not Analyzed Not Analyzed
017 031132178-0017 SC 3 / ROOF / W. SIDE / ROOF SCREED COAT 3 - / LOWER LEVEL / OFFICE ROOF	PLM NYS 198.1 Friable PLM NYS 198.6 NOB TEM NYS 198.4 NOB	10/2/2011	Brown	65.00% Cellulose	35% N/A	<b>None Detected</b>	Not Analyzed Not Analyzed
018 031132178-0018 SC 3 / ROOF / S. SIDE / ROOF SCREED COAT 3 - / LOWER LEVEL / OFFICE ROOF	PLM NYS 198.1 Friable PLM NYS 198.6 NOB TEM NYS 198.4 NOB	10/2/2011	Brown	60.00% Cellulose	40% N/A	<b>None Detected</b>	Not Analyzed Not Analyzed

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 EMSL Order: 031132178

**Test Report: Asbestos Analysis of Bulk Material**

Fax: (212) 221-7840 Phone: (212) 221-7822  
 Project: **166703.0060.0001 / NYC EDC / 200-240 FOOD CENTER DRIVE,  
 BRONX, NY / ROOF & SELECTED INTERIOR AREAS**

EMSL Proj: NYC EDC

Sample Description	Test	Analyzed Date	Color	Non Asbestos		Asbestos	Comments
				Fibrous	Non-Fibrous		
019 031132178-0019 RM 4 / ROOF / N. SIDE / ROOF MEMBRANE 4 - / MID-LEVEL ROOF	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011	Black	3.4% Glass	N/A	<b>Inconclusive: None Detected</b>	Not Analyzed
020 031132178-0020 RM 4 / ROOF / W. SIDE / ROOF MEMBRANE 4 - / MID-LEVEL ROOF	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011	Black	1.1% Glass	N/A	<b>Inconclusive: None Detected</b>	Not Analyzed
021 031132178-0021 RM 4 / ROOF / S. SIDE / ROOF MEMBRANE 4 - / MID-LEVEL ROOF	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011	Black	2.7% Glass	N/A	<b>Inconclusive: None Detected</b>	Not Analyzed
022 031132178-0022 SC 4 / ROOF/ N. SIDE / ROOF SCREED COAT 4 - / MID-LEVEL ROOF	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011	Brown	65.00% Cellulose	35% N/A	<b>None Detected</b>	Not Analyzed Not Analyzed
023 031132178-0023 SC 4 / ROOF/ W. SIDE / ROOF SCREED COAT 4 - / MID-LEVEL ROOF	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011	Brown	60.00% Cellulose	40% N/A	<b>None Detected</b>	Not Analyzed Not Analyzed
024 031132178-0024 SC 4 / ROOF/ S. SIDE / ROOF SCREED COAT 4 - / MID-LEVEL ROOF	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011	Brown	65.00% Cellulose	35% N/A	<b>None Detected</b>	Not Analyzed Not Analyzed
028 031132178-0025 FT 1 / N. SIDE / 12"X12" FLOOR TILE - / BAZZINI OFFICE / LOCKER	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011	Gray		N/A	<b>Inconclusive: None Detected</b>	Not Analyzed

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**Test Report: Asbestos Analysis of Bulk Material**

Fax: (212) 221-7840 Phone: (212) 221-7822  
 Project: **166703.0060.0001 / NYC EDC / 200-240 FOOD CENTER DRIVE,  
 BRONX, NY / ROOF & SELECTED INTERIOR AREAS**

EMSL Proj: NYC EDC

Sample Description	Test	Analyzed Date	Color	Non Asbestos		Asbestos	Comments
				Fibrous	Non-Fibrous		
029 031132178-0026	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011	Gray		N/A	<b>Inconclusive: None Detected</b>	Not Analyzed
FT 1 / N. SIDE / 12"X12" FLOOR TILE - / BAZZINI OFFICE / LOCKER	TEM NYS 198.4 NOB	10/2/2011	Gray		N/A	<b>&lt;1% Chrysotile &lt;1% Total</b>	
030 031132178-0027	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011	Gray		N/A	<b>Inconclusive: None Detected</b>	Not Analyzed
FT 1 / N. SIDE / 12"X12" FLOOR TILE - / BAZZINI OFFICE / LOCKER	TEM NYS 198.4 NOB	10/2/2011	Gray		N/A	<b>None Detected</b>	
025 031132178-0028	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011	White	16.00% Min. Wool	79.5% N/A	<b>4.50% Chrysotile</b>	Not Analyzed
PI 1 / NEAR CEILING / 6" O.D. PIPE INSUL. - / BAZZINI OFFICE / LOCKER	TEM NYS 198.4 NOB				N/A		Not Analyzed
026 031132178-0029	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011			N/A	<b>Positive Stop</b>	Not Analyzed
PI 1 / NEAR CEILING / 2" O.D. PIPE INSUL. - / BAZZINI OFFICE / LOCKER	TEM NYS 198.4 NOB				N/A		Not Analyzed
027 031132178-0030	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011			N/A	<b>Positive Stop</b>	Not Analyzed
PI 1 / NEAR CEILING / 4" O.D. PIPE INSUL. - / BAZZINI OFFICE / LOCKER	TEM NYS 198.4 NOB				N/A		Not Analyzed
031-Floor Tile 031132178-0031	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011	Beige		N/A	<b>3.4% Chrysotile 3.4% Total</b>	Not Analyzed
FT 2 / CAFETERIA & OFFICES / BEIGE 12"X12" FT - (UNDER 2 LAYERS OF GRAY FT) / BAZZINI OFFICE/CAFETERIA & OFFICES	TEM NYS 198.4 NOB	10/2/2011			N/A	<b>Positive Stop (Not Analyzed)</b>	

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**Test Report: Asbestos Analysis of Bulk Material**

Fax: (212) 221-7840 Phone: (212) 221-7822  
 Project: **166703.0060.0001 / NYC EDC / 200-240 FOOD CENTER DRIVE, BRONX, NY / ROOF & SELECTED INTERIOR AREAS**

EMSL Proj: NYC EDC

Sample Description	Test	Analyzed Date	Color	Non Asbestos		Asbestos	Comments
				Fibrous	Non-Fibrous		
031-Mastic 031132178-0031A	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011	Black		N/A	1.6% Chrysotile 1.6% Total Positive Stop (Not Analyzed)	Not Analyzed
FT 2 / MASTIC ASSOC. W./ BEIGE 12"X12" FT - (UNDER 2 LAYERS OF GRAY FT) / BAZZINI OFFICE/CAFETERIA & OFFICES	TEM NYS 198.4 NOB	10/2/2011			N/A		
032-Floor Tile 031132178-0032	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011	Beige		N/A	Positive Stop (Not Analyzed)	Not Analyzed
FT 2 / CAFETERIA & OFFICES / BEIGE 12"X12" FT - (UNDER 2 LAYERS OF GRAY FT) / BAZZINI OFFICE/CAFETERIA & OFFICES	TEM NYS 198.4 NOB	10/2/2011			N/A	Positive Stop (Not Analyzed)	
032-Mastic 031132178-0032A	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011	Black		N/A	Positive Stop (Not Analyzed)	Not Analyzed
FT 2 / MASTIC ASSOC. W./ BEIGE 12"X12" FT - (UNDER 2 LAYERS OF GRAY FT) / BAZZINI OFFICE/CAFETERIA & OFFICES	TEM NYS 198.4 NOB	10/2/2011	Black		N/A	Positive Stop (Not Analyzed)	
033-Floor Tile 031132178-0033	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011	Beige		N/A	Positive Stop (Not Analyzed)	Not Analyzed
FT 2 / CAFETERIA & OFFICES / BEIGE 12"X12" FT - (UNDER 2 LAYERS OF GRAY FT) / BAZZINI OFFICE/CAFETERIA & OFFICES	TEM NYS 198.4 NOB	10/2/2011			N/A	Positive Stop (Not Analyzed)	
033-Mastic 031132178-0033A	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011			N/A	Positive Stop (Not Analyzed)	Not Analyzed
FT 2 / MASTIC ASSOC. W./ BEIGE 12"X12" FT - (UNDER 2 LAYERS OF GRAY FT) / BAZZINI OFFICE/CAFETERIA & OFFICES	TEM NYS 198.4 NOB	10/2/2011	Black		N/A	Positive Stop (Not Analyzed)	

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**Test Report: Asbestos Analysis of Bulk Material**

Fax: (212) 221-7840 Phone: (212) 221-7822  
 Project: **166703.0060.0001 / NYC EDC / 200-240 FOOD CENTER DRIVE,  
 BRONX, NY / ROOF & SELECTED INTERIOR AREAS**

EMSL Proj: NYC EDC

Sample Description	Test	Analyzed Date	Color	Non Asbestos		Asbestos	Comments
				Fibrous	Non-Fibrous		
034 031132178-0034	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011	Gray		N/A	Inconclusive: None Detected	Not Analyzed
FT 3 / CAFETERIA & OFFICES / GRAY 12"X12" FT - (TOP LAYER G 3) / BAZZINI OFFICE/CAFETERIA & OFFICES	TEM NYS 198.4 NOB	10/2/2011	Gray		N/A	None Detected	
035 031132178-0035	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011	Gray		N/A	Inconclusive: None Detected	Not Analyzed
FT 3 / CAFETERIA & OFFICES / GRAY 12"X12" FT - (TOP LAYER G 3) / BAZZINI OFFICE/CAFETERIA & OFFICES	TEM NYS 198.4 NOB	10/2/2011	Gray		N/A	None Detected	
036 031132178-0036	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011	Gray		N/A	Inconclusive: None Detected	Not Analyzed
FT 3 / CAFETERIA & OFFICES / GRAY 12"X12" FT - (TOP LAYER G 3) / BAZZINI OFFICE/CAFETERIA & OFFICES	TEM NYS 198.4 NOB	10/2/2011	Gray		N/A	None Detected	
037 031132178-0037	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011	White		N/A	Inconclusive: None Detected	Not Analyzed
CT 1 / CAFETERIA & OFFICES / 2'X4' CEILING TILE - / BAZZINI OFFICE/CAFETERIA & OFFICES	TEM NYS 198.4 NOB	10/2/2011	White		N/A	None Detected	
038 031132178-0038	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011	White		N/A	Inconclusive: None Detected	Not Analyzed
CT 1 / CAFETERIA & OFFICES / 2'X4' CEILING TILE - / BAZZINI OFFICE/CAFETERIA & OFFICES	TEM NYS 198.4 NOB	10/2/2011	White		N/A	None Detected	
039 031132178-0039	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011	White		N/A	Inconclusive: None Detected	Not Analyzed
CT 1 / CAFETERIA & OFFICES / 2'X4' CEILING TILE - / BAZZINI OFFICE/CAFETERIA & OFFICES	TEM NYS 198.4 NOB	10/2/2011	White		N/A	None Detected	

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Test Report NY198w/A-7.21.0 Printed: 10/2/2011 2:54:05 PM



**EMSL Analytical, Inc.**  
 307 West 38th Street, New York, NY 10018  
 Phone: (212) 290-0051

Attn: **Stephen Pharai**  
 TRC Environmental Consultants  
 1430 Broadway  
 10th Floor  
 New York, NY 10018

Customer ID: TRCE51  
 Customer PO:  
 Received: 09/30/11 3:37 PM  
 EMSL Order: 031132178

**Test Report: Asbestos Analysis of Bulk Material**

Fax: (212) 221-7840 Phone: (212) 221-7822  
 Project: **166703.0060.0001 / NYC EDC / 200-240 FOOD CENTER DRIVE,  
 BRONX, NY / ROOF & SELECTED INTERIOR AREAS**

EMSL Proj: NYC EDC

Sample Description	Test	Analyzed Date	Color	Non Asbestos		Asbestos	Comments
				Fibrous	Non-Fibrous		
040	PLM NYS 198.1 Friable	10/2/2011	Brown/Gray/	<1% Glass 17.00% Cellulose	83%	<b>None Detected</b>	
031132178-0040	PLM NYS 198.6 NOB				N/A		Not Analyzed
SR 1 / CAFETERIA & OFFICES / SHEETROCK WALLBOARD - / BAZZINI OFFICE	TEM NYS 198.4 NOB				N/A		Not Analyzed
041	PLM NYS 198.1 Friable	10/2/2011	Brown/Gray/	<1% Glass 25.00% Cellulose	75%	<b>None Detected</b>	
031132178-0041	PLM NYS 198.6 NOB				N/A		Not Analyzed
SR 1 / CAFETERIA & OFFICES / SHEETROCK WALLBOARD - / BAZZINI OFFICE	TEM NYS 198.4 NOB				N/A		Not Analyzed
042	PLM NYS 198.1 Friable	10/2/2011	Brown/White	15.00% Cellulose 3.00% Glass	82%	<b>None Detected</b>	
031132178-0042	PLM NYS 198.6 NOB				N/A		Not Analyzed
SR 1 / CAFETERIA & OFFICES / SHEETROCK WALLBOARD - / BAZZINI OFFICE	TEM NYS 198.4 NOB				N/A		Not Analyzed
043	PLM NYS 198.1 Friable	10/2/2011	Cream		98.2%	<b>1.80% Chrysotile</b>	
031132178-0043	PLM NYS 198.6 NOB				N/A		Not Analyzed
JC 1 / CAFETERIA & OFFICES / JOINT COMPOUND - / BAZZINI OFFICE	TEM NYS 198.4 NOB				N/A		Not Analyzed
044	PLM NYS 198.1 Friable	10/2/2011				<b>Positive Stop</b>	
031132178-0044	PLM NYS 198.6 NOB				N/A		Not Analyzed
JC 1 / CAFETERIA & OFFICES / JOINT COMPOUND - / BAZZINI OFFICE	TEM NYS 198.4 NOB				N/A		Not Analyzed
045	PLM NYS 198.1 Friable	10/2/2011				<b>Positive Stop</b>	
031132178-0045	PLM NYS 198.6 NOB				N/A		Not Analyzed
JC 1 / CAFETERIA & OFFICES / JOINT COMPOUND - / BAZZINI OFFICE	TEM NYS 198.4 NOB				N/A		Not Analyzed

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 307 West 38th Street, New York, NY 10018  
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Attn: **Stephen Pharai**  
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 1430 Broadway  
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 New York, NY 10018

Customer ID: TRCE51  
 Customer PO:  
 Received: 09/30/11 3:37 PM  
 EMSL Order: 031132178

**Test Report: Asbestos Analysis of Bulk Material**

Fax: (212) 221-7840 Phone: (212) 221-7822  
 Project: **166703.0060.0001 / NYC EDC / 200-240 FOOD CENTER DRIVE,  
 BRONX, NY / ROOF & SELECTED INTERIOR AREAS**

EMSL Proj: NYC EDC

Sample Description	Test	Analyzed Date	Color	Non Asbestos		Asbestos	Comments
				Fibrous	Non-Fibrous		
046-Floor Tile 031132178-0046	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011	Brown		N/A	1.9% Chrysotile 1.9% Total	Not Analyzed
FT 4 / HALLWAY / BROWN DESIGN 12"X12" FT - / DAIRYLAND OFFICE	TEM NYS 198.4 NOB	10/2/2011			N/A	Positive Stop (Not Analyzed)	
046-Mastic 031132178-0046A	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011	Brown /Black		N/A	Inconclusive : <1% Chrysotile <1% Total	Not Analyzed
FT 4 / MASTIC ASSOC. W./ BROWN DESIGN 12"X12" FT - / DAIRYLAND OFFICE	TEM NYS 198.4 NOB	10/2/2011	Brown /Black		N/A	<1% Chrysotile <1% Total	
047-Floor Tile 031132178-0047	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011	Brown		N/A	Positive Stop (Not Analyzed)	Not Analyzed
FT 4 / HALLWAY / BROWN DESIGN 12"X12" FT - / DAIRYLAND OFFICE	TEM NYS 198.4 NOB	10/2/2011			N/A	Positive Stop (Not Analyzed)	
047-Mastic 031132178-0047A	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011	Black		N/A	Inconclusive : <1% Chrysotile <1% Total	Not Analyzed
FT 4 / MASTIC ASSOC. W./ BROWN DESIGN 12"X12" FT - / DAIRYLAND OFFICE	TEM NYS 198.4 NOB	10/2/2011	Black		N/A	3.1% Chrysotile 3.1% Total	
048-Floor Tile 031132178-0048	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011	Brown		N/A	Positive Stop (Not Analyzed)	Not Analyzed
FT 4 / HALLWAY / BROWN DESIGN 12"X12" FT - / DAIRYLAND OFFICE	TEM NYS 198.4 NOB	10/2/2011			N/A	Positive Stop (Not Analyzed)	
048-Mastic 031132178-0048A	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011	Black		N/A	Inconclusive : <1% Chrysotile <1% Total	Not Analyzed
FT 4 / MASTIC ASSOC. W./ BROWN DESIGN 12"X12" FT - / DAIRYLAND OFFICE	TEM NYS 198.4 NOB	10/2/2011			N/A	Positive Stop (Not Analyzed)	

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 307 West 38th Street, New York, NY 10018  
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 New York, NY 10018

Customer ID: TRCE51  
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 Received: 09/30/11 3:37 PM  
 EMSL Order: 031132178

**Test Report: Asbestos Analysis of Bulk Material**

Fax: (212) 221-7840 Phone: (212) 221-7822  
 Project: **166703.0060.0001 / NYC EDC / 200-240 FOOD CENTER DRIVE,  
 BRONX, NY / ROOF & SELECTED INTERIOR AREAS**

EMSL Proj: NYC EDC

Sample Description	Test	Analyzed Date	Color	Non Asbestos		Asbestos	Comments
				Fibrous	Non-Fibrous		
049-Floor Tile 031132178-0049	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011	Beige		N/A	Inconclusive: None Detected	Not Analyzed
FT 5 / LUNCH ROOM / BEIGE DESIGN 12"X12" FT - / DAIRYLAND OFFICE	TEM NYS 198.4 NOB	10/2/2011	Beige		N/A	None Detected	
049-Mastic 031132178-0049A	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011	Brown		N/A	Inconclusive: None Detected	Not Analyzed
FT 5 / MASTIC ASSOC. W./ BEIGE DESIGN 12"X12" FT - / DAIRYLAND OFFICE	TEM NYS 198.4 NOB	10/2/2011	Brown		N/A	None Detected	
050-Floor Tile 031132178-0050	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011	Beige		N/A	Inconclusive: None Detected	Not Analyzed
FT 5 / LUNCH ROOM / BEIGE DESIGN 12"X12" FT - / DAIRYLAND OFFICE	TEM NYS 198.4 NOB	10/2/2011	Beige		N/A	None Detected	
050-Mastic 031132178-0050A	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011	Brown		N/A	Inconclusive: None Detected	Not Analyzed
FT 5 / MASTIC ASSOC. W./ BEIGE DESIGN 12"X12" FT - / DAIRYLAND OFFICE	TEM NYS 198.4 NOB	10/2/2011	Brown		N/A	1.4% Chrysotile 1.4% Total	
051-Floor Tile 031132178-0051	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011	Beige		N/A	Inconclusive: None Detected	Not Analyzed
FT 5 / LUNCH ROOM / BEIGE DESIGN 12"X12" FT - / DAIRYLAND OFFICE	TEM NYS 198.4 NOB	10/2/2011	Beige		N/A	None Detected	
051-Mastic 031132178-0051A	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/2/2011	Brown		N/A	Inconclusive: None Detected	Not Analyzed
FT 5 / MASTIC ASSOC. W./ BEIGE DESIGN 12"X12" FT - / DAIRYLAND OFFICE	TEM NYS 198.4 NOB	10/2/2011			N/A	Positive Stop (Not Analyzed)	

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 EMSL Order: 031132178

**Test Report: Asbestos Analysis of Bulk Material**

Fax: (212) 221-7840 Phone: (212) 221-7822  
 Project: **166703.0060.0001 / NYC EDC / 200-240 FOOD CENTER DRIVE,  
 BRONX, NY / ROOF & SELECTED INTERIOR AREAS**

EMSL Proj: NYC EDC

Sample Description	Test	Analyzed Date	Color	Non Asbestos		Asbestos	Comments
				Fibrous	Non-Fibrous		
052-Floor Tile 031132178-0052 FT 6 / OFFICE AREA / BLUE 12"X12" FT - (ABOVE MASTIC BEIGE DESIGN FT) // DAIRYLAND OFFICE	PLM NYS 198.1 Friable PLM NYS 198.6 NOB TEM NYS 198.4 NOB	10/2/2011 10/2/2011	Blue Blue		N/A N/A	Inconclusive: None Detected None Detected	Not Analyzed
052-Mastic 031132178-0052A FT 6 / MASTIC ASSOC. W./ BLUE 12"X12" FT - (ABOVE MASTIC BEIGE DESIGN FT) // DAIRYLAND OFFICE	PLM NYS 198.1 Friable PLM NYS 198.6 NOB TEM NYS 198.4 NOB	10/2/2011 10/2/2011	Brown Brown		N/A N/A	Inconclusive: None Detected None Detected	Not Analyzed
053-Floor Tile 031132178-0053 FT 6 / OFFICE AREA / BLUE 12"X12" FT - (ABOVE MASTIC BEIGE DESIGN FT) // DAIRYLAND OFFICE	PLM NYS 198.1 Friable PLM NYS 198.6 NOB TEM NYS 198.4 NOB	10/2/2011 10/2/2011	Blue Blue		N/A N/A	Inconclusive: None Detected None Detected	Not Analyzed
053-Mastic 031132178-0053A FT 6 / MASTIC ASSOC. W./ BLUE 12"X12" FT - (ABOVE MASTIC BEIGE DESIGN FT) // DAIRYLAND OFFICE	PLM NYS 198.1 Friable PLM NYS 198.6 NOB TEM NYS 198.4 NOB	10/2/2011 10/2/2011	White White		N/A N/A	Inconclusive: None Detected None Detected	Not Analyzed
054-Floor Tile 031132178-0054 FT 6 / OFFICE AREA / BLUE 12"X12" FT - (ABOVE MASTIC BEIGE DESIGN FT) // DAIRYLAND OFFICE	PLM NYS 198.1 Friable PLM NYS 198.6 NOB TEM NYS 198.4 NOB	10/2/2011 10/2/2011	Blue Blue		N/A N/A	Inconclusive: None Detected None Detected	Not Analyzed
054-Mastic 031132178-0054A FT 6 / MASTIC ASSOC. W./ BLUE 12"X12" FT - (ABOVE MASTIC BEIGE DESIGN FT) // DAIRYLAND OFFICE	PLM NYS 198.1 Friable PLM NYS 198.6 NOB TEM NYS 198.4 NOB	10/2/2011 10/2/2011	Brown Brown		N/A N/A	Inconclusive: None Detected None Detected	Not Analyzed

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Test Report NY198w/A-7.21.0 Printed: 10/2/2011 2:54:05 PM



**EMSL Analytical, Inc.**  
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 Customer PO:  
 Received: 09/30/11 3:37 PM  
 EMSL Order: 031132178

**Test Report: Asbestos Analysis of Bulk Material**

Fax: (212) 221-7840 Phone: (212) 221-7822  
 Project: **166703.0060.0001 / NYC EDC / 200-240 FOOD CENTER DRIVE,  
 BRONX, NY / ROOF & SELECTED INTERIOR AREAS**

EMSL Proj: NYC EDC

Sample Description	Test	Analyzed Date	Color	Non Asbestos		Asbestos	Comments
				Fibrous	Non-Fibrous		
055 031132178-0055 CBM 1 / OFFICE / COVEBASE MASTIC - / DAIRYLAND OFFICE	PLM NYS 198.1 Friable PLM NYS 198.6 NOB TEM NYS 198.4 NOB	10/2/2011	Various		N/A	<b>Inconclusive: None Detected</b>	Not Analyzed
056 031132178-0056 CBM 1 / LUNCH ROOM / COVEBASE MASTIC - / DAIRYLAND OFFICE	PLM NYS 198.1 Friable PLM NYS 198.6 NOB TEM NYS 198.4 NOB	10/2/2011	Various		N/A	<b>Inconclusive: None Detected</b>	Not Analyzed
057 031132178-0057 CBM 1 / CAFETERIA / COVEBASE MASTIC - / DAIRYLAND OFFICE	PLM NYS 198.1 Friable PLM NYS 198.6 NOB TEM NYS 198.4 NOB	10/2/2011	Various		N/A	<b>Inconclusive: None Detected</b>	Not Analyzed
058 031132178-0058 BM 1 / W. SIDE WALL / BRICK MORTAR - / EXTERIOR FAÇADE	PLM NYS 198.1 Friable PLM NYS 198.6 NOB TEM NYS 198.4 NOB	10/2/2011	Gray/Tan		100% N/A N/A	<b>None Detected</b>	Not Analyzed Not Analyzed
059 031132178-0059 BM 1 / S. SIDE WALL / BRICK MORTAR - / EXTERIOR FAÇADE	PLM NYS 198.1 Friable PLM NYS 198.6 NOB TEM NYS 198.4 NOB	10/2/2011	Tan		100% N/A N/A	<b>None Detected</b>	Not Analyzed Not Analyzed
060 031132178-0060 BM 1 / INTERIOR WALLS / NW SIDE / BRICK MORTAR - / INTERIOR	PLM NYS 198.1 Friable PLM NYS 198.6 NOB TEM NYS 198.4 NOB	10/2/2011	Gray		100% N/A N/A	<b>None Detected</b>	Not Analyzed Not Analyzed

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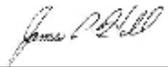
EMSL Proj: NYC EDC

<u>Sample Description</u>	<u>Test</u>	<u>Analyzed Date</u>	<u>Color</u>	<u>Non Asbestos</u>		<u>Asbestos</u>	<u>Comments</u>
				<u>Fibrous</u>	<u>Non-Fibrous</u>		

Note: Most screed coats submitted were roofing insulation samples.

NOB = Non Friable Organically Bound  
 N/A = Not Applicable

Analyst(s)  
 \_\_\_\_\_  
 David Z. Chen  
  
 Williams John  
  
 Steve Juszczuk

  
 \_\_\_\_\_  
 James Hall, Laboratory Manager  
 or other approved signatory

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Samples analyzed by EMSL Analytical, Inc. New York, NY NYS ELAP 11506

Initial Report From 10/02/2011 14:40:55

Test Report NY198w/A-7.21.0 Printed: 10/2/2011 2:54:05 PM

**THIS IS THE LAST PAGE OF THE REPORT.**





031132178

## ASBESTOS SURVEY DATA SHEET AND CHAIN OF CUSTODY

PROJECT NO: 166103-0060-0001

CLIENT: <b>NYCEDC</b>	PROJECT MANAGER: <b>S. Pharaï</b>
PROJECT SITE: <b>200-240 Food Center Drive, Bronx, N.Y.</b>	STATE: <b>N.Y.</b> PAGE <b>2</b> OF <b>7</b>
WORK AREA: <b>Roof &amp; Selected Interior Areas</b>	DATE: <b>9/30/11</b> TIME:
INSPECTOR(S): <b>A. Keab Osinaike / S. Pharaï</b>	SIGNATURE: <i>[Signature]</i> CERTIFICATE #:

## BULK SAMPLE INFORMATION

FUNCTIONAL AREA	SAMPLE NO.	HOMOGENEOUS MATERIAL							
		ID	LOCATION	DESCRIPTION	COLOR SIZE	TOTAL QUANTITY	DAMAGED QUANTITY	CONDITION	FRAGILE / NON-FRAGILE
Upper Level Roof - SE	011	SC2	Roof / South Side	Roof Screed Coat 2				G	X
	012	SC2	Roof / North Side	Roof Screed Coat 2					
Office Roof (Lower Level)	013	RMS	Roof / North Side	Roof Membrane 3		15,000	10	2011 SEP 30 PM 3:37 EMSL MANHATTAN AB RECEIVED	X
Office Roof	014	RMS	Roof / West Side	Roof Membrane 3					
Office Roof (Lower Level)	015	RMS	Roof / South Side	Roof Membrane 3					X
Office Roof	016	SC3	Roof / North Side	Roof Screed Coat 3		15,000			X
Office Roof	017	SC3	Roof / West Side	Roof Screed Coat 3					X
Office Roof	018	SC3	Roof / South Side	Roof Screed Coat 3					X
Mid-Level Roof	019	RMA	Roof / North Side	Roof Membrane 4		10,000		G	X
Mid-Level Roof	020	RMA	Roof / West Side	Roof Membrane 4		40,000		G	

## INSPECTOR'S LOG

TURNAROUND TIME		PLM - BULK	TEM - BULK & DUST	PHYSICAL CONDITION ASSESSMENT	
<input type="checkbox"/> 24 HRS	<input checked="" type="checkbox"/> 48 HRS	<input type="checkbox"/> PLM EPA 800/R-93/118 / <input type="checkbox"/> NYS 198.1 (Fragile)	<input type="checkbox"/> NYS NOB 198.4 (TEM - NOB)	<input type="checkbox"/> Damaged or Significantly Damaged FRM/TM	<input type="checkbox"/> ACM with potential for Damage
<input type="checkbox"/> 72 HRS	<input type="checkbox"/> 5 DAYS	<input type="checkbox"/> NYS 198.6 (PLM-NOB)	<input type="checkbox"/> Microvac - ASTM D 5755 / <input type="checkbox"/> Wipe - ASTM D 5480	<input type="checkbox"/> Damaged/Faded Surfacing ACM	<input type="checkbox"/> ACM with potential for Significant Damage
				<input type="checkbox"/> Significantly Damaged FRM/TM Surfacing ACM	<input type="checkbox"/> Remaining Fragile in Support of CBM
				<input type="checkbox"/> Damaged or Significantly Damaged FRM/TM Mat. ACM	<input type="checkbox"/> G - Good / N - Minor Damage / P - Poor

## CHAIN OF CUSTODY

Retinquished by (nm)	(sign)	DATE	TIME
<b>A. Osinaike</b>	<i>[Signature]</i>	<b>9 / 30 / 11</b>	am/pm
Received by (nm)	(sign)		am/pm

Email Results to: <b>spharaï@trcsolutions.com</b>	Comments:	INSPECTION TASKS COMPLETED
<b>A. Osinaike@trcsolutions.com</b>		

RECEIVED



031132178

ASBESTOS SURVEY DATA SHEET AND CHAIN OF CUSTODY

PROJECT NO: 166103-0060-0001

RECEIVED

CLIENT: NYCEDC	PROJECT MANAGER: S. Pharai
PROJECT SITE: 200-240 Food Center Drive, Bronx, N.Y.	STATE: N.Y. PAGE 3 OF 7
WORK AREA: Roof & Selected Interior	DATE: 9/30/11 TIME:
INSPECTOR(S): Akash Dimaibe / S. Pharai	SIGNATURE: [Signature] CERTIFICATE #:

BULK SAMPLE INFORMATION

FUNCTIONAL AREA		SAMPLE NO.	HOMOGENEOUS MATERIAL							
NO.	DESCRIPTION		ID	LOCATION	DESCRIPTION	COLOR SIZE	TOTAL QUANTITY	DAMAGED QUANTITY	CONDITION	FRAGILE NON-FRAGILE
4	Mid-Level Roof	021	RM 4	Roof/South Side	Roof Membrane	4			G	X
4	Mid-Level Roof	022	SC 4	Roof/North Side	Roof Screenshot	4	10,000		G	X
4	Mid-Level Roof	023	SCA	Roof/West Side	Roof Screenshot	4			G	X
4	Mid-Level Roof	024	SCA	Roof/South Side	Roof Screenshot	4			G	X
5	Basement Office	028	FT 1	Floor/North Side	Grey 12"x12" Floor Tile	12"x12"	450sf	200	P	X
5		029	FT 1	Floor/North Side	12"x12" Floor Tile				P	X
5		030	FT 2	Floor/North Side	12"x12" Floor Tile				P	X
5		025	PI 1	Near Ceiling	6" O.D. Pipe Insulation		150 LF	10	M	X
5		026	PI 1	Near Ceiling	2" O.D. Pipe Insulation		180 LF	10	M	X
5		027	PI 1	Near Ceiling	4" O.D. Pipe Insulation		180 LF	10	M	X

INSPECTOR'S LOG

TURNAROUND TIME	PLM - BULK	TEM - BULK & DUST	PHYSICAL CONDITION ASSESSMENT
<input type="checkbox"/> 24 HRS <input checked="" type="checkbox"/> 48 HRS <input type="checkbox"/> 72 HRS	PLM EPA 600/R-93/116 / <input type="checkbox"/> NYS 198.1 (Fragile) <input type="checkbox"/> NYS 198.6 (PLM-NOB)	NYS NOB 198.4 (TEM-NOB) <input type="checkbox"/> Microvac - ASTM D 5755 / <input type="checkbox"/> Wipe-ASTM D3440	1 Damaged or Significantly Damaged Fracture Tile 2 Damaged Fracture Surfacing ACM 3 Significantly Damaged Fracture Surfacing ACM 4 Damaged or Significantly Damaged Fracture Mat. ACM 5 ACM with potential for Damage 6 ACM with potential for Significant Damage 7 Remaining Fracture or Surfacing ACM 8 - Good / M2 - Minor Damage / P - Poor

CHAIN OF CUSTODY

Relinquished by (pm)	Received by (pm)	DATE	TIME
A. Dimaibe (sign)	[Signature] (sign)	9/30/11	am/pm
			am/pm

Email Results to: sphara@trcsolutions.com  
A. Dimaibe@trcsolutions.com

Comments:

INSPECTION TASKS COMPLETED

ASBESTOS SURVEY DATA SHEET AND CHAIN OF CUSTODY

PROJECT NO: 166703.0060.000

CLIENT: <b>NYCEDC</b>	PROJECT MANAGER: <b>S. Pharaï</b>	STATE: <b>NY</b>	PAGE: <b>4 OF 7</b>
PROJECT SITE: <b>200-240 Food Center Drive, Bronx, N.Y.</b>	DATE: <b>9/30/11</b>	TIME:	
WORK AREA: <b>Roof &amp; Selected Interior Areas</b>	INSPECTOR(S): <b>Akeeb Osinaïke / S. Pharaï</b>	SIGNATURE: <i>[Signature]</i>	CERTIFICATE #:

BULK SAMPLE INFORMATION

FUNCTIONAL AREA		SAMPLE NO.	HOMOGENEOUS MATERIAL							
NO.	DESCRIPTION		ID	LOCATION	DESCRIPTION	COLOR SIZE	TOTAL QUANTITY	DAMAGED QUANTITY	CONDITION	FRAGILE / NON-FRAGILE
5	Office Copiers & Offices	031	FT2	Copiers & Offices	Being 12" x 12" Floor Tile & Marble under 2 layer of Gray Ft.		8,200sf	2,000	P	X
5		032	FT2	"					P	X
5		033	FT2	"					P	X
5		034	FT3	"	Gray 12" x 12" Floor Tile (Top Layer of 3)		8,200sf	2,000	P	X
5		035	FT3	"					P	X
5		036	FT3	"					P	X
5			FT1	"	Gray 12" x 12" Floor Tile (Middle Layer)		8,200sf	2,000	P	X
5		037	CT2	"	2x4 Ceiling Tile		8,200		G	X
5		038	CT2	"					G	X
5		039	CT2	"					G	X

INSPECTOR'S LOG

TURNAROUND TIME	PLM - BULK	TEM - BULK & DUST	PHYSICAL CONDITION ASSESSMENT
<input type="checkbox"/> 24 HRS <input checked="" type="checkbox"/> 48 HRS <input type="checkbox"/> 72 HRS	<input type="checkbox"/> PLM EPA 600/R-93/116 / <input type="checkbox"/> NYS 199.1 (Friable) <input type="checkbox"/> NYS 199.6 (PLM-NOB)	<input type="checkbox"/> NYS NOB 199.4 (TEM-NOB) <input type="checkbox"/> Microvac - ASTM D 5755 / <input type="checkbox"/> Wipe-ASTM D6480	1 Damaged or Significantly Damaged Friable Tile 2 Damaged Friable Surfacing ACM 3 Significantly Damaged Friable Surfacing ACM 4 Damaged or Significantly Damaged Friable Mfr. ACM 5 ACM with potential for Damage 6 ACM with potential for Significant Damage 7 Remaining Friable or Suspect ACM 8 - Good / MD - Minor Damage / P - Poor

CHAIN OF CUSTODY

Relinquished by (print)	(sign)	DATE	TIME
A. Osinaïke	<i>[Signature]</i>	9/30/11	am/pm
Received by (print)	(sign)		am/pm

Email Results to: [spharaï@trcsolutions.com](mailto:spharaï@trcsolutions.com)      Comments: **A Osinaïke@trcsolutions.com**

**INSPECTION TASKS COMPLETED**

1. A visual identification of asbestos based on color and texture. 2. Visual and tactile identification of asbestos. 3. Laboratory analysis of samples. 4. Laboratory analysis of samples. 5. Laboratory analysis of samples. 6. Laboratory analysis of samples. 7. Laboratory analysis of samples. 8. Laboratory analysis of samples. 9. Laboratory analysis of samples. 10. Laboratory analysis of samples. 11. Laboratory analysis of samples. 12. Laboratory analysis of samples. 13. Laboratory analysis of samples. 14. Laboratory analysis of samples. 15. Laboratory analysis of samples. 16. Laboratory analysis of samples. 17. Laboratory analysis of samples. 18. Laboratory analysis of samples. 19. Laboratory analysis of samples. 20. Laboratory analysis of samples. 21. Laboratory analysis of samples. 22. Laboratory analysis of samples. 23. Laboratory analysis of samples. 24. Laboratory analysis of samples. 25. Laboratory analysis of samples. 26. Laboratory analysis of samples. 27. Laboratory analysis of samples. 28. Laboratory analysis of samples. 29. Laboratory analysis of samples. 30. Laboratory analysis of samples. 31. Laboratory analysis of samples. 32. Laboratory analysis of samples. 33. Laboratory analysis of samples. 34. Laboratory analysis of samples. 35. Laboratory analysis of samples. 36. Laboratory analysis of samples. 37. Laboratory analysis of samples. 38. Laboratory analysis of samples. 39. Laboratory analysis of samples. 40. Laboratory analysis of samples. 41. Laboratory analysis of samples. 42. Laboratory analysis of samples. 43. Laboratory analysis of samples. 44. Laboratory analysis of samples. 45. Laboratory analysis of samples. 46. Laboratory analysis of samples. 47. Laboratory analysis of samples. 48. Laboratory analysis of samples. 49. Laboratory analysis of samples. 50. Laboratory analysis of samples. 51. Laboratory analysis of samples. 52. Laboratory analysis of samples. 53. Laboratory analysis of samples. 54. Laboratory analysis of samples. 55. Laboratory analysis of samples. 56. Laboratory analysis of samples. 57. Laboratory analysis of samples. 58. Laboratory analysis of samples. 59. Laboratory analysis of samples. 60. Laboratory analysis of samples. 61. Laboratory analysis of samples. 62. Laboratory analysis of samples. 63. Laboratory analysis of samples. 64. Laboratory analysis of samples. 65. Laboratory analysis of samples. 66. Laboratory analysis of samples. 67. Laboratory analysis of samples. 68. Laboratory analysis of samples. 69. Laboratory analysis of samples. 70. Laboratory analysis of samples. 71. Laboratory analysis of samples. 72. Laboratory analysis of samples. 73. Laboratory analysis of samples. 74. Laboratory analysis of samples. 75. Laboratory analysis of samples. 76. Laboratory analysis of samples. 77. Laboratory analysis of samples. 78. Laboratory analysis of samples. 79. Laboratory analysis of samples. 80. Laboratory analysis of samples. 81. Laboratory analysis of samples. 82. Laboratory analysis of samples. 83. Laboratory analysis of samples. 84. Laboratory analysis of samples. 85. Laboratory analysis of samples. 86. Laboratory analysis of samples. 87. Laboratory analysis of samples. 88. Laboratory analysis of samples. 89. Laboratory analysis of samples. 90. Laboratory analysis of samples. 91. Laboratory analysis of samples. 92. Laboratory analysis of samples. 93. Laboratory analysis of samples. 94. Laboratory analysis of samples. 95. Laboratory analysis of samples. 96. Laboratory analysis of samples. 97. Laboratory analysis of samples. 98. Laboratory analysis of samples. 99. Laboratory analysis of samples. 100. Laboratory analysis of samples.

CLIENT: <b>NYCEDC</b>	PROJECT MANAGER: <b>S. Phara</b>
PROJECT SITE: <b>200-240 Food Center Drive, Bronx, N.Y.</b>	STATE: <b>NY</b> PAGE <b>5</b> OF <b>7</b>
WORK AREA: <b>Roof &amp; Selected Interior Areas</b>	DATE: <b>9/30/11</b> TIME:
INSPECTOR(S): <b>Akeeb Osmarke / S. Phara</b>	SIGNATURE: <i>[Signature]</i> CERTIFICATE #:

BULK SAMPLE INFORMATION

FUNCTIONAL AREA		SAMPLE NO.	HOMOGENEOUS MATERIAL							
NO.	DESCRIPTION		ID	LOCATION	DESCRIPTION	COLOR SIZE	TOTAL QUANTITY	DAMAGED QUANTITY	CONDITION	FIXABLE / NON-FIXABLE
5	Bazzani Office	040	SR1	Corridor & Offices	Sheetrock wallboard		1985 SF	100	G	X
		041	SR1				-	-	G	X
		042	SR1				-	-	G	X
		043								
		044	JC1		Sheetrock Joint Compound		980 SF	100	G	X
		045	JC1				-	-	G	X
		046	JC1				-	-	G	X
		047	JC1				-	-	G	X
b	Hamilton Office	048	FTA	Office Hallway	Brown design 12"x12" FT & Matric		1250 SF	400	P	X
		049	FTA				-	-	P	X
		048	FTA				-	-	P	X
b		049	FT5	Lunch Room	Beige design 12"x12" FT & Matric		700 SF	200	P	X

INSPECTOR'S LOG

TURNAROUND TIME	PLM - BULK	TEM - BULK & DUST	PHYSICAL CONDITION ASSESSMENT
24 HRS	PLM EPA 800/R-93/116 / NYS 198.1 (Fracture)	NYS NOB 198.4 (TEM - NOB)	1 Damaged or Significantly Damaged Fracture T&M
48 HRS	NYS 198.6 (PLM-NOB)	Microvac - ASTM D 5755 / Wipe-ASTM D6480	2 Damaged Fracture Surrounding ACM
72 HRS			3 Significantly Damaged Fracture Surrounding ACM
			4 Damaged or Significantly Damaged Fracture Mat. ACM
			5 ACM with potential for Damage
			6 ACM with potential for Significant Damage
			7 Remaining Fracture or Surrounding ACM
			8 - Good / 9D - Minor Damage / P - Poor

CHAIN OF CUSTODY

Relinquished by (nm)	Received by (nm)	DATE	TIME
A - Osmarke	[Signature]	9/30/11	am/pm
	[Signature]	/ /	am/pm

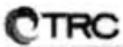
Email Results to: sphara@trcsolutions.com

Comments:

Aosmarke@trcsolutions.com

INSPECTION TASKS COMPLETED

1.1 Visual Inspection of all visible suspect materials and surfaces. 2.1 Collect 24 samples for analysis. 3.1 Prepare Field Reports. 4.1 Laboratory Analysis. 5.1 Preparation of report tables and site maps, records and photos. 6.1 Quality for amount of samples collected. 7.1 Response to client. 8.1 Follow up required to analyze all the samples. 9.1 Review results & report findings. 10.1 Final report. 11.1 Chain of Custody. 12.1 Report accompanied by samples to the laboratory.



031132178

ASBESTOS SURVEY DATA SHEET AND CHAIN OF CUSTODY

PROJECT NO: 166703.0060.0001

CLIENT: NYCEDC PROJECT MANAGER: S. Pharaal  
 PROJECT SITE: 200-240 Park Center Drive, Bronx, N.Y. STATE: NY PAGE: 6 of 7  
 WORK AREA: Roof & Selected Interior Areas DATE: 9/30/11 TIME:  
 INSPECTOR(S): Akceeb Asmaikel / S. Pharaal SIGNATURE: [Signature] CERTIFICATE #:

BULK SAMPLE INFORMATION

FUNCTIONAL AREA	NO.	DESCRIPTION	SAMPLE NO.	HOMOGENEOUS MATERIAL							
				ID	LOCATION	DESCRIPTION	COLOR SIZE	TOTAL QUANTITY	DAMAGED QUANTITY	CONDITION	FRAGILE / NON-FRAGILE
Dairyland Office	b		050	FT5	Lunch Room	Beige design 12x12 tile & Mastic				R	x
	b		051	FT5	Lunch Room	Blue Floor tile 12x12 & Mastic				R	x
			052	FT6	Office Area	Beige design 12x12		2,500sf	100	MD	x
			053	FT6							
			054	FT6							
Dairyland Office	b		055	CBM1	Office	Cove Base Mastic		860sf	200	MD	x
Dairyland Office	b		056	CBM1	Lunch Room						x
Bozzini Office	5		057	CBM1	Cafeteria						x
Exterior Facade	7		058	BM1	West Side Wall	Brick Mortar		1600 sf		G	
Exterior Facade	7		059	BM1	South Side Wall					G	

INSPECTOR'S LOG

TURNAROUND TIME:  24 HRS  48 HRS  72 HRS  5 DAYS  
 PLM - BULK:  PLM EPA 600/R-93/116  NYS 196.1 (Fragile)  NYS 198.6 (PLM-NOB)  
 TEM - BULK & DUST:  NYS NOB 196.4 (TEM-NOB)  Microvac - ASTM D 5755 /  Wipe-ASTM D6480  
 PHYSICAL CONDITION ASSESSMENT:  
 1 Damaged or Significantly Damaged Fibrous Tile  
 2 Damaged Fibrous Surfacing ACM  
 3 Significantly Damaged Fibrous Surfacing ACM  
 4 Damaged or Significantly Damaged Fibrous Mat. ACM  
 5 ACM with potential for Damage  
 6 ACM with potential for Significant Damage  
 7 Remaining Fibrous or Suspect ACM  
 8 - Good / 9 - Minor Damage / 10 - Poor

CHAIN OF CUSTODY

Relinquished by (name): [Signature] (sign) DATE: / / TIME: am/pm  
 Received by (name): [Signature] (sign) DATE: / / TIME: am/pm

Email Results to: spharaal@trcsolutions.com Comments: [Signature]  
 A. Asmaikel@trcsolutions.com INSPECTION TASKS COMPLETED

1. A visual inspection of all materials sampled for asbestos... 2. All samples must be analyzed for asbestos... 3. All samples must be analyzed for asbestos... 4. All samples must be analyzed for asbestos...





**EMSL Analytical, Inc.**  
 307 West 38th Street, New York, NY  
 10018  
 Phone: (212) 290-0051

Attn: **Stephen Pharai**  
**TRC Environmental Consultants**  
 1430 Broadway  
 10th Floor  
 New York, NY 10018

Customer ID: TRCE51  
 Customer PO:  
 Received: 10/12/11 10:31 AM  
 EMSL Order: 031133549

**Test Report: Asbestos Analysis of Bulk Material**

Fax: (212) 221-7840

Phone: (212) 221-7822

EMSL Proj:

Project: **NYC EDC / 200-240 FOOD CENTER DRIVE, BRONX, NY / ROOF  
 & SELECTED INTERIOR - ROOF SHED**

Sample Description	Test	Analyzed Date	Color	Non Asbestos		Asbestos	Comments
				Fibrous	Non-Fibrous		
061 031133549-0001 RAIL SHED ROOF - ROOF/ SOUTH SIDE/ ROOFING MEMBRANE 5	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/13/2011	Black		N/A	<b>Inconclusive: None Detected</b>	Not Analyzed
062 031133549-0002 RAIL SHED ROOF - ROOF/ EAST SIDE/ ROOFING MEMBRANE 5	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/13/2011	Black		N/A	<b>Inconclusive: None Detected</b>	Not Analyzed
063 031133549-0003 RAIL SHED ROOF - ROOF/ S.E SIDE/ ROOFING MEMBRANE 5	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/13/2011	Black		N/A	<b>Inconclusive: None Detected</b>	Not Analyzed
064 031133549-0004 RAIL SHED ROOF - ROOF/ SOUTH SIDE/ ROOFING SCREED COAT 5	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/12/2011	Tan/Black	50.00% Cellulose	50% N/A	<b>None Detected</b>	Not Analyzed Not Analyzed
065 031133549-0005 RAIL SHED ROOF - ROOF/ EAST SIDE/ ROOFING SCREED COAT 5	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/12/2011	Tan/Black	52.00% Cellulose	48% N/A	<b>None Detected</b>	Not Analyzed Not Analyzed
066 031133549-0006 RAIL SHED ROOF - ROOF/ S.E. SIDE/ ROOFING SCREED COAT 5	PLM NYS 198.1 Friable PLM NYS 198.6 NOB	10/12/2011	Brown	60.00% Cellulose	40% N/A	<b>None Detected</b>	Not Analyzed Not Analyzed

Initial Report From 10/14/2011 08:12:17

Test Report NY198w/A-7.21.0 Printed: 10/14/2011 8:12:17 AM



**EMSL Analytical, Inc.**  
 307 West 38th Street, New York, NY  
 10018  
 Phone: (212) 290-0051

Attn: **Stephen Pharai**  
**TRC Environmental Consultants**  
 1430 Broadway  
 10th Floor  
 New York, NY 10018

Customer ID: TRCE51  
 Customer PO:  
 Received: 10/12/11 10:31 AM  
 EMSL Order: 031133549

**Test Report: Asbestos Analysis of Bulk Material**

Fax: (212) 221-7840

Phone: (212) 221-7822

EMSL Proj:

Project: **NYC EDC / 200-240 FOOD CENTER DRIVE, BRONX, NY / ROOF  
 & SELECTED INTERIOR - ROOF SHED**

Sample Description	Test	Analyzed Date	Color	Non Asbestos		Asbestos	Comments
				Fibrous	Non-Fibrous		

NOB = Non Friable Organically Bound

N/A = Not Applicable

James Hall, Laboratory Manager  
 or other approved signatory

Analyst(s)

*Albert Grohmann*

*Jon Williams*

*Gerald Iannuzzi*

*Henry Akintunde*

EMSL maintains liability limited to cost of analysis. This report relates only to the samples reported above and may not be reproduced, except in full, without written approval by EMSL. The above test report relates only to the items tested. This test report must not be used to claim product endorsement by NVLAP or any agency of the U.S. Government . EMSL bears no responsibility for sample collection activities or analytical method limitations. The results in this report meet all requirements of the NELAC Standards unless otherwise noted. The laboratory is not responsible for the accuracy of results when requested to physically separate and analyze layered samples. PLM is not consistently reliable in detecting asbestos in floor coverings and similar NOB's. Quantitative TEM is currently the only method that can be used to determine if a NOB material can be considered or treated as non-asbestos containing.

Samples analyzed by EMSL Analytical, Inc . New York, NY NYS ELAP 11506

Initial Report From 10/02/2011 08:12:17

Test Report NY198w/A-7.21.0 Printed: 10/14/2011 8:12:17 AM

**THIS IS THE LAST PAGE OF THE REPORT.**

Page 2

ASBESTOS SURVEY DATA SHEET AND CHAIN OF CUSTODY

PROJECT NO: 177603.0060.0001

CLIENT: <b>NYCEDC</b>	PROJECT MANAGER: <b>S. Pharaï</b>
PROJECT SITE: <b>200-240 Food Center Drive, Bronx, NY</b>	STATE: <b>NY</b> PAGE <b>1</b> OF <b>1</b>
WORK AREA: <b>Roof &amp; Selected Interior - Roof Shed</b>	DATE: <b>10/11/11</b> TIME: _____
INSPECTOR(S): <b>S. Pharaï</b>	SIGNATURE:  CERTIFICATE #: _____

BULK SAMPLE INFORMATION										
FUNCTIONAL AREA			HOMOGENEOUS MATERIAL							
NO.	DESCRIPTION	SAMPLE NO.	ID	LOCATION	DESCRIPTION	COLOR SIZE	TOTAL QUANTITY	DAMAGED QUANTITY	CONDITION	P MF
9	Rail Shed Roof	061	RM5	Roof/South Side	Roofing Membrane 5	---	57,000	5,000	P	X
9	Rail Shed Roof	062	RM5	Roof/East Side	Roofing Membrane 5	---	---	---	P	X
9	Rail Shed Roof	063	RM5	Roof/S E Side	Roofing Membrane 5	---	---	---	P	X
9	Rail Shed Roof	064	SC5	Roof/South Side	Roofing Screed Coat 5	---	57,000	5,000	P	X
9	Rail Shed Roof	065	SC5	Roof/East Side	Roofing Screed Coat 5	---	---	---	P	X
9	Rail Shed Roof	066	SC5	Roof/S E Side	Roofing Screed Coat 5	---	---	---	P	X

*Dr 10/12 5:30p*

RECEIVED  
10/12/11 12 AM ID: 31  
EMSI/PHARAÏ/ATLAN LAB

INSPECTOR'S LOG			
TURNAROUND TIME		PLM - BULK	TEM - BULK & DUST
24 HRS	<input checked="" type="checkbox"/> 48 HRS	PLM EPA 600/R-92/116 / NYS 198.1 (Friable)	NYS NOB 198.4 (TEM-NOB)
72 HRS	<input type="checkbox"/> 5 DAYS	NYS 198.6 (PLM-NOB)	Micrograph - ASTM D 3265.1 / Tape - ASTM D6460
PHYSICAL CONDITION ASSESSMENT			
1. Damaged or significantly damaged Friable TM		2. Damaged or significantly damaged ACM	
3. Damaged or significantly damaged Friable ACM		4. Damaged or significantly damaged Friable Non-Friable ACM	
5. ACM with potential for friability		6. ACM with potential for significant damage	
7. Remaining Friable or Friable ACM		8. Class I, II, III - Minor Damage / P - Poor	
CHAIN OF CUSTODY			
Relinquished by (name)	<i>Stephan Pharaï</i>	(sign)	
Received by (name)	<i>S. Vasconcelos</i>	(sign)	
DATE		TIME	
10/12/11		9:00 am	
10/12/11		am/pm	
Email Results to: <a href="mailto:spharaï@trcsolutions.com">spharaï@trcsolutions.com</a>		Comments:	
INSPECTION TASKS COMPLETED			

*Dr 10/12 4:14pm*

---

**APPENDIX B**

**TRC ENVIRONMENTAL CORPORATION  
COMPANY ACCREDITATION & EMPLOYEE CERTIFICATIONS**

NEW YORK STATE - DEPARTMENT OF LABOR  
DIVISION OF SAFETY AND HEALTH  
LICENSE AND CERTIFICATE UNIT  
STATE CAMPUS BUILDING 12  
ALBANY, NY 12240

ASBESTOS HANDLING LICENSE

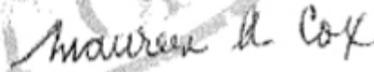
TRC Environmental Corporation  
1430 Broadway, 10th Floor  
New York, NY 10018

FILE NUMBER: 99-0373  
LICENSE NUMBER: 31038  
LICENSE CLASS: RESTRICTED  
DATE OF ISSUE: 05/06/2010  
EXPIRATION DATE: 05/31/2011

Duly Authorized Representative - Edward Gerdtz

This license has been issued in accordance with applicable provisions of Article 30 of the Labor Law of New York State and of the New York State Codes, Rules and Regulations (12 NYCRR Part 56). It is subject to suspension or revocation for a (1) serious violation of state, federal or local laws with regard to the conduct of an asbestos project, or (2) demonstrated lack of responsibility in the conduct of any job involving asbestos or asbestos material.

This license is valid only for the contractor named above and this license or a photocopy must be prominently displayed at the asbestos project worksite. This license verifies that all persons employed by the licensee on an asbestos project in New York State have been issued an Asbestos Certificate, appropriate for the type of work they perform, by the New York State Department of Labor.



Maureen A. Cox, Director  
FOR THE COMMISSIONER OF LABOR

NYC DEP Asbestos Control Program  
Asbestos Certificate



OSINAIKE,  
AKEEB O  
INVESTIGATOR  
123113  
EXPIRES: 10/7/2013  
DOB:10/7/1967 M 5' 08"

Must be carried on all asbestos projects

STATE OF NEW YORK - DEPARTMENT OF LABOR  
ASBESTOS CERTIFICATE



AKERS O OSBAI/KE  
CLASS(EXPIRES)  
C/ATEC(10/11) O/ASP(10/11)  
H PM (10/11)

CERT# 02-00055  
DMV# 817257602

MUST BE CARRIED ON ASBESTOS PROJECTS



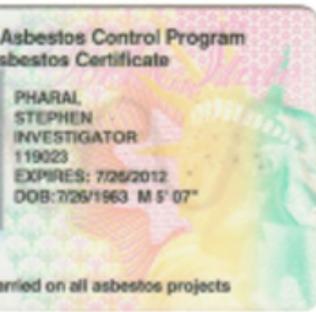
EYES BRO  
HAIR BLK  
HGT 5' 08"

IF FOUND RETURN TO:  
NYSDEL - L&C UNIT  
ROOM 161A BUILDING 12  
STATE OFFICE CAMPUS  
ALBANY NY 12240

**NYC DEP Asbestos Control Program**  
**Asbestos Certificate**



PHARA  
STEPHEN  
INVESTIGATOR  
119023  
EXPIRES: 7/26/2012  
DOB: 7/26/1963 M 5' 07"



Must be carried on all asbestos projects

**STATE OF NEW YORK - DEPARTMENT OF LABOR**  
**ASBESTOS CERTIFICATE**



STEPHEN N. PHARA  
CLASS (EXPIRES)  
C-ATEC (07/12) D-INSPL (07/12)  
E-MGPL (07/12) H-PM (07/12)  
I-RO (07/12)

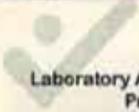


**CERT# 90-13290**  
**DMV# 416379553**  
**MUST BE CARRIED ON ASBESTOS PROJECTS**

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**APPENDIX C**

**EMSL ANALYTICAL INC.  
LABORATORY ACCREDITATION**



**AIHA**

Laboratory Accreditation  
Programs, LLC

**AIHA Laboratory Accreditation Programs, LLC**

*acknowledges that*

**EMSL Analytical, Inc.**

307 West 38th Street, New York, NY 10018

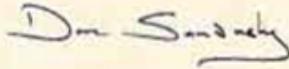
Laboratory ID: 102581

has fulfilled the requirements of the AIHA Laboratory Accreditation Programs (AIHA-LAP), LLC thereby conforming to the ISO/IEC 17025:2005 international standard, *General Requirements for the Competence of Testing and Calibration Laboratories*. The above named laboratory, along with all premises from which key activities are performed, as listed above, have been accredited by AIHA-LAP, LLC in the following:

**LABORATORY ACCREDITATION PROGRAMS**

- |  |                                   |
|--|-----------------------------------|
| <input checked="" type="checkbox"/> INDUSTRIAL HYGIENE         | Accreditation Expires: 08/01/2012 |
| <input checked="" type="checkbox"/> ENVIRONMENTAL LEAD         | Accreditation Expires: 08/01/2012 |
| <input checked="" type="checkbox"/> ENVIRONMENTAL MICROBIOLOGY | Accreditation Expires: 08/01/2012 |
| <input type="checkbox"/> FOOD                                  | Accreditation Expires:            |

Specific Field(s) of Testing (FoT)/Method(s) within each Accreditation Program for which the above named laboratory maintains accreditation is outlined on the attached **Scope of Accreditation**. Continued accreditation is contingent upon successful on-going compliance with AIHA-LAP, LLC requirements. This certificate is not valid without the attached **Scope of Accreditation**. Please review the AIHA-LAP, LLC website ([www.aihaaccreditedlabs.org](http://www.aihaaccreditedlabs.org)) for the most current scope of accreditation.



*Dave Sandusky, CIH*  
Chairperson, Analytical Accreditation Board

Date Issued: 08/01/2010



AIHA Laboratory Accreditation Programs, LLC  
SCOPE OF ACCREDITATION

EMSL Analytical, Inc.  
307 West 38th Street, New York, NY 10018

Laboratory ID: 102581  
Issue Date: 08/01/2010

The laboratory is approved for those specific field(s) of testing/methods listed in the table below. Clients are urged to verify the laboratory's current accreditation status for the particular field(s) of testing/Methods, since these can change due to proficiency status, suspension and/or revocation. A complete listing of currently accredited Industrial Hygiene laboratories is available on the AIHA-LAP, LLC website at: <http://www.aihaaccreditedlabs.org>

**Industrial Hygiene Laboratory Accreditation Program (IHLAP)**

**Initial Accreditation Date: 07/21/1999**

<u>IHLAP Category</u>	<u>Field of Testing (FoT)</u>	<u>Method</u>	<u>Method Description (for internal methods only)</u>
<b>Core Program Testing</b>	<b>Polarized Light Microscopy (PLM)</b>	EPA 600/M4-82-020 EPA 600/R-93/116 NYS ELAP 198.1 NYS ELAP 198.6	
	<b>Phase Contrast Microscopy (PCM)</b>	NIOSH 7400	
	<b>Transmission Electron Microscopy (TEM)</b>	EPA AHERA - 40 CFR Part 763  NIOSH 7402	EPA AHERA Method (40 CFR 763, Subpart E, Appendix A, Mandatory Method

The laboratory participates in the following AIHA-LAP, LLC-approved proficiency testing programs:

- |  |   |
|--|---|
| <input type="checkbox"/> Metals  | <input type="checkbox"/> Organic Solvents                 |
| <input type="checkbox"/> Silica  | <input type="checkbox"/> Diffusive Sampler (3M)           |
| <input type="checkbox"/> Asbestos  | <input type="checkbox"/> Diffusive Sampler (SKC)          |
| <input type="checkbox"/> Bulk Asbestos                                     | <input type="checkbox"/> Diffusive Sampler (AT)           |
| <input type="checkbox"/> Beryllium   | <input type="checkbox"/> WASP <sup>1</sup> (Formaldehyde) |
| <input type="checkbox"/> WASP <sup>1</sup> (Thermal Desorption Tubes)      |   |
| <input type="checkbox"/> Pharmaceutical Round Robin                        |   |
| <input type="checkbox"/> Compressed/Breathing Air Round Robin              |   |
| <input type="checkbox"/> NVLAP (determined at the time of site assessment) |   |

<sup>1</sup> Workplace Analytical Scheme for Proficiency

NEW YORK STATE DEPARTMENT OF HEALTH  
WADSWORTH CENTER



Expires 12:01 AM April 01, 2012  
Issued April 01, 2011

**CERTIFICATE OF APPROVAL FOR LABORATORY SERVICE**

*Issued in accordance with and pursuant to section 502 Public Health Law of New York State*

MR. JAMES HALL  
EMSL ANALYTICAL, INC  
307 WEST 38TH STREET  
NEW YORK, NY 10018

NY Lab Id No: 11506  
EPA Lab Code: NY01204

Is hereby APPROVED as an Environmental Laboratory for the category  
**ENVIRONMENTAL ANALYSES AIR AND EMISSIONS**  
All approved subcategories and/or analytes are listed below:

**Miscellaneous Air**

Asbestos

40 CFR 763 APX A No. III  
NIOSH 7402

Filters

YAMATE, AGARWAL, GIBB  
NIOSH 7400 A RULES

Serial No.: 44335

Property of the New York State Department of Health. Certificates are valid only at the address shown, must be conspicuously posted, and are printed on secure paper. Continued accreditation depends on successful ongoing participation in the Program. Consumers are urged to call (516) 485-5570 to verify the laboratory's accreditation status.



SCOPE OF ACCREDITATION TO ISO/IEC 17025:2005

EMSL Analytical, Inc.
307 W. 38th Street
New York, NY 10018
Jim Hall
Phone: 212-290-0051 Fax: 212-290-0058
E-Mail: ssiegel@emsl.com
URL: http://www.emsl.com

AIRBORNE ASBESTOS FIBER ANALYSIS (TEM)

NVLAP LAB CODE 101048-9

Table with 2 columns: NVLAP Code, Designation /Description. Row 1: 18/A02, U.S. EPA's "Interim Transmission Electron Microscopy Analytical Methods-Mandatory and Nonmandatory-and Mandatory Section to Determine Completion of Response Actions" as found in 40 CFR, Part 763, Subpart E, Appendix A.

2010-07-01 through 2011-06-30

Effective dates

Sally S. Bruce

For the National Institute of Standards and Technology

United States Department of Commerce  
National Institute of Standards and Technology



---

## Certificate of Accreditation to ISO/IEC 17025:2005

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NVLAP LAB CODE: 101048-9

**EMSL Analytical, Inc.**  
New York, NY

*is accredited by the National Voluntary Laboratory Accreditation Program for specific services,  
listed on the Scope of Accreditation, for:*

### **BULK ASBESTOS FIBER ANALYSIS**

*This laboratory is accredited in accordance with the recognized International Standard ISO/IEC 17025:2005.  
This accreditation demonstrates technical competence for a defined scope and the operation of a laboratory quality  
management system (refer to joint ISO-ILAC-IAF Communique dated January 2009).*

2010-07-01 through 2011-06-30

*Effective dates*



*Dally J. Bruce*  
For the National Institute of Standards and Technology



SCOPE OF ACCREDITATION TO ISO/IEC 17025:2005

EMSL Analytical, Inc.
307 W. 38th Street
New York, NY 10018
Jim Hall
Phone: 212-290-0051 Fax: 212-290-0058
E-Mail: ssiegel@emsl.com
URL: http://www.emsl.com

BULK ASBESTOS FIBER ANALYSIS (PLM)

NVLAP LAB CODE 101048-9

Table with 2 columns: NVLAP Code, Designation /Description. Row 1: 18/A01, EPA-600/M4-82-020: Interim Method for the Determination of Asbestos in Bulk Insulation Samples

2010-07-01 through 2011-06-30

Effective dates

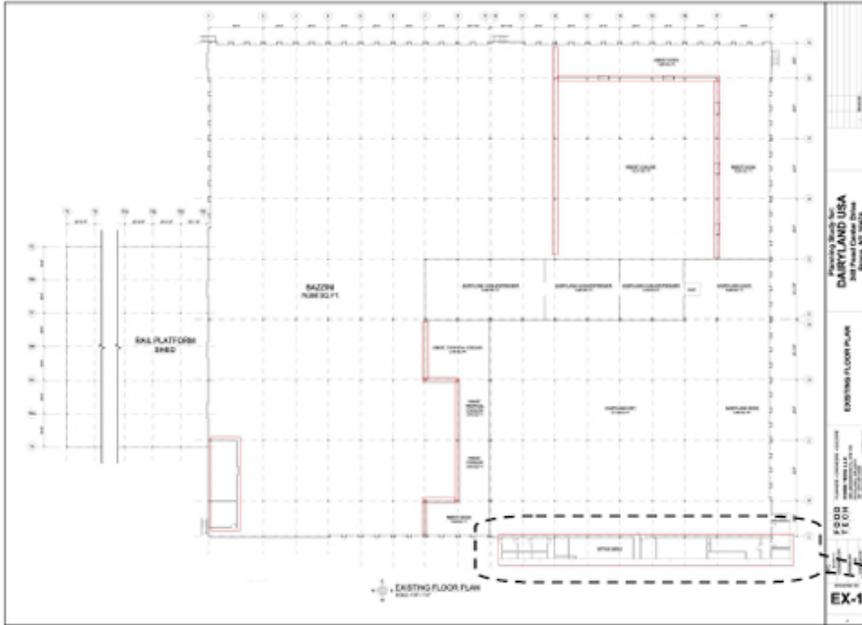
Sally S. Bruce

For the National Institute of Standards and Technology

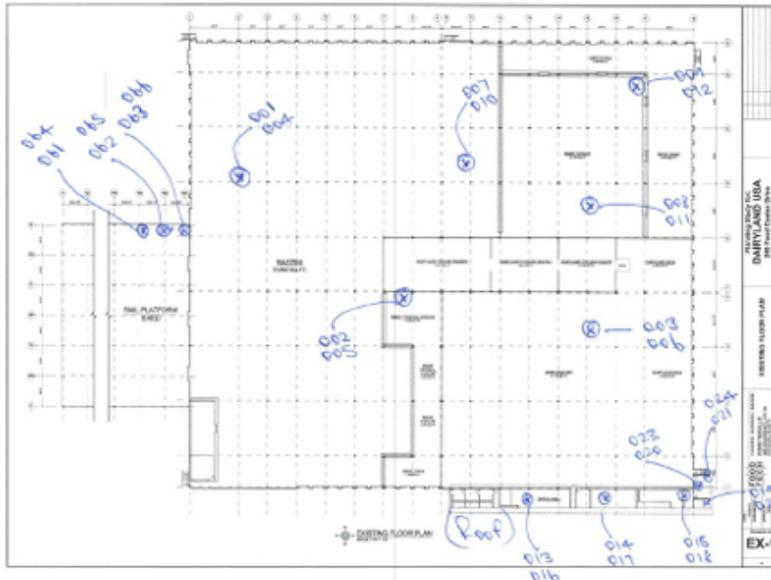
---

**APPENDIX D**

**FIGURES**

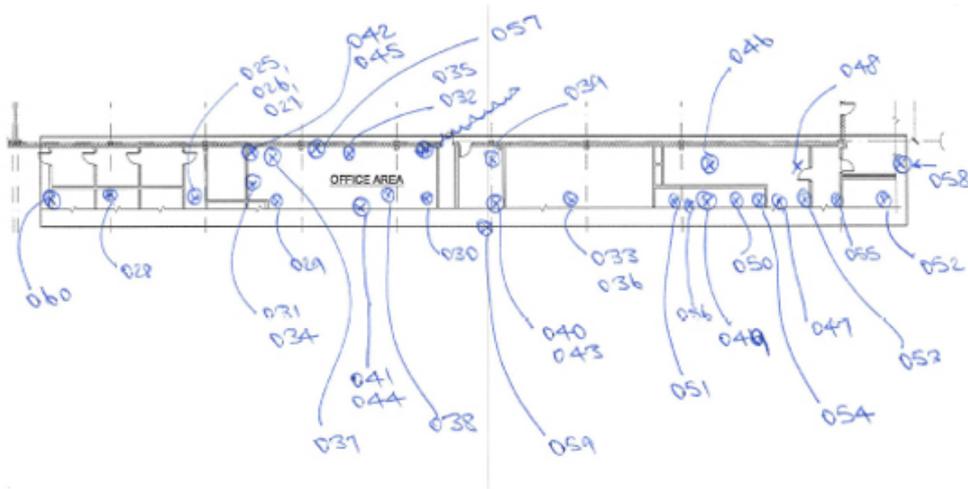


REVISIONS	NO.	DESCRIPTION	BY	DATE	 1432 BROADWAY, 12 <sup>TH</sup> FLOOR NEW YORK, NY 10018 212.221.7822	DESIGNED BY: AO	Project Name:	FIGURE



**ROOF PLAN**

REVISIONS	NO.	DESCRIPTION	BY	DATE	 1432 BROADWAY, 12 <sup>TH</sup> FLOOR NEW YORK, NY 10018 212.221.7822	DESIGNED BY: AO	Project Name:	FIGURE



**OFFICE AREA**

REVISIONS				 1432 BROADWAY, 15 <sup>TH</sup> FLOOR NEW YORK, NY 10018 212.221.7322	DESIGNED BY: AD	Project Name:	NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION LIMITED ASBESTOS BUILDING INSPECTION AND MATERIALS SURVEY 200-240 FOOD CENTER DRIVE, BRONX, NY 10474 Figure Title: BULK SAMPLE LOCATION PLAN - OFFICE AREA	FIGURE  3
					DRAWN BY: SP			
					CHECKED BY: JM			
					DATE: 10/14/11			
NO.	DESCRIPTION	BY	DATE		PROJECT NO.:			
					177603.0060.0001			

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EXHIBIT E

ROOF WARRANTY



BaySystems NorthAmerica



LIMITED WARRANTY

Building Owner: NEW YORK CITY ECONOMIC DEVELOPMENT CORP.

Warranty No.: 20S-1231

Building Identification/Address: 200 Food Center Drive, 200 Food Center Drive, Bronx, New York

Warranty Period: Twenty (20) Years
Date of Completion: 8/2/2007
Installed by: WeatherTight Roofing, Inc.

Roof Size: 46,200 square feet

BaySystems North America (BSNA) WARRANTS that for a period of 20 years from the date of completion listed above, the roof system installation described in this warranty will not leak water through the system due to:

- 1) Ordinary wear and tear by the elements, or
2) Improper workmanship in installation of the Roofing System and that it shall for the WARRANTY PERIOD, repair any such leaks at no expense to the owner, with no dollar limit.

BSNA requires that all roofing materials have been installed according to BSNA's published specification guide. This 20-year warranty shall be contingent upon a minimum 30 dry mil coating thickness of BSNA silicone elastomer.

THE WARRANTY STATED ABOVE IS IN LIEU OF ALL OTHER WARRANTIES (EXCEPT OF TITLE), WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE.

EXCLUSIONS AND LIMITATIONS

BSNA shall not be liable under this agreement or otherwise for damage to the Roofing System, property, building or contents caused by:

- 1) Fire, cracks, or openings in the Roofing System substrate; settling, distortion or other failure of the building structure; faulty, defective or improper building or structure design; natural causes including but not limited to floods, lightning, wind storms, hail, cyclones, hurricanes, tornadoes, earthquakes or other Acts of God or extraordinary or unusual events.
2) Vandalism, penetration, damage or attack by third parties, foreign objects or agents, including plant or animal life.
3) Alterations or additions to, encroachment upon, or erection of structures on Roofing System unless performed by an Authorized Qualified Applicator or otherwise approved in advance in writing by BSNA; or any use of the Roofing System other than for its intended purpose.
4) Failure of the Owner or Lessee to use reasonable care in maintaining the roof. Said maintenance to include, but not be limited to those items listed on the BSNA Silicones Care and Maintenance Information sheet which accompanies this Warranty.
5) Color changes in the Roofing System due to dirt accumulation or normal weathering.
6) Temporary repairs to the Roofing System made by non-BSNA approved personnel.

The obligations set forth herein shall constitute the sole and exclusive liability of BSNA, and remedy of owner, for the Roofing System, its application, maintenance, repair and replacement. In no event, whether based on contract, warranty, negligence strict liability or otherwise, shall BSNA be liable for expenses for other work, loss or profit, and special, consequential, incidental or exemplary damages of any nature.

All BSNA obligations will terminate and Owner will be responsible for ALL damages if OWNER fails to follow WARRANTY SERVICE PROCEDURES set forth below.

Warranty Service Procedures

- a) Owner will immediately notify BSNA and QA of any claimed roof system failure.
b) Owner will confirm oral notice of claimed roof system failures to BSNA in writing by certified mail to BSNA PRIOR TO THE WARRANTY EXPIRATION DATE.
c) Owner hereby gives BSNA the right to inspect or have inspected the System and/or other areas specified for both covered and excluded roof system failures.
d) Owner will immediately authorize implementation of BSNA repair recommendations for both covered and excluded roof system failures and will immediately confirm this authorization in writing.
e) Owner shall pay cost of repairing all excluded roof system failures.

Transferability

This warranty is transferable only (1) to the Owner of the building; (2) if BSNA is notified at the time of the sale; (3) if BSNA is satisfied that the intended use of the property by the transferee will not impair the roof system; and (4) if BSNA acknowledges, in writing, transfer of this warranty to the new Owner.

Arbitration

Any claim controversy between or among the parties arising out of or relating to the roofing system application described herein shall be settled by arbitration in accordance with the Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any Court having jurisdiction.

Note 1: Warranty not in effect unless signed by authorized BSNA representative and payment has been made in full for all invoices.

Note 2: Upon inspection by owner/agent, contractor and BSNA, and all necessary repairs have been made and other obligations met, this warranty is eligible to be renewed for the same length of time.

BSNA Signature: [Signature] Title: Business Manager, BaySystems NA LLC Date: 10/11/07



BaySystems NorthAmerica

**OWNER CARE & MAINTENANCE INFORMATION  
FOR YOUR  
BAYSYSTEMS Roof System**



Congratulations on your purchase of the BaySystems Roof System. The BaySystems Roof System has been designed to provide years of leak-free performance. As with any roof, the BaySystems Roof System requires periodic routine maintenance in order for you to obtain optimum performance for the life of the system and to keep your Limited Warranty in full force and effect.

Following are a few simple guidelines and procedures to assist you in this effort.

**INSPECT** your roof at least **twice** a year (Spring/Fall) and after any severe storms, paying particular attention to:

1. **DEBRIS:** Bag and remove all debris from the roof since this debris can be swept into drains and drainage paths by rains or melting snow.
2. **DRAINS:** All drain areas must remain clean and free of accumulated debris to allow for proper water runoff and to avoid overloading the roof with ponded water.
3. **ROOF MAINTENANCE ITEMS:** Counterflashings, metal curbs, drains, pipes, equipment and curbs, skylights/roof hatches, etc. must be properly maintained and kept in a sealed, watertight condition at all times. Temporary repairs can be made with sealant available through BaySystems. **DO NOT USE ROOFING CEMENT OR OTHER SEALANTS.** Notify your Qualified Applicator **IN WRITING** of any such repairs.
4. **WALKWAYS:** Walkways should be provided if there is regular foot traffic or if rooftop equipment has a regular (30 day or less) maintenance schedule. Placement of walkways is recommended to and from areas requiring regular maintenance. Contact your BaySystems Qualified Applicator for specific recommendations. Exercise **CAUTION** when **NOT** walking on walkways since ice/frost buildup on membrane may not be readily visible.
5. **NEW EQUIPMENT:** If new equipment is to be installed (i.e. HVAC units, TV antennas, etc.) or if any other **PHYSICAL** alterations will be made to your roof, **YOU MUST** contact either your Qualified Applicator or the Warranty Customer Service Department in writing **BEFORE PROCEEDING.**

**WHAT TO DO IF YOU EXPERIENCE A LEAK ---- CHECK FOR THE OBVIOUS!**

Make sure that the leak is **NOT** caused by faulty or defective plumbing, metal duct work, skylights, roof hatches, curbs, etc. **BEFORE** contacting the Qualified Applicator. Once you are reasonably sure that a problem with the roof system is the cause of the leak, contact your Qualified Applicator in writing. But please remember, **THE COST OF INVESTIGATION AND REPAIR OF LEAKS WHICH ARE OUTSIDE THE SCOPE OF THE WARRANTY ARE THE RESPONSIBILITY OF THE OWNER.**

The preceding requirements are offered to assist you, the building owner, in maintaining a watertight roof for many years. Remember, your roof is an investment. To maximize the return on this investment, routine maintenance is essential.

**NOTE:** Many BaySystems Qualified Applicators offer Roofing Care and Maintenance Programs.



BaySystems North America  
P.O. Box 1509, Spring, TX 77383 800-221-3626

**LIMITED WARRANTY**

Building Owner: NEW YORK CITY ECONOMIC DEVELOPMENT CORP. Warranty No.: 20S-1415

Building Identification/Address: 200 Food Center Drive Facility  
200 Food Center Drive  
Bronx, New York 10474

Warranty Period: Twenty (20) Years Roof Size: 138,608 square feet  
Date of Completion: 2/6/2008  
Contractor: Thesaurus Contracting Corp., Brooklyn, NY

BaySystems North America (BSNA) WARRANTS that for a period of 20 years from the date of completion listed above, the roof system installation described in this warranty will not leak water through the system due to:

- 1) Ordinary wear and tear by the elements, or
- 2) Improper workmanship in installation of the Roofing System and that it shall for the WARRANTY PERIOD, repair any such leaks at no expense to the owner.

BSNA requires that all roofing materials have been installed according to BSNA's published specification guide. This 20-year warranty shall be contingent upon a minimum 30 dry mil coating thickness of BSNA silicone elastomer.

THE WARRANTY STATED ABOVE IS IN LIEU OF ALL OTHER WARRANTIES (EXCEPT OF TITLE), WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE.

**EXCLUSIONS AND LIMITATIONS**

BSNA shall not be liable under this agreement or otherwise for damage to the Roofing System, property, building or contents caused by:

- 1) Fire, cracks, or openings in the Roofing System substrate; settling, distortion or other failure of the building structure; faulty, defective or improper building or structure design; natural causes including but not limited to floods, lightning, wind storms, hail, cyclones, hurricanes, tornadoes, earthquakes or other Acts of God or extraordinary or unusual events.
- 2) Vandalism, penetration, damage or attack by third parties, foreign objects or agents, including plant or animal life.
- 3) Alterations or additions to, encroachment upon, or erection of structures on Roofing System unless performed by an Authorized Qualified Applicator or otherwise approved in advance in writing by BSNA; or any use of the Roofing System other than for its intended purpose.
- 4) Failure of the Owner or Lessee to use reasonable care in maintaining the roof. Said maintenance to include, but not be limited to those items listed on the BSNA Silicones Care and Maintenance Information sheet which accompanies this Warranty.
- 5) Color changes in the Roofing System due to dirt accumulation or normal weathering.
- 6) Temporary repairs to the Roofing System made by non-BSNA approved personnel.

The obligations set forth herein shall constitute the sole and exclusive liability of BSNA, and remedy of owner, for the Roofing System, its application, maintenance, repair and replacement. In no event, whether based on contract, warranty, negligence strict liability or otherwise, shall BSNA be liable for expenses for other work, loss or profit, and special, consequential, incidental or exemplary damages of any nature.

All BSNA obligations will terminate and Owner will be responsible for ALL damages if OWNER fails to follow WARRANTY SERVICE PROCEDURES set forth below.

**Warranty Service Procedures**

- a) Owner will immediately notify BSNA and Contractor of any claimed roof system failure.
- b) Owner will confirm oral notice of claimed roof system failures to BSNA in writing by certified mail to BSNA PRIOR TO THE WARRANTY EXPIRATION DATE.
- c) Owner hereby gives BSNA the right to inspect or have inspected the System and/or other areas specified for both covered and excluded roof system failures.
- d) Owner will immediately authorize implementation of BSNA repair recommendations for both covered and excluded roof system failures and will immediately confirm this authorization in writing.
- e) Owner shall pay cost of repairing all excluded roof system failures.

**Transferability**

This warranty is transferable only (1) to the Owner of the building; (2) if BSNA is notified at the time of the sale; (3) if BSNA is satisfied that the intended use of the property by the transferee will not impair the roof system; and (4) if BSNA acknowledges, in writing, transfer of this warranty to the new Owner.

**Arbitration**

Any claim controversy between or among the parties arising out of or relating to the roofing system application described herein shall be settled by arbitration in accordance with the Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any Court having jurisdiction.

Warranty not in effect unless signed by authorized BSNA representative and payment has been made in full for all invoices.

BSNA Signature: *J. Stoddard* Title: BUSINESS MANAGER Date: 3/27/2009



March 14, 2012

New York City Economic Development Corporation  
110 William Street, 6<sup>th</sup> Floor  
New York, NY 10088

Re: 200-240 Food Center Drive  
Roof warranty numbers 20S-1231 and 20S-1415

This letter will confirm our understanding based on your representations that the building referred to above is the subject of a long term lease agreement between the City of New York and Dairyland HP, LLC ("Dairyland") with the New York City Economic Development Corporation ("NYC EDC") acting as the lease administrator and that Dairyland will be responsible for maintenance and repair of the building, including the roof. Bayer MaterialScience LLC ("BMS"), at your request, agrees to recognize Dairyland as lessee and/or the lessee's lender as parties from whom notices will be received regarding leaks on the roof and to respond according to the terms of the roof warranty so long as such lease is in effect unless and until BMS is notified otherwise in writing by NYC EDC.

Please sign this letter in the space below to indicate that our understanding is correct and to confirm NYC EDC's and Dairyland's request that BMS act according to the terms described above, and return it to me at the address above.

Sincerely,

Bob Creighton  
Marketing Manager, Contractor and Warranty Programs  
Mobile: 602-301-1649  
Email: bob.creighton@bayer.com

Acknowledged and agreed to:

For New York City Economic Development Corporation

Name John Cicerello

Title EVP

Signature

Date 4/26/1

For Dairyland HP, LLC

By: Dairyland USA Corporation, its Sole Member and Manager

Name Christopher Pappas

Title Chief Executive Officer

Signature

Date

**MORTGAGE NOTE**  
(New Market Tax Credit Loan)

\$11,000,000.00

White Plains, New York  
April 26, 2012

FOR VALUE RECEIVED, DAIRYLAND HP LLC, a Delaware limited liability company having an office located at c/o Dairyland USA Corporation, 100 East Ridge Road, Ridgefield, Connecticut 06877 (the “**Maker**”), promises to pay to COMMERCIAL LENDING II LLC, a Delaware limited liability company having an office at 106 Corporate Park Drive, White Plains, New York 10604 (the “**Payee**”), or order, at said office, or at such place as may be designated from time to time in writing by the Payee, the principal sum of Eleven Million and no/100 Dollars (\$11,000,000.00) in lawful money of the United States of America, with interest thereon from and including the date of this Note to, but not including, the date this Note is paid in full calculated in the manner hereinafter set forth, as follows:

(i) interest only on the Principal Balance calculated in the manner hereinafter set forth shall be due and payable in immediately available New York City funds on May 26, 2012, and on the 26<sup>th</sup> day of each calendar month thereafter to and including the Maturity Date; and

(ii) the entire Principal Balance then remaining unpaid, together with all interest accrued and unpaid thereon calculated in the manner hereinafter set forth and all other sums due under this Note, shall be due and payable on the Maturity Date.

1. The following terms as used in this Note shall have the following meanings:

(i) The term “**Building Loan Agreement**” shall mean the Building Loan Agreement between the Maker and the Payee dated the date hereof, as amended, modified, supplemented, replaced or restated from time to time.

(ii) The term “**Debt**” shall mean all principal, interest, additional interest and other sums of any nature whatsoever which may or shall become due to the Payee in accordance with the provisions of this Note, the Mortgage or Other Loan Documents.

(ii) The term “**Loan**” shall mean the loan in the principal sum of \$11,000,000.00 made by the Payee to the Maker which is evidenced by this Note and secured by the Mortgage and the Other Loan Documents.

(iii) The term “**Loan Agreement**” shall mean the Loan Agreement between the Maker and the Payee and the guarantors dated the date hereof, as amended, modified, supplemented, replaced or restated from time to time.

(iii) The term “**Maturity Date**” shall mean April 26, 2017.

(iv) The term “**Mortgage**” shall mean a certain leasehold mortgage, assignment of lessor’s interest in leases and rents and security agreement dated the date hereof in the principal sum of \$11,000,000.00 given by the Maker to the Payee covering the leasehold estate of the Maker in certain premises located in Bronx County, New York, as more particularly described therein, and intended to be duly recorded in the City Registers Office for the City of New York in said County as amended, modified, supplemented, replaced or restated from time to time.

(v) The term **“Other Loan Documents”** shall mean all and any of the documents other than this Note, the Mortgage, the Loan Agreement or the Building Loan Agreement, now or hereafter executed by the Maker or others, and by or in favor of the Payee, which wholly or partially secure or guarantee payment of this Note, or which otherwise pertain to the Loan.

(vi) The term **“Participant”** shall have the meaning given to such term in paragraph 6 of this Note.

(vii) The term **“Principal Balance”** shall mean the outstanding principal balance of this Note from time to time.

2. Subject to the provisions of this Note hereinafter set forth, the entire Principal Balance shall bear interest at the Fixed Rate. The term **“Fixed Rate”** shall mean a rate per annum equal to 1.00%, which rate shall be calculated on the basis of the actual number of days elapsed over a year of 360 days.

3. The Maker shall not make, and the Payee shall have no obligation to accept, any prepayment, in whole or in part, of the Principal Balance prior to March 15, 2014 (the “Lockout Date”). Thereafter, subject to the following provisions of this paragraph, the Maker shall have the right, after the Lockout Date, to prepay the Principal Balance in whole, or in multiples of \$100,000.00 (with a minimum of \$100,000.00), upon not less than five (5) nor more than fifteen (15) business days’ prior written notice to the Payee specifying the intended date of prepayment, which date of prepayment shall not be more than forty-five (45) days after the date of such notice, and the amount to be prepaid, and such prepayment is accompanied by payment of accrued interest to and including the date of prepayment and other sums then due and payable pursuant to the provisions of this Note, the Mortgage or the Other Loan Documents. The Maker shall pay to the Payee contemporaneously with any such voluntary prepayment a Prepayment Premium (as hereinafter defined). Any payment of the then outstanding principal indebtedness by virtue of a sale or further encumbrance of the Premises or after the Payee shall have declared the principal indebtedness immediately due and payable, or after the Payee shall have commenced an action or proceeding to foreclose the Mortgage as a result of an Event of Default thereunder, shall be deemed a voluntary prepayment for the purposes of this paragraph and a Prepayment Premium calculated pursuant to the provisions of this paragraph shall be payable with respect thereto based upon the interest rate specified herein applicable to the then outstanding principal indebtedness immediately prior to such Event of Default, declaration or commencement. Any payment of the outstanding principal indebtedness or assignment of this Note and the Mortgage in connection with the closing of long term or interim mortgage financing with respect to the property encumbered by the Mortgage, or any portion thereof, shall be deemed to be a voluntary prepayment for the purposes of this paragraph and a Prepayment Premium calculated pursuant to the provisions of this paragraph shall be payable with respect thereto. The portion of the Principal Balance specified in any such notice of prepayment shall, notwithstanding anything to the contrary contained in this Note, the Mortgage or the Other Loan Documents, be absolutely and unconditionally due and payable on the date specified in such notice. Notwithstanding anything to the contrary contained in this paragraph, the Payee shall not be obligated to accept a prepayment, in whole or in part, of the Principal Balance in accordance with the provisions of this paragraph prior to the Lockout Date if any Event of Default shall have occurred and shall be continuing under this Note, the Mortgage or the Other Loan Documents unless the Payee shall otherwise agree to the contrary in its sole and absolute discretion.

“Prepayment Premium” shall mean, for any prepayment of this Note, a premium (as liquidated damages and not as penalty) equal to the sum of the differences between (a) each scheduled interest payment which would have been made on the prepaid amount if such prepayment had not occurred and (b) the corresponding fixed-rate interest payment which would be received under an interest rate swap which the Bank shall be deemed to have entered into as of the date of such prepayment (the “Replacement Swap”) covering its payment obligations under an interest rate swap which the Payee shall be deemed to have entered into when the prepaid amount was originally funded, with each such difference discounted to a present value as of the date of prepayment using the fixed interest rate of the Replacement Swap as the applicable discount rate. The Maker acknowledges that the Payee might not fund or hedge its fixed-rate loan portfolio or any prepayment thereof, on a loan-by-loan basis at all times and agrees that the foregoing is a reasonable and appropriate method of calculating liquidated damages for any such prepayment irrespective of whether any of the foregoing hedging transactions have in fact occurred or occurred precisely as stated with respect to this loan. All calculations and determinations by the Payee of the amounts payable pursuant to the preceding provisions or of any element thereof, if made in accordance with its then standard procedures for so calculating or determining such amounts, shall be conclusive absent manifest arithmetic error.

4. Anything in this Note, the Mortgage or any of the Other Loan Documents to the contrary notwithstanding, the Maker shall indemnify and hold the Payee harmless and defend the Payee at the Maker’s sole cost and expense against any loss or liability, cost or expense (including, without limitation, reasonable attorneys’ fees and disbursements of the Payee’s counsel, whether in-house staff, retained firms or otherwise), and all claims, actions, procedures and suits arising out of or in connection with:

(i) any ongoing matters arising out of this Note, the Mortgage, any of the Other Loan Documents or the transaction contemplated hereby or thereby, including, but not limited to, all costs of appraisal or reappraisal of all or any portion of any collateral for the Debt or of the granting by the Payee, in its sole and absolute discretion, of any lease non-disturbance agreements,

(ii) any amendment to, or restructuring of, the Debt, this Note, the Mortgage or any of the Other Loan Documents, and

(iii) any and all lawful action that may be taken by the Payee in connection with the enforcement of the provisions of this Note, the Mortgage or any of the Other Loan Documents, whether or not suit is filed in connection with the same, or in connection with the Maker, any guarantor of all or any portion of the Debt and/or any partner, joint venturer or shareholder thereof becoming subject of a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding;

provided however that the above indemnifications shall exclude any and all loss or liability, cost or expense (including, but not limited to, reasonable attorneys’ fees and disbursements of Payee’s counsel, whether in-house staff, retained firms or otherwise), and all claims, actions, procedures and suits arising out of the gross negligence, bad faith, or willful misconduct of the Payee, its agents and employees.

All sums expended by the Payee on account of any of the foregoing shall be reimbursable on demand, and until reimbursed by the Maker pursuant hereto, shall be deemed additional principal evidenced hereby and shall bear interest at the Default Rate hereinbelow set forth. The obligations of the Maker under this paragraph shall, notwithstanding any exculpatory or other provisions of any nature whatsoever which may be set forth herein, in the Mortgage or the Other Loan Documents, constitute the personal recourse undertakings, obligations and liabilities of the Maker and shall be secured by the Mortgage.

5. The Maker acknowledges and confirms that the Payee may impose certain administrative processing and/or commitment fees in connection with the extension, renewal, modification, amendment and termination of its loans and other business transactions and the release or substitution of collateral therefor (the occurrence of any of the above hereinafter called an **“Event”**), including, but not limited to, the indebtedness evidenced hereby. The Maker hereby acknowledges and agrees to pay, immediately, with or without demand, all such fees (as the same may be increased or decreased from time to time), and any additional fees of a similar type or nature which may be imposed by the Payee from time to time, upon the occurrence of any Event.

6. The Maker acknowledges that the Payee may, after the date of this Note, sell and assign the Loan or participation interests in the Loan to (i) such domestic or foreign banks, insurance companies, pension funds, trusts or other institutional lenders or (ii) such other persons, parties or investors (including, but not limited to, grantor trusts, owner trusts, special purpose corporations, REMIC's, real estate investment trusts or other similar or comparable investment vehicles) or (iii) such other parties other than Competitors (as hereinafter defined), as may be selected by the Payee in its sole and absolute discretion and on terms and conditions satisfactory to the Payee in its sole and absolute discretion (any such bank, insurance company, pension fund, trust or other institutional lender or other person, party or investor to whom a participation interest in the Loan is so sold and assigned is herein referred to as a **“Participant”**) subject however to the Maker's right to consent to a sale of the Loan as hereinafter provided. For purposes of this paragraph, the term **“Competitor”** means any food distribution wholesaler (a **“Competitive Business”**); provided that in no event shall any bank, bank holding company, savings institution or trust company, investment company, insurance company, investment banking firm, broker or dealer, fraternal benefit society, pension, retirement or profit-sharing trust or fund or any other similar financial institution (a **“Financial Institution Investor”**) be deemed to be a Competitor for purposes of this paragraph, so long as such Financial Institution Investor does not have a Competitive Business as its primary direct or indirect business. The Payee may sell and/or assign to one or more assignees all or a portion of its rights and obligations under this Note and the Loan Documents (including all or a portion of its commitment and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld) of the Maker provided that no consent of the Maker shall be required for an assignment to an Affiliate of Payee or a Financial Institution or, if an Event of Default has occurred and is continuing, for any other assignee. Notwithstanding anything to the contrary set forth herein, the Payee may at any time pledge or assign a security interest in all or any portion of its rights under this Note, the other Loan Documents or the Loan to secure obligations of the Payee, 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 the Payee from any of its obligations hereunder or substitute any such pledgee or assignee for the Payee as a party hereto. The Maker agrees that the Payee may provide any information or knowledge the Payee may have about the Maker or about any matter relating to this Note or the Other Loan Documents to JPMorgan Chase & Co., or any of its subsidiaries or affiliates or their successors, or to any one or more purchasers or potential purchasers of the Loan, this Note or the Other Loan Documents or to any Participant. The Maker agrees and shall cause each guarantor to agree that the Payee may at any time sell, assign or transfer the Loan or one or more interests or participations in all or any part of its rights and obligations in this Note to one or more purchasers whether or not related to the Payee provided the same are not a Competitor. The Maker grants to the Payee, and shall cause each guarantor to grant to the Payee, the right to distribute on a confidential basis financial and other information concerning the Maker, each such guarantor and the property encumbered by the Mortgage and other pertinent information with respect to the Loan to any party who has purchased the Loan or a participation interest in the Loan or who has expressed a serious interest in purchasing the Loan or a participation interest in the Loan. Any party to whom any such information is distributed and who declines to purchase the Loan or a participation interest in the Loan shall

be obligated to return to the Payee all such information distributed to it without retaining any copies thereof, and the Payee shall use its best efforts to effect the return of all such information from such party, it being agreed, however, that the Payee shall in no event or under any circumstances have any liability as a result of such party's failure to return all or any portion of such information. The Maker shall cooperate, and shall cause each guarantor to cooperate, in all respects with the Payee in connection with the sale of the Loan or participation interests in the Loan in the manner contemplated by this paragraph, and shall, in connection therewith, execute and deliver such estoppels, certificates, instruments and documents as may be requested by the Payee. The Maker shall execute and deliver, and shall cause each guarantor to execute and deliver, such documents and instruments as may be necessary to split the Loan into two or more loans evidenced, secured and advanced by and pursuant to separate sets of notes, mortgages and other related loan documents to the full extent required by the Payee to facilitate the sale of participation interests in the Loan in the manner contemplated by this paragraph, it being agreed that (i) any such splitting of the Loan will not adversely affect or diminish the rights of the Maker as presently set forth in this Note, the Mortgage or the Other Loan Documents and will not increase the respective obligations and liabilities of the Maker or any such guarantor, indemnitor or other person or party above those presently set forth in this Note, the Mortgage or the Other Loan Documents, (ii) the mortgages and other documents securing the Loan as so split will have such priority of lien as may be specified by the Payee, and (iii) the retained interest of the Payee in the Loan as so split shall be allocated to or among one or more of such separate loans in a manner specified by the Payee in its sole and absolute discretion. The Maker shall not incur or be responsible for any additional costs, fees or expenses of any nature whatsoever as a result of the Payee's sale of the Loan or participation interests in all or any portion of the Loan in the manner contemplated by this paragraph, it being agreed, however, that nothing contained in this sentence shall be deemed to modify, qualify, limit or affect in any manner whatsoever any of the terms and provisions of this Note, including, without limitation, the terms and provisions set forth in paragraph 3 of this Note. The Payee shall at all times during the term of the Loan act as lead lender and servicer for Participants in accordance with participation agreements in form and substance satisfactory in all respects to the Payee and its counsel. If the Maker shall default in the performance of its obligation as set forth in this paragraph, and if such default shall not be remedied by the Maker within twenty (20) days after notice by the Payee, the Payee shall have the right in its discretion to declare the Debt immediately due and payable. Upon the transfer of this Note, the Maker hereby waiving notice of any such transfer, the Payee may deliver any collateral, or any part thereof, to the transferee who shall thereupon become vested with all the rights herein or under applicable law given to the Payee with respect thereto, and the Payee shall thereafter forever be relieved and fully discharged from any liability or responsibility in the matter; but the Payee shall retain all rights hereby given to it with respect to any Liabilities (hereinbelow defined) and such collateral not so transferred.

7. It is hereby expressly agreed that the entire Debt shall become immediately due and payable at the option of the Payee on the happening of (i) any default under the terms of this Note beyond any applicable notice and/or cure period provided for herein or (ii) any Event of Default under the Mortgage, the Loan Agreement, the Building Loan Agreement or the Other Loan Documents, the Debt may or shall become due and payable, and that all of the terms, covenants and provisions contained in the Mortgage and the Other Loan Documents which are to be kept and performed by the Maker are hereby made part of this Note to the same extent and with the same force and effect as if they were fully set forth herein.

8. If any installment of principal, interest, additional interest or other sum payable under this Note is not paid within ten (10) days after the date on which it is due, other than on Maturity Date or an acceleration where the provisions of paragraph 9 below shall control, the Maker shall pay to the Payee upon demand an amount equal to 5% of such unpaid installment as a late payment charge.

9. In addition to any late payment charge which may be due under this Note, upon the occurrence of an Event of Default and/or if the principal indebtedness is declared immediately due and payable by the Payee pursuant to the provisions of this Note, the Mortgage or any Other Loan Document, or if the Debt is not paid in full on the Maturity Date, the Maker shall thereafter, unless and until such date, if any, as the Payee may elect, in its sole and absolute discretion, to waive, in writing, all or any portion of such interest, pay interest on the principal sum then remaining unpaid from the date of such Event of Default or declaration or the Maturity Date, as the case may be, until the date on which the principal sum then outstanding is paid in full (whether before or after judgment), at a rate per annum (calculated for the actual number of days elapsed on the basis of a 360-day year) equal to 5% plus the Fixed Rate, provided, however, that such interest rate shall in no event exceed the maximum interest rate which the Maker may by law pay (the “**Default Rate**”).

10. The Maker hereby waives presentment and demand for payment, notice of dishonor, protest and notice of protest of this Note. If any payment under this Note is not made when due, the Maker agrees to pay all costs of collection when incurred, including reasonable attorneys’ fees (which costs shall be added to the amount due under this Note and shall be receivable therewith). The Maker agrees to perform and comply with each of the terms, covenants and provisions contained in this Note, the Mortgage and the Other Loan Documents on the part of the Maker to be observed or performed. No release of any security for the payment of this Note or extension of time for payment of this Note, or any installment hereof, and no alteration, amendment or waiver of any provision of this Note, the Mortgage or the Other Loan Documents made by agreement between the Payee and any other person or party shall release, discharge, modify, change or affect the liability of the Maker under this Note, the Mortgage or the Other Loan Documents.

11. This Note is subject to the express condition that at no time shall the Maker be obligated or required to pay interest on the Principal Balance at a rate which could subject the Payee to either civil or criminal liability as a result of being in excess of the maximum rate which the Maker is permitted by law to contract or agree to pay. If by the terms of this Note, the Maker is at any time required or obligated to pay interest on the Principal Balance at a rate in excess of such maximum rate, the rate of interest under this Note shall be deemed to be immediately reduced to such maximum rate and interest payable hereunder shall be computed at such maximum rate and the portion of all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the Principal Balance.

12. If the Maker consists of more than one person or party, the obligations and liabilities of each such person or party hereunder shall be joint and several.

13. This Note is secured by the Mortgage and the Other Loan Documents and the collateral mortgaged, pledged or assigned pursuant thereto. The Maker agrees to perform and comply with each of the terms, covenants and provisions contained in the Mortgage and the Other Loan Documents on the part of the Maker to be observed or performed and which are hereby made part of this Note to the same extent and with the same force and effect as if they were fully set forth herein. All sums which shall or may become due and payable by the Maker in accordance with the provisions of this Note shall be and shall under all circumstances be deemed to constitute additional interest on, and shall be evidenced by, this Note, shall be secured by the Mortgage and the Other Loan Documents and shall constitute part of the Debt.

14. This Note is and shall be deemed entered into in the State of New York and shall be governed by and construed in accordance with the laws of the State of New York and no defense given or allowed by the laws of any state or country shall be interposed in any action or proceeding hereon unless such defense is either given or allowed by the laws of the State of New York. **The Maker acknowledges and agrees that this Note is, and is intended to be, an instrument for the payment of money only, as such phrase is used in §3213 of the Civil Practice Law and Rules of the State of New York, and that the Maker has been fully advised by its counsel of the Payee’s rights and remedies pursuant to said §3213; and the Maker expressly waives any right, and hereby agrees not, to assert that this Note is not such an instrument.**

15. This Note may only be modified, amended, changed or terminated by an agreement in writing signed by the Payee and the Maker. No waiver of any term, covenant or provision of this Note shall be effective unless given in writing by the Payee and if so given by the Payee shall only be effective in the specific instance in which given.

16. The Maker acknowledges that this Note and the Maker's obligations under this Note are and shall at all times continue to be absolute and unconditional in all respects, and shall at all times be valid and enforceable irrespective of any other agreements or circumstances of any nature whatsoever which might otherwise constitute a defense to this Note and the obligations of the Maker under this Note or the obligations of any other person or party relating to this Note or the obligations of the Maker hereunder or otherwise with respect to the Loan. This Note, the Mortgage and the Other Loan Documents set forth the entire agreement and understanding of the Payee and the Maker, and the Maker absolutely, unconditionally and irrevocably waives any and all right to assert any defense, setoff, counterclaim or crossclaim of any nature whatsoever with respect to this Note, the Mortgage and the Other Loan Documents or the obligations of the Maker thereunder or the obligations of any other person or party relating hereto or thereto or the obligations of the Maker hereunder or thereunder or otherwise with respect to the Loan in any action or proceeding brought by the Payee to collect the Debt, or any portion thereof, or to enforce, foreclose and realize upon the liens and security interests created by the Mortgage and the Other Loan Documents (provided, however, that the foregoing shall not be deemed a waiver of the Maker's right to assert any compulsory counterclaim maintained in a court of the United States, or of the State of New York if such counterclaim is compelled under local law or rule of procedure, nor shall the foregoing be deemed a waiver of the Maker's right to assert any claim which would constitute a defense, setoff, counterclaim or crossclaim of any nature whatsoever against the Payee in any separate action or proceeding). The Maker acknowledges that no oral or other agreements, understandings, representations or warranties exist with respect to this Note or with respect to the obligations of the Maker under this Note, except those specifically set forth in this Note.

17. No delay on the part of the Payee in exercising any right or remedy under this Note, the Mortgage or the Other Loan Documents or failure to exercise the same shall operate as a waiver in whole or in part of any such right or remedy. No notice to or demand on the Maker shall be deemed to be a waiver of the obligation of the Maker or of the right of the Payee to take further action without further notice or demand as provided in this Note, the Mortgage and Other Loan Documents.

18. The Maker agrees to submit to personal jurisdiction in the State of New York in any action or proceeding arising out of this Note and, in furtherance of such agreement, the Maker hereby agrees and consents that without limiting other methods of obtaining jurisdiction, personal jurisdiction over the Maker in any such action or proceeding may be obtained within or without the jurisdiction of any court located in New York and that any process or notice of motion or other application to any such court in connection with any such action or proceeding may be served upon the Maker by registered or certified mail to or by personal service at the last known address of the Maker, whether such address be within or without the jurisdiction of any such court.

19. The Maker (and the undersigned representative of the Maker, if any) represents that the Maker has full power, authority and legal right to execute and deliver this Note and that the debt hereunder constitutes a valid and binding obligation of the Maker.

20. Whenever used, the singular number shall include the plural, the plural the singular, and the words **“Payee”** and **“Maker”** shall include their respective successors and assigns, provided, however, that the Maker shall in no event or under any circumstance have the right without obtaining the prior written consent of the Payee to assign or transfer its obligations under this Note, the Mortgage or the Other Loan Documents, in whole or in part, to any other person, party or entity.

21. [reserved]

**22. The Maker hereby voluntarily, knowingly, irrevocably and unconditionally waives, and the Payee by its acceptance of this Note voluntarily, knowingly, irrevocably and unconditionally waives, any and all right to trial by jury or the right to have a jury participate in any action, suit or counterclaim (whether based on contract, tort or otherwise) arising in connection with, out of or otherwise relating to the Loan, this Note, the Mortgage or the Other Loan Documents. This provision is a material inducement to the Payee to provide the financing evidenced by this Note.**

**23. The Maker waives, to the maximum extent not prohibited by law, any right the undersigned may have to claim or recover from the Payee in any legal action or proceeding any special, exemplary, punitive or consequential damages.**

**[NO FURTHER TEXT ON THIS PAGE]**

IN WITNESS WHEREOF, the Maker has duly executed this Note the day and year first above written.

DAIRYLAND HP LLC,  
a Delaware limited liability company

By: DAIRYLAND USA CORPORATION,  
a New York corporation,  
its sole member and manager

By: /s/ Christopher Pappas  
Name: Christopher Pappas  
Title: Chief Executive Officer

STATE OF NEW YORK )

ss.:

COUNTY OF NEW YORK )

On the 16th day of April in the year 2012 before me, the undersigned, a Notary Public in and for said State, personally appeared Christopher Pappas, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Raquel Mehlman

Notary Public

Raquel Mehlman

Notary Public State of New York

New York County

LIC. #01ME6193851

Comm. Exp. 9/22/2012

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**DAIRYLAND HP LLC**

**TO**

**COMMERCIAL LENDING II LLC**

**LEASEHOLD MORTGAGE AND SECURITY AGREEMENT  
AND ASSIGNMENT OF LEASES AND RENTS**

**Dated: April 26, 2012**

**Location: 200-240 Food Center Drive, Bronx, New York**

**The premises are also known as Section 10, Block 2770, p/o Lot 1 and Section 10., Block 2781, p/o  
Lot 500 on the Tax Map of the County of Bronx, City and State of New York**

**RECORD AND RETURN TO:**

**Mayo Crowe LLC**

**600 North Broadway, Suite 220**

**White Plains, New York 10603**

**Attention: Nicholas J. Chivily, Esq.**

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**LEASEHOLD MORTGAGE AND SECURITY AGREEMENT  
AND ASSIGNMENT OF LEASES AND RENTS**

THIS LEASEHOLD MORTGAGE AND SECURITY AGREEMENT AND ASSIGNMENT OF LEASES AND RENTS made the 26<sup>th</sup> day of April, 2012, between DAIRYLAND HP LLC., a Delaware limited liability company, having an office located at c/o Dairyland USA Corporation, 100 East Ridge Road, Ridgefield, CT 06877 (the “**Mortgagor**”), and COMMERCIAL LENDING II LLC, a Delaware Limited Liability Company, having an office at 106 Corporate Park Drive, White Plains, New York 10604 (together with its subsidiaries and affiliates, successors and/or assigns, the “**Mortgagee**”).

**WITNESSETH:**

Whereas the Mortgagor is the owner of a leasehold estate in the premises described in Exhibit A attached hereto (the “**Premises**”) under and pursuant to the provisions of the lease described in Exhibit A-1 attached hereto (the “**Mortgaged Lease**”);

NOW THEREFORE, to secure the payment of an indebtedness in the principal sum of ELEVEN MILLION AND 00/100 DOLLARS (\$11,000,000.00), lawful money of the United States of America, or so much thereof as may be advanced in accordance with the provisions of the Building Loan Agreement (as hereinafter defined), to be paid with interest (said indebtedness, interest and all other sums which may or shall become due hereunder, collectively, the “**Debt**”) according to a certain Mortgage Note dated the date hereof given by the Mortgagor to the Mortgagee (as modified, amended and restated from time to time, the “**Note**”), the Mortgagor has mortgaged, given, granted, bargained, sold, aliened, enfeoffed, conveyed, confirmed and assigned, and by these presents does mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm and assign unto the Mortgagee forever all right, title and interest of the Mortgagor now owned, or hereafter acquired, in and to the following property, rights and interest (such property, rights and interests, collectively, the “**Mortgaged Property**”):

(a) the Premises;

(b) all buildings and improvements now or hereafter located on the Premises (the “**Improvements**”);

(b)(1) the Mortgaged Lease and the leasehold estate created thereunder;

(b)(2) all modifications, extensions and renewals of the Mortgaged Lease and all credits, deposits, options, purchase options, privileges and rights of the Mortgagor under the Mortgaged Lease, including, but not limited to, the right, if any, to renew or extend the Mortgaged Lease for a succeeding term or terms, or to acquire fee title to or other interest in all or any portion of the Premises or the Improvements;

(b)(3) all of the Mortgagor’s rights and remedies at any time arising under or pursuant to Section 365(h) of the Bankruptcy Code, 11 U.S.C. Section 101 *et seq.* (the “**Bankruptcy Code**”), including, without limitation, all of the Mortgagor’s right thereunder to remain in possession of the Premises and the Improvements;

(c) all of the estate, right, title, claim or demand of any nature whatsoever of the Mortgagor, either in law or in equity, in possession or expectancy, in and to the Mortgaged Property or any part thereof;

(d) all easements, rights-of-way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Mortgaged Property (including, without limitation, any and all development rights, air rights or similar or comparable rights of any nature whatsoever now or hereafter appurtenant to the Premises or now or hereafter transferred to the Premises) and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Premises to the center line thereof;

(e) all machinery, apparatus, equipment, fittings, fixtures and other property of every kind and nature whatsoever and all additions thereto and renewals and replacements thereof, and all substitutions therefor now owned or hereafter acquired by the Mortgagor, purchased with the proceeds of the Debt now or hereafter located upon the Mortgaged Property and whether stored at the Mortgaged Property or off-site (collectively, the **“Equipment”**) and all proceeds and products of any of the above;

(f) all awards or payments, including interest thereon, and the right to receive the same, which may be made with respect to the Mortgaged Property, whether from the exercise of the right of eminent domain (including any transfer made in lieu of the exercise of said right), or for any other injury to or decrease in the value of the Mortgaged Property;

(g) all leases and other agreements (other than the Mortgaged Lease) affecting the use or occupancy of the Mortgaged Property now or hereafter entered into (the **“Leases”**) and the right to receive and apply the rents, issues and profits of the Mortgaged Property (the **“Rents”**) to the payment of the Debt;

(h) all right, title and interest of the Mortgagor in and to (i) all contracts from time to time executed by the Mortgagor or any manager or agent on its behalf relating to the ownership, construction, maintenance, repair, operation, occupancy, sale or financing of the Mortgaged Property or any part thereof and all agreements relating to the purchase or lease of any portion of the Mortgaged Property or any property which is adjacent or peripheral to the Mortgaged Property, together with the right to exercise such options and all leases of Equipment, (ii) all consents, licenses, building permits, certificates of occupancy and other governmental approvals relating to construction, completion, occupancy, use or operation of the Mortgaged Property or any part thereof, and (iii) all drawings, plans, specifications and similar or related items relating to the Mortgaged Property;

(i) [reserved];

(j) [reserved];

(k) all proceeds of and any unearned premiums on any insurance policies covering the Mortgaged Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Mortgaged Property; and

(l) the right, in the name and on behalf of the Mortgagor, to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to commence any action or proceeding to protect the interest of the Mortgagee in the Mortgaged Property.

TO HAVE AND TO HOLD the above granted and described Mortgaged Property unto and to the proper use and benefit of the Mortgagee, and the successors and assigns of the Mortgagee, forever.

AND the Mortgagor covenants and agrees with and represents and warrants to the Mortgagee as follows:

1. Payment of Debt. The Mortgagor will pay the Debt at the time and in the manner provided for its payment in the Note and in this Mortgage.

2. Warranty of Title.

(a) Subject only to those exceptions to title specifically set forth in the title policy issued or to be issued by Stewart Title Insurance Company of New York to the Mortgagee and insuring the lien of this Mortgage, the Mortgagor warrants the title to the Premises, the Improvements, the Equipment, the Mortgaged Lease, and the balance of the Mortgaged Property. In addition, the Mortgagor represents and warrants that (i) the Mortgaged Lease is in full force and effect and has not been modified in any manner whatsoever, (ii) there are no defaults under the Mortgaged Lease beyond any applicable notice and cure periods and no event has occurred, which but for the passage of time, or notice, or both, would constitute a default under the Mortgaged Lease, (iii) all rents, additional rents and other sums due and payable under the Mortgaged Lease have been paid in full, and (iv) no action has commenced and no notice has been given or received for the purpose of terminating the Mortgaged Lease. The Mortgagor also represents and warrants that (i) the Mortgagor is now, and after giving effect to this Mortgage, will be in a solvent condition, (ii) the execution and delivery of this Mortgage by the Mortgagor does not constitute a "fraudulent conveyance" within the meaning of Title 11 of the United States Code as now constituted or under any other applicable statute, and (iii) no bankruptcy or insolvency proceedings are pending or contemplated by or against the Mortgagor.

(b) The Mortgagor (and the undersigned representative of the Mortgagor, if any) additionally represents and warrants that: (i) it has full power, authority and legal right to execute this Mortgage, and to mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm and assign the Mortgaged Property pursuant to the terms hereof and to keep and observe all of the terms of this Mortgage on the Mortgagor's part to be performed, (ii) if the Mortgagor is a corporation, the Mortgagor is a duly organized and presently existing corporation and this Mortgage has been executed by authority of its Board of Directors and with the requisite consent of the holders of the outstanding shares of its capital stock entitled to vote thereon, if such consent is required under the provisions of the certificate of incorporation of the Mortgagor, (iii) if the Mortgagor is a partnership, the Mortgagor is a duly authorized and validly existing partnership and this Mortgage has been executed by a duly authorized general partner, and (iv) if the Mortgagor is a limited liability company, the Mortgagor is a duly authorized validly existing limited liability company and this Mortgage has been executed by a duly authorized manager thereof.

3. Insurance. Mortgagor, at its expense, shall maintain and deliver to Mortgagee policies of insurance providing the following:

(a) Commercial General Liability Insurance with limits of not less than \$1,000,000 per occurrence combined single limit and \$5,000,000 in the aggregate for the policy period, or in whatever higher amounts as may be required by Mortgagee from time to time by notice to Mortgagor, and extended to cover:

(i) Contractual Liability assumed by Mortgagor with defense provided in addition to policy limits for indemnities of the named insured, (ii) if any of the work is subcontracted, Independent Contractors Liability providing coverage in connection with such portion of the work which may be subcontracted, (iii) Broad Form Property Damage Liability, (iv) Products & Completed Operations for coverage, such coverage to apply for two years following completion of construction, (v) waiver of subrogation against all parties named additional insured, (vi) severability of interest provision, and (vii) Personal Injury & Advertisers Liability.

(b) Automobile Liability including coverage on owned, hired and non-owned automobiles and other vehicles, if used in connection with the performance of the work, with Bodily Injury and Property Damage limits of not less than \$2,000,000.00 per occurrence combined single limit, with a waiver of subrogation against all parties named as additional insured.

(c) Umbrella/Excess Liability in excess of Commercial General Liability, Automobile Liability and Employers' Liability coverages which is at least as broad as these underlying policies with a limit of liability of \$10,000,000.00.

(d) All-Risk Property (Special Cause of Loss) Insurance on the Improvements in an amount not less than the full insurable value on a replacement cost basis of the insured Improvements and personal property related thereto. During the construction period, such policy shall be written in the so-called "Builder's Risk Completed Value Non-Reporting Form" with no coinsurance requirement and shall contain a provision granting the insured permission to occupy prior to completion.

(e) Workers' Compensation and Employer's Liability Insurance in accordance with the applicable laws of the state in which the work is to be performed or of the state in which Mortgagor is obligated to pay compensation to employees engaged in the performance of the work. The policy limit under the Employer's Liability Insurance section shall not be less than \$1,000,000.00 for any one accident.

(f) If the Property, or any part thereof, lies within a "special flood hazard area" as designated on maps prepared by the Department of Housing and Urban Development, a National Flood Insurance Association standard flood insurance policy, plus insurance from a private insurance carrier if necessary, for the duration of the Loan in the amount of the full insurable value of the Improvements, or the amount of the Loan, whichever is less.

(g) Such other insurance as Mortgagee may require with respect to the Mortgagor and the Mortgaged Property, which may include, without limitation, errors and omissions insurance with respect to the contractors, architects and engineers, earthquake insurance, rent abatement and/or business loss.

All insurance policies (the "**Policies**") shall (i) be issued by an insurance company licensed to do business in the state where the Mortgaged Property is located having a rating of "A-" VIII or better by A.M. Best Co., in Best's Rating Guide, (ii) name "Commercial Lending II LLC., any and all subsidiaries as their interest may appear" as additional insureds on all liability insurance and as mortgagee and loss payee on all All-Risk Property and flood insurance, (iii) be endorsed to show that Mortgagor's insurance shall be primary and all insurance carried by Mortgagee is strictly excess and secondary and shall not contribute with Mortgagor's insurance, (iv) provide that Mortgagee is to receive thirty (30) days written notice prior to non-renewal or cancellation, (v) be evidenced by a certificate of insurance to be provided to Mortgagee along with a copy of the policy for All-Risk Property coverage, (vi) include either policy or binder numbers on the ACORD form, and (vii) be in form and amounts acceptable to Mortgagee. Mortgagor shall deliver to Mortgagee, at least ten (10) days before the expiration of an existing policy, evidence acceptable to Mortgagee of the continuation of the coverage of the expiring policy. If Mortgagee has not received satisfactory evidence of such continuation of coverage in the time frame herein specified, Mortgagee shall have the right, but not the obligation, to purchase such insurance for Mortgagee's interest only. Any amounts so disbursed by Mortgagee pursuant to this Section shall be repaid by Mortgagor within 10 days after written demand therefor. Nothing contained in this Section shall require Mortgagee to incur any expense or take any action hereunder, and inaction by Mortgagee shall never be considered a waiver of any right accruing to Mortgagee on account on this Section. The payment by Mortgagee of any insurance premium for insurance

which Mortgagor is obligated to provide hereunder but which Mortgagee believes has not been paid, shall be conclusive between the parties as to the legality and amounts so paid. Mortgagor agrees to pay all premiums on such insurance as they become due, and will not permit any condition to exist on or with respect to the Mortgaged Property which would wholly or partially invalidate any insurance thereon. Unless Mortgagor provides Mortgagee with evidence satisfactory to Mortgagee of the insurance coverage required by this Agreement, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interest in the Mortgaged Property. This insurance may, but need not, protect Mortgagor's interest in the Mortgaged Property. The coverages that Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Mortgaged Property. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence satisfactory to Mortgagee that Mortgagor has obtained insurance as required by this Agreement. If Mortgagee purchases insurance for the Mortgaged Property, Mortgagor will be responsible for the costs of that insurance, including any charges imposed by Mortgagee in connection with the placement of insurance, until the effective date of the cancellation or expiration of such insurance. The costs of the insurance may, at Mortgagee's discretion, be added to Mortgagor's total principal obligation owing to Mortgagee, and in any event shall be secured by the liens on the Mortgaged Property created by the Mortgage. It is understood and agreed that the costs of insurance obtained by Mortgagee may be more than the costs of insurance Mortgagor may be able to obtain on its own. Mortgagee shall not by the fact of approving, disapproving, accepting, preventing, obtaining or failing to obtain any such insurance, incur any liability for the form or legal sufficiency of insurance contracts, solvency of insurers, or payment of losses, and Mortgagor hereby expressly assumes full responsibility therefor and all liability, if any, thereunder. Mortgagor hereby absolutely assigns and transfers to Mortgagee all of Mortgagor's right, title and interest in and to any unearned premiums paid on policies required hereunder and any claims thereunder and Mortgagee shall have the right, but not the obligation, to assign any then existing claims under the same to any purchaser of the Mortgaged Property at any foreclosure sale; provided, however, that so long as no Event of Default exists and is continuing hereunder, Mortgagor shall have the right under a license granted hereby, and Mortgagee hereby grants to Mortgagor a license, to exercise rights under said policies and in and to said premiums subject to the provisions of this Agreement. Said license shall be revoked automatically upon the occurrence and during the continuance of an Event of Default hereunder. Mortgagor shall not carry any separate insurance on the Mortgaged Property concurrent in kind or form with any insurance required hereunder or contributing in the event of loss without Mortgagee's prior written consent, and any such policy shall have attached a standard non-contributing mortgagee clause, with loss payable to Mortgagee, and shall otherwise meet all other requirements set forth herein. Blanket insurance policies shall not be acceptable for the purposes of this paragraph unless otherwise approved to the contrary by the Mortgagee. The Mortgagor shall at all times comply with and shall cause the Improvements and Equipment and the use, occupancy, operation, maintenance, alteration, repair and restoration thereof to comply with the terms, conditions, stipulations and requirements of the Policies. If the Mortgaged Property shall be damaged or destroyed, in whole or in part, by fire or other property hazard or casualty, the Mortgagor shall give prompt notice thereof to the Mortgagee. Sums paid to the Mortgagee, subject to the terms of the Mortgaged Lease, by any insurer may be retained and applied by the Mortgagee toward payment of the Debt whether or not then due and payable in such order, priority and proportions as the Mortgagee in its discretion shall deem proper or, at the discretion of the Mortgagee, the same may be paid, either in whole or in part, to the Mortgagor for such purposes as the Mortgagee shall designate. If the Mortgagee shall receive and retain such insurance proceeds, the lien of this Mortgage shall be reduced only by the amount thereof received and retained by the Mortgagee and actually applied by the Mortgagee in reduction of the Debt. The provisions of subsection 4 of Section 254 of the Real Property Law of New York covering the insurance of buildings against loss by fire shall not apply to this Mortgage. Notwithstanding anything to the contrary set forth in the Mortgage Lease or herein, in the event that insurance proceeds are paid to the Mortgagor for restoration, such proceeds shall be applied, and such restoration completed with twelve months from the date of such casualty, subject however to delays resultant from a Force Majeure as provided in Paragraph 7 of the Building Loan Agreement.

4. Payment of Taxes, etc. The Mortgagor shall pay all taxes, assessments, water rates, sewer rents and other charges, including vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Premises, now or hereafter levied or assessed against the Mortgaged Property and all insurance premiums relating to the Policies (collectively, the “**Taxes**”) prior to the date upon which any fine, penalty, interest or cost may be added thereto or imposed by law for the nonpayment thereof. The Mortgagor shall deliver to the Mortgagee, upon request, receipted bills, canceled checks and other evidence satisfactory to the Mortgagee evidencing the payment of the Taxes prior to the date upon which any fine, penalty, interest or cost may be added thereto or imposed by law for the nonpayment thereof.

5. [Reserved]

6. Condemnation. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise, the Mortgagor shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and this Mortgage and the Debt shall not be reduced until any award or payment therefor shall have been actually received and applied by the Mortgagee to the discharge of the Debt. The Mortgagee may, subject to the terms and conditions of the Mortgaged Lease and the Recognition Agreement between the , apply the entire amount of any such award or payment to the discharge of the Debt whether or not then due and payable in such order, priority and proportions as the Mortgagee in its discretion shall deem proper. If the Mortgaged Property is sold, through foreclosure or otherwise, prior to the receipt by the Mortgagee of such award or payment, the Mortgagee shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive such award or payment, or a portion thereof sufficient to pay the Debt, whichever is less. The Mortgagor shall file and prosecute its claim or claims for any such award or payment in good faith and with due diligence and cause the same to be collected and paid over to the Mortgagee. The Mortgagor hereby irrevocably authorizes and empowers the Mortgagee, in the name of the Mortgagor or otherwise, to collect and receipt for any such award or payment and to file and prosecute such claim or claims. Although it is hereby expressly agreed that the same shall not be necessary in any event, the Mortgagor shall, upon demand of the Mortgagee, make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning any such award or payment to the Mortgagee, free and clear of any encumbrances of any kind or nature whatsoever. Notwithstanding anything to the contrary set forth in the Mortgaged Lease or herein, in the event that condemnation proceeds are paid to the Mortgagor for restoration, such proceeds shall be applied, and such restoration completed with twelve months from the date of such condemnation, subject however to delays resultant from a Force Majeure as provided in Paragraph 7 of the Building Loan Agreement.

7. Leases and Rents. (a) Mortgagor hereby absolutely and unconditionally assigns, sells, transfers and conveys all of the right, title and interest in and to all existing and future leases and subleases, tenancies and occupancy agreements, however denominated, affecting all or a portion of the Premises and all renewals, replacements and guarantees thereof (the “**Leases**”) along with all of the rents, income and profits due thereunder (the “**Rents**”) to Mortgagee. This assignment is absolute in nature and not an assignment for additional security only. The Mortgagee waives the right to enter the Mortgaged Property for the purpose of collecting the Rents, and grants the Mortgagor the right to collect the Rents. The Mortgagor shall hold the Rents, or an amount sufficient to discharge all current sums due on the Debt, in trust for use in payment of the Debt. The right of the Mortgagor to collect the Rents may be revoked by the Mortgagee without notice upon any Event of Default by the Mortgagor under the terms of the Note or this Mortgage. Following such revocation the Mortgagee may retain and apply the Rents toward payment of the Debt in such order, priority and proportions as the Mortgagee, in its discretion, shall deem proper, or to the

operation, maintenance and repair of the Mortgaged Property, and irrespective of whether the Mortgagee shall have commenced a foreclosure of this Mortgage or shall have applied or arranged for the appointment of a receiver. The Mortgagor shall not, except as provided below, without the consent of the Mortgagee, make, or suffer to be made, any Leases or modify any Leases or cancel any Leases or modify or cancel any Leases or accept prepayments of installments of the Rents for a period of more than one (1) month in advance or further assign the whole or any part of the Rents. Notwithstanding the foregoing, but subject in all respects to the terms and conditions of Section E. 10. of that certain Loan Agreement of even date herewith made by and among the Mortgagor, Mortgagee and Guarantors (the "**Loan Agreement**"), the Mortgagor may, without the prior written consent of the Mortgagee (i) sublease the entire Mortgaged Property to Dairyland USA Corporation pursuant to an operating lease (the "**Operating Lease**") approved by the Mortgagee dated the date hereof and (ii) enter into subleases under the Operating Lease to affiliates of Dairyland USA Corporation for all or portions of the Improvements and (iii) enter into subleases with non affiliates for portions of the Improvements, expressly subordinate to this Mortgage, at market rates provided the aggregate of such subleases is not in excess of (a) twenty five percent (25%) of the rentable square feet of the Improvements provided that such subleases and the subtenants are not in a Tenant Excluded Business and are otherwise in conformance with the Loan Agreement and the provisions therein requiring conformance with the New Market Tax Credit laws, rules and regulations or (b) after the termination of the subleases in (iv) and (v), twenty five percent (25%) of the rentable square feet of the Improvements provided that such subleases and the subtenants are not in a Tenant Excluded Business and are otherwise in conformance with the Loan Agreement and the provisions therein requiring conformance with the New Market Tax Credit laws, rules and regulations and (iv) a short term sublease or license by the Mortgagor to A.L. Bazzini Co. Inc. for a sublease term not to exceed one hundred twenty (120) days and (v) the sublease covering a portion of the Mortgaged Property held by R Best which shall remain in place until the Full Vacate Date (as defined in the Mortgaged Lease) (all of the foregoing hereinafter referred to as "**Permitted Subleases**"). The Mortgagee shall have all of the rights against tenants of the Mortgaged Property as set forth in Section 291-f of the Real Property Law of New York. The Mortgagor shall (a) fulfill or perform each and every provision of the Leases on the part of the Mortgagor to be fulfilled or performed, (b) promptly send copies of all notices of default which the Mortgagor shall send or receive under the Leases to the Mortgagee, and (c) enforce, short of termination of the Leases, the performance or observance of the provisions thereof by the tenants thereunder. The Mortgagor shall from time to time, but not less frequently than once every year, provide to the Mortgagee a complete and detailed leasing status report with respect to the Improvements, which leasing status report shall be in form and substance satisfactory in all respects to the Mortgagee. In addition to the rights which the Mortgagee may have herein, upon any Event of Default under this Mortgage, the Mortgagee, at its option, may require the Mortgagor to pay monthly in advance to the Mortgagee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Mortgaged Property as may be in possession of the Mortgagor. Upon an Event of Default in any such payment, the Mortgagor will vacate and surrender possession of the Mortgaged Property to the Mortgagee, or to such receiver, and, in default thereof, the Mortgagor may be evicted by summary proceedings or otherwise. Nothing contained in this paragraph shall be construed as imposing on the Mortgagee any of the obligations of the lessor under the Leases or of a "mortgagee in possession".

(b) The Mortgagor acknowledges and agrees that, upon recordation of this Mortgage, the Mortgagee's interest in the Rents shall be deemed to be fully perfected, "choate" and enforced as to the Mortgagor and all third parties, including without limitation any subsequently appointed trustee in any case under the Bankruptcy Code, without the necessity of (i) commencing a foreclosure action with respect to this Mortgage, (ii) furnishing notice to the Mortgagor or tenants under the Leases, (iii) making formal demand for the Rents, (iv) taking possession of the Premises as a mortgagee-in-possession, (v) obtaining the appointment of a receiver of the rents and profits of the Premises, (vi) sequestering or impounding the Rents, or (vii) taking any other affirmative action.

(c) For purposes of Section 552(b) of the Bankruptcy Code, the Mortgagor and the Mortgagee agree that this Mortgage shall constitute a “security agreement,” that the security interest created by such security agreement extends to property of the Mortgagor acquired before the commencement of a case in bankruptcy and to all amounts paid as Rents and that such security interest shall extend to all Rents acquired by the estate after the commencement of a case in bankruptcy.

(d) The Mortgagor acknowledges and agrees that all Rents shall be deemed to be “Cash Collateral” under Section 363 of the Bankruptcy Code in the event that the Mortgagor files a voluntary petition in bankruptcy or is made subject to any involuntary bankruptcy proceeding. After the filing of such petition, the Mortgagor may not use Cash Collateral without the consent of the Mortgagee and/or an order of any bankruptcy court pursuant to Section 363(b)(2) of the Bankruptcy Code.

#### 8. Maintenance of the Mortgaged Property.

The Mortgagor shall cause the Mortgaged Property to be maintained in good condition and repair and will not commit or suffer to be committed any waste of the Mortgaged Property. The Improvements and the Equipment shall not be removed, demolished or materially altered except (a) for normal replacement of the Equipment as determined in the reasonable business judgment of the Mortgagee and/or for renovations contemplated to be made by the Mortgagor with the reasonable approval of the Mortgagee or (b) if appropriate, in accordance with the approved plans and specifications or (c) with the prior written consent of the Mortgagee. The Mortgagor shall promptly comply with all existing and future governmental laws, orders, ordinances, rules and regulations affecting the Mortgaged Property, or any portion thereof or the use thereof. The Mortgagor shall promptly repair, replace or rebuild any part of the Mortgaged Property which may be damaged or destroyed by fire or other property hazard or casualty (including any fire or other property hazard or casualty for which insurance was not obtained or obtainable) or which may be affected by any taking by any public or quasi-public authority through eminent domain or otherwise, and shall complete and pay for, within a reasonable time, any structure at any time in the process of construction or repair on the Premises. If such fire or other property hazard or casualty shall be covered by the Policies, the Mortgagor’s obligation to repair, replace or rebuild such portion of the Mortgaged Property shall be contingent upon the Mortgagee paying the Mortgagor the proceeds of the Policies, or such portion thereof as shall be sufficient to complete such repair, replacement or rebuilding, whichever is less. The Mortgagor will not, without obtaining the prior consent of the Mortgagee, initiate, join in or consent to any private restrictive covenant, zoning ordinance, or other public or private restrictions, limiting or affecting the uses which may be made of the Mortgaged Property or any part thereof.

#### 9. Environmental Provisions.

(a) For the purposes of this paragraph the following terms shall have the following meanings: (i) the term “**Hazardous Material**” shall mean any material or substance that, whether by its nature or use, is now or hereafter defined or regulated as a hazardous waste, hazardous substance, pollutant or contaminant under any Environmental Requirement, or which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous or which is or contains petroleum, gasoline, diesel fuel, another petroleum hydrocarbon product, asbestos, asbestos-containing materials or polychlorinated biphenyls, (ii) the “**Environmental Requirements**” shall collectively mean all present and future laws, statutes, common law, ordinances, rules, regulations, orders, codes, licenses, permits, decrees, judgments, directives or the equivalent of or by any Governmental Authority and relating to or addressing the protection of the environment or human health, and (iii) the term “**Governmental Authority**” shall

mean the Federal government, or any state or other political subdivision thereof, or any agency, court or body of the Federal government, any state or other political subdivision thereof, exercising executive, legislative, judicial, regulatory or administrative functions.

(b) The Mortgagor hereby represents and warrants to the Mortgagee that to its actual knowledge, except as set forth in that certain Phase I environmental site assessment dated August 31, 2011 prepared by Professional Service Industries (the "**Phase I**") and that certain Phase II site investigation report dated November, 2008 prepared by Henningson, Durham & Richardson Architecture and Engineering, P.C. (the "**Phase II**"), (i) no Hazardous Material is currently located at, on, in, under or about the Mortgaged Property, (ii) no releasing, emitting, discharging, leaching, dumping, disposing or transporting of any Hazardous Material from the Mortgaged Property onto any other property or from any other property onto or into the Mortgaged Property has occurred or is occurring in violation of any Environmental Requirement, (iii) no notice of violation, non-compliance, liability or potential liability, lien, complaint, suit, order or other notice with respect to the Mortgaged Property is presently outstanding under any Environmental Requirement, nor does the Mortgagor have knowledge or reason to believe that any such notice will be received or is being threatened, and (iv) the Mortgaged Property and the operation thereof are in full compliance with all Environmental Requirements.

(c) The Mortgagor shall comply, and shall cause all subtenants or other occupants of the Mortgaged Property claiming through the Mortgagor to comply, in all respects with all Environmental Requirements, and will not generate, store, handle, process, dispose of or otherwise use, and will not permit any subtenant or other occupant of the Mortgaged Property to generate, store, handle, process, dispose of or otherwise use, Hazardous Materials at, in, on, or about the Mortgaged Property in a manner that could lead or potentially lead to the imposition on the Mortgagor, the Mortgagee or the Mortgaged Property of any liability or lien of any nature whatsoever under any Environmental Requirement. The Mortgagor shall notify the Mortgagee promptly after becoming aware in the event of any spill or other release of any Hazardous Material at, in, on, under or about the Mortgaged Property which is required to be reported to a Governmental Authority under any Environmental Requirement, will promptly forward to the Mortgagee copies of any notices received by the Mortgagor relating to alleged violations of any Environmental Requirement or any potential liability under any Environmental Requirement and will promptly pay when due any fine or assessment against the Mortgagee, the Mortgagor or the Mortgaged Property relating to any Environmental Requirement (subject to the Mortgagor's right to contest by appropriate proceedings and as provided in paragraph 58 below) . If at any time it is determined that the operation or use of the Mortgaged Property is in violation of any applicable Environmental Requirement or that there are Hazardous Materials located at, in, on, under or about the Mortgaged Property violates any applicable Environmental Requirement or that there are Hazardous Materials located at, in, on, under or about the Mortgaged Property which, under any Environmental Requirement, require special handling in collection, storage, treatment or disposal, or any form of cleanup or corrective action, the Mortgagor shall, within thirty (30) days after receipt of notice thereof from any Governmental Authority or from the Mortgagee, take, at the Mortgagor's sole cost and expense, such actions as may be necessary to fully comply in all respects with all Environmental Requirements, provided, however, that if such compliance cannot reasonably be completed within such thirty (30) day period, the Mortgagor shall commence such necessary action within such thirty (30) day period and shall thereafter diligently and expeditiously proceed to fully comply in all respects and in a timely fashion with all Environmental Requirements. Notwithstanding the foregoing, the mere presence of Hazardous Materials at the Mortgaged Property incident to cleaning, maintenance and/or operation of the Mortgaged Property or the operation of vehicles or Equipment therefrom or thereon shall not constitute a violation of these provisions so long as the same are stored, handled, and disposed of in accordance with the applicable Environmental Requirements.

(d) If the Mortgagor fails to timely take, or to diligently and expeditiously proceed to complete in a timely fashion, any such action described in clause (c) above, the Mortgagee may, in its sole and absolute discretion, make advances or payments toward the performance or satisfaction of the same, but shall in no event be under any obligation to do so. All sums so advanced or paid by the Mortgagee (including, without limitation, reasonable counsel fees and consultant fees and expenses, investigation and laboratory fees and expenses, and fines or other penalty payments) and all sums advanced or paid in connection with any judicial or administrative investigation or proceeding relating thereto, will immediately, upon demand, become due and payable from the Mortgagor and shall bear interest at the Default Rate from the date any such sums are so advanced or paid by the Mortgagee until the date any such sums are repaid by the Mortgagor to the Mortgagee. The Mortgagor will execute and deliver, promptly upon request, such instruments as the Mortgagee may deem useful or necessary to permit the Mortgagee to take any such action, and such additional notes and mortgages, as the Mortgagee may require to secure all sums so advanced or paid by the Mortgagee. If a lien is filed against the Mortgaged Property by any Governmental Authority resulting from the need to expend or the actual expending of monies arising from an action or omission, whether intentional or unintentional, of the Mortgagor or for which the Mortgagor is responsible, resulting in the releasing, spilling, leaking, leaching, pumping, emitting, pouring, emptying or dumping of any Hazardous Material into the waters or onto land located within or without the State where the Mortgaged Property is located, then the Mortgagor will, within thirty (30) days from the date that the Mortgagor is first given notice that such lien has been placed against the Mortgaged Property (or within such shorter period of time as may be specified by the Mortgagee if such Governmental Authority has commenced steps to cause the Mortgaged Property to be sold pursuant to such lien), either (a) pay the claim and remove the lien, or (b) furnish a cash deposit, bond, or such other security with respect thereto as is reasonably satisfactory in all respects to the Mortgagee and is sufficient to effect a complete discharge of such lien on the Mortgaged Property.

(e) The Mortgagee may, at its option, at intervals of not less than one year, or more frequently if the Mortgagee reasonably believes that a Hazardous Material or other environmental condition violates or threatens to violate any Environmental Requirement, cause an environmental audit of the Mortgaged Property or portions thereof to be conducted to confirm the Mortgagor's compliance with the provisions of this paragraph, and the Mortgagor shall cooperate in all reasonable ways with the Mortgagee connection with any such audit. If such audit discloses that a violation of or a liability under an Environmental Requirement exists or if such audit was required or prescribed by law, regulation or governmental or quasi-governmental authority, the Mortgagor shall pay all costs and expenses incurred in connection with such audit; otherwise, the costs and expenses of such audit shall, notwithstanding anything to the contrary set forth in this paragraph, be paid by the Mortgagee.

(f) [reserved]

(g) The Mortgagor will defend, indemnify, and hold harmless the Mortgagee, its co-lenders, participants, employees, agents, officers, and directors, from and against any and all claims, demands, penalties, causes of action, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, foreseen or unforeseen, contingent or otherwise (including, without limitation, counsel and consultant fees and expenses, investigation and laboratory fees and expenses, court costs, and litigation expenses) arising out of, or in any way related to, (i) any breach by the Mortgagor of any of the provisions of this paragraph 9, (ii) the presence, disposal, spillage, discharge, emission, leakage, release, or threatened release of any Hazardous Material which is at, in, on, under, about, from or affecting the Mortgaged Property, including, without limitation, any damage or injury resulting from any such Hazardous Material to or affecting the Mortgaged Property or the soil, water, air, vegetation, buildings, personal property, persons or animals located on the Mortgaged Property or on any other property or otherwise, (iii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or

related to any such Hazardous Material, (iv) any lawsuit brought or threatened, settlement reached, or order or directive of or by any Governmental Authority relating to such Hazardous Material, or (v) any violation of any Environmental Requirement or any policy or requirement of the Mortgagee hereunder provided however that the above indemnifications shall exclude any of the foregoing arising out of the gross negligence, bad faith, or willful misconduct of the Mortgagee, its agents and/or employees. The aforesaid indemnification shall, notwithstanding any exculpatory or other provision of any other document or instrument now or hereafter executed and delivered in connection with the loan evidenced by the Note and secured by this Mortgage, constitute the personal recourse undertakings, obligations and liabilities of the Mortgagor.

(h) The obligations and liabilities of the Mortgagor under this paragraph 9 shall survive and continue in full force and effect and shall not be terminated, discharged or released, in whole or in part, irrespective of whether the Debt has been paid in full and irrespective of any foreclosure of this Mortgage, sale of the Mortgaged Property pursuant to the provisions of this Mortgage or acceptance by the Mortgagee, its nominee or affiliate of a deed or assignment in lieu of foreclosure or sale and irrespective of any other fact or circumstance of any nature whatsoever. Nothing in this paragraph 9 shall prohibit the Mortgagor from contesting any alleged violation in good faith and by appropriate proceedings so long as the Mortgagor is in compliance with the provisions of Paragraph 58 below.

10. Estoppel Certificates. The Mortgagor, within twenty (20) days after request by the Mortgagee and at its expense, will furnish the Mortgagee with a statement, duly acknowledged and certified, setting forth the amount of the Debt and the offsets or defenses thereto, if any.

11. Transfer or Encumbrance of the Mortgaged Property.

Except for the occupancy of the Mortgaged Property pursuant to the Operating Lease and Permitted Subleases, and as otherwise hereinafter specifically provided to the contrary in this paragraph and paragraph 7 of this Mortgage, no part of the Mortgaged Property nor any interest of any nature whatsoever therein, shall in any manner, directly or indirectly, be further encumbered, sold, transferred, assigned, conveyed, let or sublet, or permitted to be further encumbered, sold, transferred, assigned, conveyed, let or sublet without the prior consent of the Mortgagee, which consent in any and all circumstances may be withheld in the sole and absolute discretion of the Mortgagee, except (i) that as to further subleasing, Mortgagee's consent shall not be unreasonably withheld, delayed or conditioned unless the existence of such proposed sublease would violate paragraph 7 (a) clause (iii) (a) hereof, (ii) to the extent permitted below in this paragraph 11 and (iii) nothing herein shall prohibit the granting of licenses to use the Equipment to the person or persons then operating at the Mortgaged Property.

In addition, except as otherwise hereinafter specifically provided to the contrary in this paragraph, but subject at all times to the terms and conditions of Section E. 24. of the Loan Agreement, no interest of any nature whatsoever in the Mortgagor or any Guarantor (whether partnership, stock, equity, beneficial, profit, loss or otherwise) shall in any manner, directly or indirectly, be encumbered, sold, transferred, conveyed, without the prior consent of the Mortgagee, which consent in any and all circumstances may be withheld in the sole and absolute discretion of the Mortgagee provided however that a transfer or conveyance of the Equity Interests of the Mortgagor or Guarantors shall be permitted hereunder without the consent of the Mortgagee if such transfer or conveyance does not result in a prohibited Change of Control (as defined in the Existing Credit Agreement) or, with respect to the Guarantors is otherwise permitted under the Existing Credit Agreement. Existing pledges of Equity Interests under the Existing Credit Agreement (as defined in the Loan Agreement) or the exercise of the remedies under the Existing Credit Agreement shall not be deemed a violation of the provisions hereof.

12. **Notice.** Any notice, request, demand, statement, authorization, approval or consent made hereunder shall be in writing and shall be sent by Federal Express, UPS or other reputable nationally recognized overnight delivery service (that provides written confirmation of receipt) or by postage pre-paid or certified mail, return receipt requested, and shall be deemed given at the following addresses on the date actually received or, if refused, on the date of such refusal:

If to the Mortgagor:

Dairyland HP LLC  
c/o Dairyland USA Corporation  
100 East Ridge Road  
Ridgefield, Connecticut 06877  
Attention: Kenneth Clark, Chief Financial Officer

**With a copy to:**

Reed Smith LLP  
599 Lexington Avenue, 29th Floor  
New York, New York 10022  
Attention: Joseph M. Marger, Esq.

If to the Mortgagee:

Commercial Lending II LLC  
JPMorgan Chase Bank, N. A.  
106 Corporate Park Drive  
White Plains, New York, 10604  
Attention: Patricia Stone, Senior Vice President

With a copy to:

JPMorgan Chase Bank, N.A.  
Legal Department  
237 Park Avenue—12th Floor  
Mail Code NY1-R065  
New York, New York 10017  
Attention: Charles J. Janoff, Esq.

Each party may designate a change of address by notice to the other party, given at least fifteen (15) days before such change of address is to become effective.

13. **Sale of Mortgaged Property.** If this Mortgage is foreclosed, the Mortgaged Property, or any interest therein, may, at the discretion of the Mortgagee, be sold in one or more parcels or in several interests or portions and in any order or manner.

14. Changes in Laws Regarding Taxation. In the event of the passage after the date of this Mortgage of any law of the State of New York deducting from the value of real property for the purpose of taxation any lien or encumbrance thereon or changing in any way the laws for the taxation of mortgages or debts secured by mortgages for state or local purposes or the manner of the collection of any such taxes, and imposing a tax, either directly or indirectly, on this Mortgage, the Note or the Debt, the Mortgagor shall, if permitted by law, pay any tax imposed as a result of any such law within the statutory period or within fifteen (15) days after demand by the Mortgagee, whichever is less, provided, however, that if, in the opinion of the attorneys for the Mortgagee, the Mortgagor is not permitted by law to pay such taxes, the Mortgagee shall have the right, at its option, to declare the Debt due and payable on a date specified in a prior notice to the Mortgagor of not less than thirty (30) days.

15. No Credits on Account of the Debt. The Mortgagor will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes assessed against the Mortgaged Property or any part thereof and no deduction shall otherwise be made or claimed from the taxable value of the Mortgaged Property, or any part thereof, by reason of this Mortgage or the Debt. If at any time this Mortgage shall secure less than all of the principal amount of the Debt, it is expressly agreed that any repayment of the principal amount of the Debt shall not reduce the amount of the lien of this Mortgage until the lien amount shall equal the principal amount of the Debt outstanding.

16. [reserved]

17. Other Security for the Debt. The Mortgagor shall observe and perform all of the terms, covenants and provisions contained in the Note and in all other mortgages and other instruments or documents evidencing, securing or guaranteeing payment of the Debt, in whole or in part, or otherwise executed and delivered in connection with the Note, this Mortgage or the loan evidenced and secured thereby.

18. Documentary Stamps. If at any time the United States of America, any state thereof, or any governmental subdivision of any such state, shall require revenue or other stamps to be affixed to the Note or this Mortgage, the Mortgagor will pay for the same, with interest and penalties thereon, if any.

19. Right of Entry. Upon prior notice, the Mortgagee and its agents shall have the right to enter and inspect the Mortgaged Property at all reasonable times.

20. Books and Records. The Mortgagor shall comply with the terms of the Loan Agreement between Mortgagor and Mortgagee regarding the maintenance of books and records and disclosure of financial information.

21. Performance of Other Agreements. The Mortgagor shall observe and perform each and every term to be observed or performed by the Mortgagor pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Mortgaged Property.

22. Events of Default. The Debt shall become due at the option of the Mortgagee upon the occurrence of any one or more of the following events (herein collectively referred to as Events of Default):

(a) if any portion of the Debt is not paid when such portion of the Debt is due and payable;

(b) if the Mortgagor shall fail to pay within twenty (20) days of notice and demand by the Mortgagee, any installment of any assessment against the Mortgaged Property for local improvements heretofore or hereafter laid, which assessment is or may become payable in annual or periodic installments and is or may become a lien on the Mortgaged Property, notwithstanding the fact that such installment may not be due and payable at the time of such notice and demand;

(c) if any Federal tax lien is filed against the Mortgagor, any Guarantor or the Mortgaged Property and the same is not discharged of record within sixty (60) days after the same is filed ;

(d) if (except as specifically provided to the contrary in Paragraph 11 above) without the consent of the Mortgagee (which consent in any and all circumstances may be withheld in the sole and absolute discretion of the Mortgagee) any part of the Mortgaged Property or any interest of any nature whatsoever therein or any interest of any nature whatsoever in the Mortgagor or any Guarantor (whether partnership, stock, equity, beneficial, profit, loss or otherwise) is in any manner, by operation of law or otherwise, whether directly or indirectly, further encumbered, sold, transferred, assigned or conveyed, and irrespective of whether any such further encumbrance, sale, transfer, assignment or conveyance is voluntary, by reason or operation of law or is otherwise made;

(e) if without the consent of the Mortgagee any Improvement or the Equipment (except as provided in paragraph 8 above) is removed, demolished or materially altered, or if the Mortgaged Property is not kept in good condition and repair following;

(f) if the Mortgagor shall fail to comply with any requirement or order or notice of violation of law or ordinance issued by any governmental department claiming jurisdiction over the Mortgaged Property within three (3) months from the issuance thereof, or the time period set forth therein, whichever is less;

(g) if the Mortgagor shall be in default with respect to its obligations under Paragraph 9 of the Mortgage beyond any applicable grace period and/or after the giving of any applicable notice as stated in Paragraph 9;

(h) if the Policies are not kept in full force and effect, or if the Policies are not delivered to the Mortgagee upon request;

(i) if on application of the Mortgagee two or more fire insurance companies lawfully doing business in the State of New York refuse to issue Policies;

(j) if the Mortgagor shall fail to pay the Mortgagee on demand for all Premiums and/or Taxes paid by the Mortgagee pursuant to this Mortgage, together with any late payment charge and interest thereon calculated at the Default Rate;

(k) if without the consent of the Mortgagee any Leases are made, canceled or modified or if any portion of the Rents is paid for a period of more than one (1) month in advance or if any of the Rents are further assigned;

(l) if any representation or warranty of the Mortgagor, or of any person (herein referred to as a **"Guarantor"**) guaranteeing payment of the Debt or any portion therefor guaranteeing completion of the Improvements as described in the Building Loan Agreement or guaranteeing performance by the Mortgagor of any of the terms of this Mortgage made herein or in any such guaranty (a **"Guaranty"**), or in any certificate, report, financial statement or other instrument furnished in connection with the making of the Note, this Mortgage, or any such Guaranty, shall prove false or misleading in any material respect;

(m) if the Mortgagor or any Guarantor shall make an assignment for the benefit of creditors;

(n) if a court of competent jurisdiction enters a decree or order for relief with respect to the Mortgagor or any Guarantor under Title 11 of the United States Code as now constituted or hereafter amended or under any other applicable Federal or state bankruptcy law or other similar law, or if such court enters a decree or order appointing a receiver, liquidator, assignee, trustee, sequestrator (or similar official) of the Mortgagor or any Guarantor, or of any substantial part of their respective properties, or if such court decrees or orders the winding up or liquidation of the affairs of the Mortgagor or any Guarantor;

(o) if the Mortgagor or any Guarantor files a petition or answer or consent seeking relief under the Bankruptcy Code as now constituted or hereafter amended, or under any other applicable Federal or state bankruptcy law or other similar law, or if the Mortgagor or any Guarantor consents to the institution of proceedings thereunder or to the filing of any such petition or to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Mortgagor or any Guarantor, or of any substantial part of their respective properties, or if the Mortgagor or any Guarantor fails generally to pay their respective debts as such debts become due, or if the Mortgagor or any Guarantor takes any action in furtherance of any action described in this subparagraph;

(p) if the Mortgagor or any Guarantor shall be in default beyond any applicable notice and/or cure period under the Note, the Completion Guaranty executed and delivered by the Guarantors to the Mortgagee, Guaranty of Payment executed and delivered by the Guarantors to the Mortgagee, the Hazardous Material Indemnification Agreement executed and delivered by the Borrower and the Guarantors to the Mortgagee, the Loan Agreement between the Mortgagee and the Mortgagor and the Guarantors, the Building Loan Agreement or under any other mortgage, instrument or document evidencing, securing or guaranteeing payment of the Debt, in whole or in part, or otherwise executed and delivered in connection with the Note, this Mortgage or the loan evidenced and secured thereby, and any modification, amendment, restatements, or supplement thereto;

(q) if the Mortgagor or other person shall be in default beyond any applicable notice and cure period under any mortgage or deed of trust covering any part of the Mortgaged Property whether superior or inferior in lien to this Mortgage, and including, without limitation, any such mortgage or deed of trust now or hereafter held by the Mortgagee;

(r) if the Mortgagor shall default beyond any applicable notice and cure period in the observance or performance of any term, covenant or condition of the Mortgaged Lease on the part of the Mortgagor, as ground lessee thereunder, to be observed or performed, unless any such observance or performance shall have been waived or not required in writing by the ground lessor under the Mortgaged Lease, or if any one or more of the events referred to in the Mortgaged Lease shall occur which would or may cause the Mortgaged Lease to terminate without notice or action by the ground lessor thereunder or which would entitle the ground lessor under the Mortgaged Lease to terminate the Mortgaged Lease and the term thereof by giving notice to the Mortgagor, as ground lessee thereunder, or if the leasehold estate created by the Mortgaged Lease shall be surrendered, in whole or in part, or if the Mortgaged Lease shall be terminated or canceled for any reason or under any circumstance whatsoever, or if any of the terms, covenants or conditions of the Mortgaged Lease shall in any manner be modified, changed, supplemented, altered or amended without the consent of the Mortgagee;

(s) if the Mortgagor shall, without the Mortgagee's prior written approval, elect to treat the lease as terminated under Section 365(h)(1) of the Bankruptcy Code. Any such election made by the Mortgagor, as holder of the fee or leasehold estates in the Mortgaged Property, without the Mortgagee's prior written consent, in addition to constituting an Event of Default, shall be void;

(t) if any Guarantor shall terminate or dissolve or suspend their usual business activities or convey, sell, lease, transfer or otherwise dispose of all or a substantial part of their property, business or assets other than in the ordinary course of business or as may be permitted under the Existing Credit Agreement (as defined in the Loan Agreement); or

(u) if any Guarantor shall be in default under any Guaranty beyond any applicable notice and cure period provided for therein;

(v) if the Mortgaged Property shall become subject (i) to any tax lien, other than a lien for local real estate taxes and assessments not due and payable, or (ii) to any lis pendens, notice of pendency, stop order, notice of intention to file mechanic's or materialman's lien, mechanic's or materialman's lien or other lien of any nature whatsoever and the same shall not either be discharged of record or in the alternative insured over to the satisfaction of the Mortgagee by the title company insuring the lien of this Mortgage within a period of thirty (30) days after the same is filed or recorded, and irrespective of whether the same is superior or subordinate in lien or other priority to the lien of this Mortgage and irrespective of whether the same constitutes a perfected or inchoate lien or encumbered on the Mortgaged Property or is only a matter of record or notice; or

(w) a default beyond any applicable cure period or at maturity by the Mortgagor or any Guarantor in any payment of principal or interest due on or in the performance of any other provision contained in the Existing Credit Agreement (as defined in the Loan Agreement) including the breach of any covenant thereunder, if (x) with respect to a payment default, such payment is a payment at maturity or a final payment, or (y) the effect of such default is to cause the lender (or lead bank acting as agent) under the Existing Credit Agreement (a "**Holder**") to accelerate the balance due thereunder prior to its stated maturity (or under any agreement or instrument by which the Existing Credit Agreement is evidenced or secured) and, in any case, no waiver, extension or forbearance agreement is then in effect; provided further, that any subsequent waiver, extension or forbearance agreement or cure by payment or other satisfaction accepted by the Holder shall be concurrently deemed a cure of the default created under this clause; or

(x) if the Mortgagor shall continue to be in default under any of the other terms, covenants or conditions of this Mortgage for ten (10) days after notice from the Mortgagee in the case of any default which can be cured by the payment of a sum of money or for thirty (30) days after notice from the Mortgagee in the case of any other default, provided that if such default cannot reasonably be cured within such thirty(30) day period and the Mortgagor shall have commenced to cure such default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty(30) day period shall be extended for so long as it shall require the Mortgagor in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of one hundred twenty (120) days , and that nothing contained in this paragraph shall be construed as having the effect of extending the Completion Date (as defined in the Building Loan Agreement).

23. Right to Cure Defaults. If an Event of Default in the performance of any of the covenants of the Mortgagor herein occurs, the Mortgagee may, at its discretion, remedy the same and for such purpose shall have the right to enter upon the Mortgaged Property or any portion thereof without thereby becoming liable to the Mortgagor or any person in possession thereof holding under the Mortgagor. If the Mortgagee shall remedy such an Event of Default or appear in, defend, or bring any action or proceeding to protect its interest in the Mortgaged Property or to foreclose this Mortgage or collect the Debt, the costs and expenses thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this

paragraph, shall be paid by the Mortgagor to the Mortgagee upon demand. All costs and expenses incurred by the Mortgagee in remedying such Event of Default or in appearing in, defending, or bringing any such action or proceeding shall be paid by the Mortgagor to the Mortgagee upon demand, with interest (calculated for the actual number of days elapsed on the basis of a 360-day year) at a rate per annum equal to 5% plus the rate of interest provided in the Note (herein referred to as the Default Rate), provided, however, that the Default Rate shall in no event exceed the maximum interest rate which the Mortgagor may by law pay, for the period after notice from the Mortgagee that such costs or expenses were incurred to the date of payment to the Mortgagee. To the extent any of the aforementioned costs or expenses paid by the Mortgagee after an Event of Default by the Mortgagor shall constitute payment of (i) taxes, charges or assessments which may be imposed by law upon the Mortgaged Property, (ii) premiums on insurance policies covering the Mortgaged Property, (iii) expenses incurred in upholding the lien of this Mortgage, including, but not limited to, the costs and expenses of any litigation to collect the indebtedness secured by this Mortgage or to prosecute, defend, protect or preserve the rights and the lien created by this Mortgage, or (iv) any amount, cost or charge to which the Mortgagee becomes subrogated, upon payment, whether under recognized principles of law or equity, or under express statutory authority; then, and in each such event, such costs, expenses and amounts, together with interest thereon at the Default Rate, shall be added to the indebtedness secured by this Mortgage and shall be secured by this Mortgage. Notwithstanding anything to the contrary contained in this Mortgage, the maximum amount of the principal indebtedness secured by this Mortgage at execution or which under any contingency may become secured by this Mortgage is ELEVEN MILLION and 00/100 DOLLARS (\$11,000,000.00), plus all amounts expended by the Mortgagee after an Event of Default by the Mortgagor, as hereinabove set forth in paragraph.

24. Appointment of Receiver. The Mortgagee, in any action to foreclose this Mortgage or upon the actual or threatened waste to any part of the Mortgaged Property or upon the occurrence of any Event of Default hereunder, shall be at liberty, without notice, to apply for the appointment of a receiver of the Rents, and shall be entitled to the appointment of such receiver as a matter of right, without regard to the value of the Mortgaged Property as security for the Debt, or the solvency or insolvency of any person then liable for the payment of the Debt.

25. Non-Waiver. The failure of the Mortgagee to insist upon strict performance of any term of this Mortgage shall not be deemed to be a waiver of any term of this Mortgage. The Mortgagor shall not be relieved of the Mortgagor's obligation to pay the Debt at the time and in the manner provided for its payment in the Note and this Mortgage by reason of (i) failure of the Mortgagee to comply with any request of the Mortgagor to take any action to foreclose this Mortgage or otherwise enforce any of the provisions hereof or of the Note or any other mortgage, instrument or document evidencing, securing or guaranteeing payment of the Debt or any portion thereof, (ii) the release, regardless of consideration, of the whole or any part of the Mortgaged Property or any other security for the Debt, or (iii) any agreement or stipulation between the Mortgagee and any subsequent owner or owners of the Mortgaged Property or other person extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Mortgage or any other mortgage, instrument or document evidencing, securing or guaranteeing payment of the Debt or any portion thereof, without first having obtained the consent of the Mortgagor, and in the latter event, the Mortgagor shall continue to be obligated to pay the Debt at the time and in the manner provided in the Note and this Mortgage, as so extended, modified and supplemented, unless expressly released and discharged from such obligation by the Mortgagee in writing. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate lien, encumbrance, right, title or interest in or to the Mortgaged Property, the Mortgagee may release any person at any time liable for the payment of the Debt or any portion thereof or any part of the security held for the Debt and may extend the time of payment or otherwise modify the terms of the Note or this Mortgage, including, without limitation, a modification of the interest rate payable on the principal balance of the Note, without in any manner impairing or affecting this Mortgage or the lien thereof or the priority of this Mortgage, as so extended and

modified, as security for the Debt over any such subordinate lien, encumbrance, right, title or interest. The Mortgagee may resort for the payment of the Debt to any other security held by the Mortgagee in such order and manner as the Mortgagee, in its discretion, may elect. The Mortgagee may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of the Mortgagee thereafter to foreclose this Mortgage. The Mortgagee shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every additional right and remedy now or hereafter afforded by law. The rights of the Mortgagee under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of the Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

26. Liability. If the Mortgagor consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several.

27. Construction. The terms of this Mortgage shall be construed in accordance with the laws of the State of New York.

28. Security Agreement; Financing Statement. This Mortgage constitutes both a real property mortgage and a "security agreement," within the meaning of the Uniform Commercial Code, and the Mortgaged Property includes both real and personal property and all other rights and interest, whether tangible or intangible in nature, of the Mortgagor in the Mortgaged Property. The Mortgagor by executing and delivering this Mortgage has granted to the Mortgagee, as security for the Debt, a security interest in the Equipment. Upon any Event of Default under the Note or this Mortgage, the Mortgagee, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Equipment or any part thereof, and to take such other measures as the Mortgagee may deem necessary for the care, protection and preservation of the Equipment. Upon request or demand of the Mortgagee, the Mortgagor shall at its expense assemble the Equipment and make it available to the Mortgagee at a convenient place acceptable to the Mortgagee. The Mortgagor shall pay to the Mortgagee on demand any and all expenses, including legal expenses and attorneys' fees, incurred or paid by the Mortgagee in protecting its interest in the Equipment and in enforcing its rights hereunder with respect to the Equipment. Any notice of sale, disposition or other intended action by the Mortgagee with respect to the Equipment sent to the Mortgagor in accordance with the provisions of this Mortgage at least seven (7) days prior to the date of any such sale, disposition or other action, shall constitute reasonable notice to the Mortgagor, and the method of sale or disposition or other intended action set forth or specified in such notice shall conclusively be deemed to be commercially reasonable within the meaning of the Uniform Commercial Code unless objected to in writing by the Mortgagor within five (5) days after receipt by the Mortgagor of such notice. The proceeds of any sale or disposition of the Equipment, or any part thereof, may be applied by the Mortgagee to the payment of the Debt in such order, priority and proportions as the Mortgagee in its discretion shall deem proper. If any change shall occur in the Mortgagor's name, the Mortgagor shall promptly cause to be filed at its own expense, new financing statements as required under the Uniform Commercial Code to replace those on file in favor of the Mortgagee.

The Mortgage shall also serve as a financing statement as provided for in Section 9-502(c) of the Uniform Commercial Code.

29. Further Acts, etc. The Mortgagor will, at the cost of the Mortgagor, and without expense to the Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers and assurances as the Mortgagee shall, from time to time, require for the better assuring, conveying, assigning, transferring and confirming unto the

Mortgagee the property and rights hereby mortgaged or intended now or hereafter so to be, or which the Mortgagor may be or may hereafter become bound to convey or assign to the Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or for filing, registering or recording this mortgage and, on demand, will execute and deliver and hereby authorizes the Mortgagee to execute in the name of the Mortgagor to the extent the Mortgagee may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the lien hereof upon the Mortgaged Property.

30. Headings, etc. The headings and captions of various paragraphs of this Mortgage are for convenience of reference only and are not to be construed as defined or limiting, in any way, the scope or intent of the provisions hereof.

31. Filing of Mortgage, etc. The Mortgagor forthwith upon the execution and delivery of this Mortgage and thereafter, from time to time, will cause this Mortgage, and any security instrument creating a lien or evidencing the lien hereof upon the Mortgaged Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect, preserve and perfect the lien hereof upon, and the interest of the Mortgagee in, the Mortgaged Property. The Mortgagor will pay all filing, registration and recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property, and any instrument of further assurance, and all Federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance. The Mortgagor shall hold harmless and indemnify the Mortgagee, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Mortgage.

32. Usury Laws. This Mortgage and the Note are subject to the express condition that at no time shall the Mortgagor be obligated or required to pay interest on the principal balance due under the Note at a rate which could subject the holder of the Note to either civil or criminal liability as a result of being in excess of the maximum interest rate which the Mortgagor is permitted by law to contract or agree to pay. If by the terms of this Mortgage or the Note, the Mortgagor is at any time required or obligated to pay interest on the principal balance due under the Note at a rate in excess of such maximum rate, the rate of interest under the Note shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate and all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal balance of the Note.

33. Sole Discretion of Mortgagee. Except as may otherwise be expressly provided to the contrary, wherever pursuant to the Note, this Mortgage, the Building Loan Agreement, or any other document or instrument now or hereafter executed and delivered in connection therewith or otherwise with respect to the loan secured hereby, the Mortgagee exercises any right given to it to consent or not consent, or to approve or disapprove, or any arrangement or term is to be satisfactory to the Mortgagee, the decision of the Mortgagee to consent or not consent, or to approve or disapprove, or to decide that arrangements or terms are satisfactory or not satisfactory, shall be in the sole and absolute discretion of the Mortgagee and shall be final and conclusive.

34. Reasonableness. If at any time the Mortgagor believes that the Mortgagee has not acted reasonably in granting or withholding any approval or consent under the Note, this Mortgage, the Building Loan Agreement, or any other document or instrument now or hereafter executed and delivered in

connection therewith or otherwise with respect to the loan secured hereby, as to which approval or consent either (i) the Mortgagee has expressly agreed to act reasonably, or (ii) absent such agreement, applicable law would nonetheless require the Mortgagee to act reasonably, then the Mortgagor's sole remedy shall be to seek injunctive relief or specific performance, and no action for monetary damages or punitive damages shall in any event or under any circumstance be maintained by the Mortgagor against the Mortgagee.

35. Recovery of Sums Required To Be Paid. The Mortgagee shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of the Mortgagee thereafter to bring an action of foreclosure, or any other action, for an Event of Default or Events of Defaults by the Mortgagor existing at the time such earlier action was commenced.

36. Actions and Proceedings. After an Event of Default, the Mortgagee shall have the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of the Mortgagor, which the Mortgagee, in its discretion, determines should be brought to protect its interest in the Mortgaged Property.

37. Inapplicable Provisions. If any term, covenant or condition of this Mortgage shall be held to be invalid, illegal or unenforceable in any respect, this Mortgage shall be construed without such provision.

38. Duplicate Originals. This Mortgage may be executed in any number of duplicate originals and each such duplicate original shall be deemed to constitute but one and the same instrument.

39. Certain Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided in this Mortgage, words used in this Mortgage shall be used interchangeably in singular or plural form and the word "**Mortgagor**" shall mean each of the Mortgagor and any subsequent owner or owners of the Mortgaged Property or any part thereof or interest therein; the word "**Mortgagee**" shall mean the Mortgagee or any subsequent holder of the Note; the word "**Note**" shall mean the Note or any other evidence of indebtedness secured by this Mortgage and any and all modifications, amendments, extensions, renewals, restatements, consolidations and/or replacements thereof; the word "**Guarantor**" shall, in addition to the meaning ascribed to it in Paragraph 22(l) hereof, include their respective heirs, executors, administrators, legal representatives, successors and assigns; the word "**person**" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, or other entity; the words "**Mortgaged Property**" shall include any portion of the Mortgaged Property or interest therein; and the word "**Debt**" shall mean all sums secured by this Mortgage; and the word "**default**" shall mean the occurrence of any default by the Mortgagor or other person in the observance or performance of any of the terms, covenants or provisions of the Note or this Mortgage on the part of the Mortgagor or such other person to be observed or performed without regard to whether such default constitutes or would constitute upon notice or lapse of time, or both, an Event of Default under this Mortgage. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

40. Waiver of Notice. The Mortgagor shall not be entitled to any notices of any nature whatsoever from the Mortgagee except with respect to matters for which this Mortgage specifically and expressly provides for the giving of notice by the Mortgagee to the Mortgagor, and the Mortgagor hereby expressly waives the right to receive any notice from the Mortgagee with respect to any matter for which this Mortgage does not specifically and expressly provide for the giving of notice by the Mortgagee to the Mortgagor.

41. No Oral Change. This Mortgage may only be modified, amended or changed by an agreement in writing signed by the Mortgagor and the Mortgagee, and may only be released, discharged or satisfied of record by an agreement in writing signed by the Mortgagee. No waiver of any term, covenant or provision of this Mortgage shall be effective unless given in writing by the Mortgagee and if so given by the Mortgagee shall only be effective in the specific instance in which given. The Mortgagor acknowledges that the Note, this Mortgage, the Building Loan Agreement and the other documents and instruments executed and delivered in connection therewith or otherwise in connection with the loan secured hereby set forth the entire agreement and understanding of the Mortgagor and the Mortgagee with respect to the loan secured hereby and that no oral or other agreements, understanding, representation or warranties exist with respect to the loan secured hereby other than those set forth in the Note, this Mortgage, the Building Loan Agreement and such other executed and delivered documents and instruments.

42. Absolute and Unconditional Obligation. The Mortgagor acknowledges that the Mortgagor's obligation to pay the Debt in accordance with the provision of the Note and this Mortgage is and shall at all times continue to be absolute and unconditional in all respects, and shall at all times be valid and enforceable irrespective of any other agreements or circumstances of any nature whatsoever which might otherwise constitute a defense to the Note or this Mortgage or the obligation of the Mortgagor thereunder to pay the Debt or the obligations of any other person relating to the Note or this Mortgage or the obligations of the Mortgagor under the Note or this Mortgage or otherwise with respect to the loan secured hereby, and the Mortgagor absolutely, unconditionally and irrevocably waives any and all right to assert any defense, setoff, counterclaim or crossclaim of any nature whatsoever with respect to the obligation of the Mortgagor to pay the Debt in accordance with the provisions of the Note and this Mortgage or the obligations of any other person relating to the Note or this Mortgage or obligations of the Mortgagor under the Note or this Mortgage or otherwise with respect to the loan secured hereby in any action or proceeding brought by the Mortgagee to collect the Debt, or any portion thereof, or to enforce, foreclose and realize upon the lien and security interest created by this Mortgage or any other document or instrument securing repayment of the Debt, in whole or in part (provided, however, that the foregoing shall not be deemed a waiver of the Mortgagor's right to assert any compulsory counterclaim maintained in a court of the United States, or of the State of New York if such counterclaim is compelled under local law or rule of procedure, nor shall the foregoing be deemed a waiver of the Mortgagor's right to assert any claim which would constitute a defense, setoff, counterclaim or crossclaim of any nature whatsoever against the Mortgagee in any separate action or proceeding).

43. Trust Fund Pursuant to Section 13 of the Lien Law of New York, the Mortgagor shall receive the advances secured hereby and shall hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of any improvement and shall apply such advances first to the payment of the cost of any such improvement on the Mortgaged Property before using any part of the total of the same for any other purpose.

44. Non-Residential Property. This Mortgage does not cover real property principally improved by one or more structures containing in the aggregate six (6) or less residential dwelling units having their own separate cooking facilities.

45. Waiver of Trial by Jury. **The Mortgagor hereby irrevocably and unconditionally waives, and the Mortgagee by its acceptance of the Note and this Mortgage irrevocably and unconditionally waives, any and all rights to trial by jury in any action, suit or counterclaim arising in connection with, out of or otherwise relating to the Note, this Mortgage, the Building Loan Agreement, any other document or instrument now or hereafter executed and delivered in connection therewith or the loan secured by this Mortgage.**

46. Waiver of Statutory Rights. The Mortgagor shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws to the full extent that the Mortgagor may do so under applicable law. The Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Property marshaled upon any foreclosure of the lien of this Mortgage and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Property sold as an entirety. The Mortgagor hereby waives for itself and all who may claim through or under it, and to the full extent the Mortgagor may do so under applicable law, any and all rights of redemption from sale under any order of decree of foreclosure of this Mortgage or granted under any statute now existing or hereafter enacted.

47. Brokerage. The Mortgagor covenants and agrees that no brokerage commission or other fee, commission or compensation is to be paid by the Mortgagee on account of the loan or other financing obligations evidenced by the Note and/or secured by this Mortgage and the Mortgagor agrees to indemnify the Mortgagee against any claims for any of the same.

48. Indemnity. Anything in this Mortgage, the Note, the Building Loan Agreement, the Loan Agreement or any of the other agreement, document or instrument now or hereafter executed and/or delivered in connection with the Debt (collectively, as the same may be amended and modified, restated, replaced or supplemented from time to time, the "**Loan Documents**") to the contrary notwithstanding, the Mortgagor shall indemnify and hold the Mortgagee harmless and defend the Mortgagee at the Mortgagor's sole cost and expense against any loss or liability, cost or expense (including, without limitation, reasonable attorneys' fees and disbursements of the Mortgagee's counsel, whether in-house staff, retained firms or otherwise), and all claims, actions, procedures and suits arising out of or in connection with:

(i) any ongoing matters arising out of this Mortgage, the Note, the Building Loan Agreement, the Loan Agreement, any of the other Loan Documents or the transaction contemplated hereby or thereby, including, but not limited to, all costs of appraisal or reappraisal of all or any portion of any collateral for the Debt (including without limitation, the Mortgaged Property) and all costs of reappraisal of the Mortgaged Property whether required by law or regulation of the Mortgagee or any governmental or quasi governmental agency or of the granting by the Payee, in its sole and absolute discretion, of any lease non-disturbance agreements,

(ii) any amendment to, or restructuring of, the Debt, this Mortgage, the Note, the Building Loan Agreement, the Loan Agreement or any of the other Loan Documents, and

(iii) any and all lawful action that may be taken by the Mortgagee in connection with the enforcement of the provisions of this Mortgage, the Note, the Building Loan Agreement, the Loan Agreement or any of the other Loan Documents, whether or not suit is filed in connection with the same, or in connection with the Mortgagor, any Guarantor of all or any portion of the Debt and/or any partner, joint venturer or shareholder thereof becoming subject of a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding;

provided however that the above indemnifications shall exclude any and all loss or liability, cost or expense (including, but not limited to, reasonable attorneys' fees and disbursements of Mortgagee's counsel, whether in-house staff, retained firms or otherwise), and all claims, actions, procedures and suits arising out of the gross negligence, bad faith, or willful misconduct of the Mortgagee, its agents and employees.

All sums expended by the Mortgagee on account of any of the foregoing shall be reimbursable on demand, and until reimbursed by the Mortgagor pursuant hereto, shall be deemed additional principal evidenced hereby and secured by this Mortgage and shall bear interest at the Default Rate hereinbelow set forth. The obligations of the Mortgagor under this paragraph shall, notwithstanding any exculpatory or other provisions of any nature whatsoever which may be set forth herein, in this Mortgage, the Note, the Building Loan Agreement, the Loan Agreement or the other Loan Documents, constitute the personal recourse undertakings, obligations and liabilities of the Mortgagor and shall be secured by the Mortgage.

49. Enforceability. This Mortgage was negotiated in the State of New York, and made by the Mortgagor and accepted by the Mortgagee in the State of New York, and the proceeds of the loan secured hereby were disbursed from the State of New York, which State the parties agree has a substantial relationship to the parties and to the underlying transaction embodied hereby, and in all respects, including, without limiting the generality of the foregoing, matters of construction, validity and performance, this Mortgage and the obligations arising hereunder shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts made and performed in such State and any applicable laws of the United State of America. Whenever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Mortgage shall be unenforceable or prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such unenforceability, prohibition or invalidity, without invalidating the remaining provisions of this Mortgage.

50. Relationship. The relationship of the Mortgagee to the Mortgagor hereunder is strictly and solely that of lender and borrower and mortgagor and mortgagee and swap counter-parties and nothing contained in the Note, this Mortgage, the Building Loan Agreement, or any other document or instrument now or hereafter executed and delivered in connection therewith or otherwise in connection with the loan secured hereby is intended to create, or shall in any event or under any circumstance be construed as creating, a partnership, joint venture, tenancy-in-common, joint tenancy or other relationship of any nature whatsoever between the Mortgagee and the Mortgagor other than as lender and borrower and swap counter-parties.

51. [reserved]

52. USA Patriot Act. The Mortgagee hereby notifies the Mortgagor that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies the Mortgagor, which information includes the name and address of the Mortgagor and other information that will allow the Mortgagee to identify the Mortgagor in accordance with the Act. The Mortgagor will not: (a) be or become subject at any time to any law, regulation or list of any government agency (including, without limitation, the US Office of Foreign Asset Control List) that prohibits or limits the Mortgagee from making any advance or extension of credit to the Mortgagor or from otherwise conducting business with the Mortgagor, or (b) fail to provide documentary and other evidence of the Mortgagor's identity as may be requested by the Mortgagee at any time to enable the Mortgagee to verify the Mortgagor's identity or to comply with any applicable law or regulation, including, without limitation, Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318.

53. Building Loan Agreement. This is a building loan and “construction loan” mortgage, the proceeds of which are loaned for the purpose of financing the construction of certain improvements on the Premises. This Mortgage is subject to all of the terms, covenants and conditions of a certain building loan agreement dated the date hereof entered into between the Mortgagee and the Mortgagor (herein referred to as the Building Loan Agreement), which Building Loan Agreement and all of the terms, covenants and conditions thereof are by this reference incorporated herein and made a part hereof with the same force and effect as if set forth at length herein. The proceeds of the building loan secured hereby are to be advanced by the Mortgagee to the Mortgagor in accordance with the provisions of the Building Loan Agreement. The Mortgagor shall observe and perform all of the terms, covenants and conditions of the Building Loan Agreement on the Mortgagor’s part to be observed or performed. Subject to the limitations and qualifications expressly set forth in paragraph 23 of this Mortgage entitled “Right to Cure Defaults,” all advances made and all indebtedness arising and accruing under the Building Loan Agreement from time to time shall be secured hereby. In the event of any conflict or ambiguity between the terms, covenants and conditions of this Mortgage and the Building Loan Agreement, the terms, covenants and conditions which shall enlarge the rights and remedies of the Mortgagee and the interest of the Mortgagee in the Mortgaged Property, afford the Mortgagee greater financial security in the Mortgaged Property and better assure payment of the Debt in full, shall control.

54. [Reserved]

55. The Mortgaged Lease.

(a) The Mortgagor shall: (i) pay all rents, additional rents and other sums required to be paid by the Mortgagor as lessee under and pursuant to the provisions of the Mortgaged Lease, (ii) diligently perform and observe all of the terms, covenants and conditions of the Mortgaged Lease on the part of the Mortgagor, as lessee thereunder, to be performed and observed, unless such performance or observance shall be waived or not required in writing by the lessor under the Mortgaged Lease or the same is being contested by the Mortgagor in good faith and by appropriate proceedings and subject to the provision of paragraph 58 below, to the end that all things shall be done which are necessary to keep unimpaired the rights of the Mortgagor, as lessee, under the Mortgaged Lease, (iii) promptly notify the Mortgagee in writing of any notice of default received by the Mortgagor or given to the lessor under the Mortgaged Lease in respect to the performance or observance of any of the terms, covenants or conditions on the part of, respectively, the Mortgagor or lessor to be performed or observed under the Mortgaged Lease, (iv) promptly notify the Mortgagee of the giving of any notice by the lessor under the Mortgaged Lease to the Mortgagor noting or claiming any default by the Mortgagor in the performance or observance of any of the terms, covenants or conditions of the Mortgaged Lease on the part of the Mortgagor, as lessee thereunder, to be performed or observed and deliver to the Mortgagee a true copy of each such notice, (v) promptly notify the Mortgagee in writing of any request made by either party to the Mortgaged Lease for arbitration proceedings, if any, pursuant to the Mortgaged Lease and of the institution of any arbitration proceedings, as well as of all proceedings thereunder, and promptly deliver to the Mortgagee a copy of the determination of the arbitrators in each such arbitration proceeding, it being acknowledged and agreed that the Mortgagee shall have the right to participate in such arbitration proceedings in association with the Mortgagor or on its own behalf as an interested party, (vi) furnish to the Mortgagee, within ten (10) days after demand, proof of payment of all items which are required to be paid by the Mortgagor pursuant to the Mortgaged Lease, and (vii) not consent to the subordination of the Mortgaged Lease to any mortgage of the fee interest of the lessor under the Mortgaged Lease in the Mortgaged Property except such as agreed to by the Mortgagee.

(b) The Mortgagor, shall not, without the prior written consent of the Mortgagee, surrender the leasehold estate created by the Mortgaged Lease or terminate or cancel the Mortgaged Lease or modify, change, supplement, alter or amend the Mortgaged Lease, in any respect, either orally or in writing, and the

Mortgagor hereby assigns to the Mortgagee, as further security for the payment of the Debt and for the performance and observance of the terms, covenants and conditions of this Mortgage, all of the rights, privileges and prerogatives of the Mortgagor, as lessee under the Mortgaged Lease, to surrender the leasehold estate created by the Mortgaged Lease or to terminate, cancel, modify, change, supplement, alter or amend the Mortgaged Lease, and any such surrender of the leasehold estate created by the Mortgaged Lease or termination, cancellation, modification, change, supplement, alteration or amendment of the Mortgaged Lease without the prior written consent of the Mortgagee shall be void and of no force and effect.

(c) Supplementing the provisions of subparagraph (b) above, it is understood and agreed that the Mortgagor shall not, without the Mortgagee's prior written consent, elect to treat the Mortgaged Lease as terminated under Section 365(h)(1) of the Bankruptcy Code. Any such election made without the Mortgagee's prior written consent shall be void. The Mortgagor hereby unconditionally assigns, transfers and set over to the Mortgagee all of the Mortgagor's claims and rights to the payment of damages arising under the Bankruptcy Code from any rejection by the lessor under the Mortgaged Lease. The Mortgagee shall have the right to proceed in its own name or in the name of the Mortgagor in respect of any claim, suit, action or proceeding relating to the rejection of the Mortgaged Lease, including, without limitation, the right to file and prosecute, to the exclusion of the Mortgagor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of such lessor under the Bankruptcy Code. This assignment constitutes a present, irrevocable and unconditional assignment of the foregoing claims, rights and remedies, and shall continue in effect until all of the indebtedness and obligations secured by the Mortgage shall have been satisfied and discharged in full. Any amounts received by the Mortgagee as damages arising out of the rejection of the Mortgaged Lease as aforesaid shall be applied first to all costs and expenses of the Mortgagee (including, without limitation, reasonable attorneys' fees) incurred in connection with the exercise of any of its rights or remedies under this Paragraph 55 and then shall be applied against the Debt in such order, priority and proportion as the Mortgagee shall determine. If any action, motion or notice shall be commenced or filed in respect of the Mortgagor, as lessee under the Mortgaged Lease, or all or any portion of the Mortgaged Property in connection with any case under the Bankruptcy Code, the Mortgagor shall give the Mortgagee prompt written notice thereof and the Mortgagee shall have the option, to the exclusion of the Mortgagor, exercisable upon notice from the Mortgagee to the Mortgagor, to conduct and control any such litigation with counsel of the Mortgagee's choice. The Mortgagee may proceed in its own name or in the name of the Mortgagor in connection with any such litigation, and the Mortgagor agrees to execute any and all powers, authorizations, consents and other documents required by the Mortgagee in connection therewith. The Mortgagor shall, upon demand, pay to the Mortgagee all costs and expenses (including attorneys' fees) paid or incurred by the Mortgagee in connection with the prosecution or conduct of any such proceedings. Any such costs or expenses not paid by the Mortgagor as aforesaid shall be secured by the lien of the Mortgage and shall be added to the Debt. The Mortgagor shall not commence any action, suit, proceeding or case, or file any application or make any motion, in respect of the Mortgaged Lease in any such case under the Bankruptcy Code without the prior written consent of the Mortgagee. The Mortgagor shall, immediately after obtaining knowledge thereof, notify the Mortgagee and its counsel, by telecopy to the numbers set forth in Paragraph 12, of any filing by or against the lessor under the Mortgaged Lease of a petition under the Bankruptcy Code. The Mortgagor shall thereafter forthwith give written notice of such filing to the Mortgagee, setting forth the date of such filing, the court in which the petition was filed and the relief sought therein. The Mortgagor shall promptly deliver to the Mortgagee, following receipt, any and all notices, summonses, pleadings, applications and other documents received by the Mortgagor in connection with any such petition and any proceedings relating thereto.

(d) If the Mortgagor shall be in default in the performance or observance of any term, covenant or condition of the Mortgaged Lease on the part of the Mortgagor, as lessee thereunder, to be performed or observed beyond any applicable notice and cure period, then, without limiting the generality of the other provisions of this Mortgage, and without waiving or releasing the Mortgagor from any of its obligations hereunder, the Mortgagee shall have the right, but shall be under no obligation, to pay any sums and to perform any act or take any action as may be appropriate to cause all of the terms, covenants and conditions of the Mortgaged Lease on the part of the Mortgagor, as lessee thereunder, to be performed or observed to be promptly performed or observed on behalf of the Mortgagor, to the end that the rights of the Mortgagor in, to and under the Mortgaged Lease shall be kept unimpaired and free from default. If the Mortgagee shall make any payment or perform any act or take action in accordance with the preceding sentence, the Mortgagee will notify the Mortgagor of the making of any such payment, the performance of any such act, or the taking of any such action. All sums so paid by the Mortgagee and all costs and expenses incurred by the Mortgagee in connection with the performance of any such act shall be paid by the Mortgagor to the Mortgagee upon demand with interest at the Default Rate from the date of the payment or incurrence thereof, and the same shall be deemed to be secured by this Mortgage and shall be a lien on the Mortgaged Property prior to any right, title to, interest in or claim upon the Mortgaged Property attaching subsequent to the lien of this Mortgage. In any such event, subject to the rights, if any, of lessees and other occupants under the Leases, the Mortgagee and any person designated by the Mortgagee shall have, and are hereby granted, the right to enter upon the Mortgaged Property at any time and from time to time for the purpose of taking any such action. If the lessor under the Mortgaged Lease shall deliver to the Mortgagee a copy of any notice of default sent by said lessor to the Mortgagor, as lessee under the Mortgaged Lease, such notice shall constitute full protection to the Mortgagee for any action taken or omitted to be taken by the Mortgagee, in good faith, in reliance thereon.

(e) The Mortgagor hereby irrevocably appoints the Mortgagee its true and lawful attorney-in-fact in its name or otherwise to do any and all acts and to execute any and all documents which in the reasonable opinion of the Mortgagee may be necessary or desirable to preserve any rights of the Mortgagor in, to or under the Mortgaged Lease, or any occupancy lease, license or concession, including, without limitation, the right (but not the obligation) following a Event of Default, to cure any defaults of the Mortgagor as lessee under the Mortgaged Lease, preserve any rights of the Mortgagor whatsoever in respect of any part of the Mortgaged Property or to execute an extension or renewal of the Mortgaged Lease as hereinafter set forth. The Mortgagor shall, within ten (10) days of request by the Mortgagee, obtain from the lessor under the Mortgaged Lease such certificates of estoppel with respect to compliance by the Mortgagor with the terms of the Mortgaged Lease as may be requested by the Mortgagee. The Mortgagor shall exercise each individual option, if any, to extend or renew the term of the Mortgaged Lease upon demand by the Mortgagee made at any time within one (1) year of the last day upon which any such option may be exercised, and the Mortgagor hereby expressly authorizes and appoints the Mortgagee the Mortgagor's attorney-in-fact to exercise, either jointly or individually, any such option in the name of and upon behalf of the Mortgagor, which power of attorney shall be irrevocable and shall be deemed to be coupled with an interest.

(f) The generality of the provisions of this Paragraph 55 relating to the Mortgaged Lease shall not be limited by other provisions of this Mortgage or any other agreement between the Mortgagee and the Mortgagor, setting forth particular obligations of the Mortgagor which are also required of the Mortgagor as tenant under the Mortgaged Lease.

56. No Merger of Fee and Leasehold Estates. So long as any portion of the Debt shall remain unpaid, and unless the Mortgagee shall otherwise consent, the fee title to the Premises and the Improvements and the leasehold estate therein created pursuant to the provisions of the Mortgaged Lease shall not merge, but shall always be kept separate and distinct, notwithstanding the union of such estates in the Mortgagor or in any other person, by purchase, operation of law or otherwise. If the Mortgagee shall acquire the fee title to the Premises and the Improvements and the leasehold estate therein created pursuant

to the provisions of the Mortgaged Lease, by foreclosure of this Mortgage or otherwise, such estates shall not merge as a result of such acquisition and shall remain separate and distinct for all purposes after such acquisition unless and until the Mortgagee shall elect to merge such estates.

57. Remedies. Upon the occurrence, and during the continuance (for the purposes of this Mortgage the term ‘continuance’ as used herein shall mean an Event of Default which has not been cured and/or such cure accepted by the Mortgagee or such Event of Default waived, in its sole and absolute discretion) of any Event of Default, Mortgagor agrees that Mortgagee may take such action, without notice or demand, except as otherwise provided herein, as it deems advisable to protect and enforce its rights against Mortgagor and in and to the Mortgaged Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee, in each case, to the extent permitted by law: (a) declare the entire unpaid Debt to be immediately due and payable; (b) with or without entry, institute proceedings at law or equity, for the complete or partial foreclosure of this Mortgage under any applicable provision of law in which case the Mortgaged Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions, if applicable, permitted hereunder or under law, and in any order or manner, any partial foreclosure to be subject to the continuing lien and security interest of this Mortgage for the balance of the Debt not then due, unimpaired and without loss of priority; (c) sell for cash or upon credit the Mortgaged Property or any part thereof and all estate, claim, demand, right, title and interest of Mortgagor therein and rights of redemption thereof, pursuant to judicial decree or otherwise, at one or more sales, as an entirety or in one or more parcels, if applicable; (d) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note or in the other Loan Documents; (e) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Mortgage or the other Loan Documents; (f) apply for the appointment of a receiver, trustee, liquidator or conservator of the Mortgaged Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Mortgagor, any Guarantor, indemnitor or of any person, firm or other entity liable for the payment of the Debt; (g) subject to the rights of any subtenants or other occupants of the Mortgaged Property, enter into or upon the Mortgaged Property, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Mortgagor and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Mortgagor agrees to surrender possession of the Mortgaged Property and of such books, records and accounts to Mortgagee upon demand, and thereupon Mortgagee may exercise all rights and powers of Mortgagor with respect to the Mortgaged Property including, without limitation, (1) the right to use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Mortgaged Property and conduct the business thereat; (2) the right to make or complete any construction, alterations, additions, renewals, replacements and improvements to or on the Mortgaged Property, subject to the provisions of the Mortgaged Lease, as Mortgagee deems advisable; (3) the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Mortgaged Property and every part thereof; (h) require Mortgagor to pay monthly in advance to Mortgagee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Mortgaged Property as may be occupied by Mortgagor; (i) require Mortgagor to vacate and surrender possession of the Mortgaged Property to Mortgagee or to such receiver and, in default thereof, Mortgagor may be evicted by summary proceedings or otherwise; (j) apply the receipts from the Mortgagor Property, any deposits and interest thereon and/or any unearned insurance premiums paid to Mortgagee upon the surrender of any Policies maintained pursuant to paragraph 3 hereof (it being agreed that Mortgagee shall have the right to surrender such Policies upon the occurrence of an Event of Default), to the payment of the Debt, in such order, priority and proportions as Mortgagee shall deem appropriate in its sole discretion; (k) exercise any and all rights and remedies granted to a secured party upon default under

the Uniform Commercial Code, including, without limiting the generality of the foregoing: (1) the right to take possession of the Equipment or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Equipment, and (2) request Mortgagor at its expense to assemble the Equipment and make it available to Mortgagee at the Premises. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Equipment sent to Mortgagor in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Mortgagor. Upon any foreclosure or other sale of the Mortgaged Property pursuant to the terms hereof, Mortgagee may bid for and purchase the Mortgaged Property and shall be entitled to apply all or any part of the secured indebtedness as a credit against the purchase price. In the event of a sale, by foreclosure, power of sale, or otherwise, of less than all of the Mortgaged Property, if applicable, this Mortgage shall continue as a lien and security interest on the remaining portion of the Mortgaged Property unimpaired and without loss of priority. Notwithstanding the provisions of this paragraph to the contrary, if any Event of Default as described in Paragraph 22 (m), (n) or (o) shall occur, the entire unpaid Debt shall be automatically due and payable, without any further notice, demand or other action by Mortgagee.

58. Contest Of Certain Claims. Notwithstanding anything to the contrary herein, the Mortgagor shall not be in default for failure to pay or discharge Taxes or mechanic's or materialman's lien asserted against the Mortgaged Property or to comply with an Environmental Requirement if, and so long as, (a) Mortgagor shall have notified Mortgagee of same within ten (10) days of obtaining knowledge thereof; (b) Mortgagor shall diligently and in good faith contest the same by appropriate legal proceedings which shall operate to prevent the enforcement or collection of the same and the sale of the property or any part thereof, to satisfy the same; (c) Mortgagor shall promptly upon final determination thereof pay the amount of any such Taxes, or claim or fine or assessment so determined, together with all costs, interest and penalties which may be payable in connection therewith; (d) the failure to pay the Taxes, or mechanic's or materialman's lien claim or fine or assessment does not constitute an Event of Default under any other Mortgage, the Mortgaged Lease or any other agreement or security interest covering or affecting any part of the Mortgaged Property; and (e) notwithstanding the foregoing, Mortgagor shall immediately upon request of Mortgagee pay (and if Mortgagee shall fail so to do, Mortgagor may, but shall not be required to, pay or cause to be discharged or bonded against) any such Taxes, or claim or fine or assessment notwithstanding such contest, if in the reasonable opinion of Mortgagor, the Mortgaged Property or any part thereof or interest therein may be in danger of being sold, forfeited, foreclosed, terminated, canceled or lost. Mortgagor may pay over any such cash deposit or part hereof to the claimant entitled thereto at any time when, in the judgment of the Mortgagor, the entitlement of such claimant is established.

**[NO FURTHER TEXT ON THIS PAGE]**

**IN WITNESS WHEREOF**, the Mortgagor has duly executed this Mortgage the day and year first above written.

DAIRYLAND HP LLC,  
a Delaware limited liability company

By: DAIRYLAND USA CORPORATION,  
a New York corporation,  
its sole member and manager

By: /s/ Christopher Pappas  
Name: Christopher Pappas  
Title: Chief Executive Officer

STATE OF NEW YORK            )  
  ) ss.:  
COUNTY OF NEW YORK        )

On the 16<sup>th</sup> day of April in the year 2012 before me, the undersigned, a Notary Public in and for said State, personally appeared Christopher Pappas, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Raquel Mehlman  
Notary Public  
Raquel Mehlman  
Notary Public State of New York  
New York County  
LIC. #01ME6193851  
Comm. Exp. 9/22/2012

**EXHIBIT A**

(Description of Premises)

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough and County of the Bronx, City and State of New York, being part of Tax Lot 1 in Block 2770 and part of Tax Lot 500 in Block 2781, and bounded and more particularly described as follows:

COMMENCING at the intersection of the northerly line of Food Center Drive with the easterly right-of-way line of Halleck Street (100 feet wide); and

RUNNING THENCE along the northerly right-of-way line of Food Center Drive, North 78 degrees 17 minutes 45 seconds East 1,446.07 feet to a point;

THENCE continuing along the same, North 86 degrees 55 minutes 54 seconds East 180.95 feet to a point of curvature;

THENCE continuing along the same with a curve to the left having a radius of 264.00 feet, an arc length of 39.78 feet and a central angle of 08 degrees 38 minutes 00 seconds to a point of tangency;

THENCE continuing along the same, North 78 degrees 17 minutes 54 seconds East 128.52 feet to a point of curvature;

THENCE continuing along the same with a curve to the right having a radius of 300.00 feet, an arc length of 119.70 feet and a central angle of 22 degrees 51 minutes 39 seconds to a point on the curve;

THENCE along an existing leasehold, North 36 degrees 29 minutes 08 seconds East 89.22 feet to a point;

THENCE continuing along the same, North 13 degrees 12 minutes 58 seconds East 67.43 feet to a point; and

THENCE continuing along the same, North 78 degrees 21 minutes 32 seconds East 39.24 feet to the point of TRUE BEGINNING;

THENCE along the existing leasehold, North 11 degrees 38 minutes 28 seconds West 707.60 feet to a point;

THENCE continuing along the same, North 78 degrees 21 minutes 32 seconds East 17.00 feet to a point;

THENCE continuing along the same, North 11 degrees 56 minutes 13 seconds West 310.20 feet to a point;

THENCE continuing along the same, North 23 degrees 01 minutes 04 seconds West 95.50 feet to a point;

THENCE continuing along the same, North 37 degrees 28 minutes 49 seconds West 85.25 feet to a point;

THENCE continuing along the same, North 41 degrees 35 minutes 56 seconds East 26.80 feet to a point;

THENCE continuing along the same, North 56 degrees 23 minutes 24 seconds West 21.30 feet to a point;

THENCE continuing along the same, North 24 degrees 55 minutes 08 seconds East 29.63 feet to a point being 100.37 feet, more or less, upland of the U.S. Pierhead and Bulkhead line;

THENCE along the proposed leasehold line, South 66 degrees 30 minutes 05 seconds East 95.49 feet to a point;

THENCE continuing along the same, South 60 degrees 56 minutes 09 seconds East 49.88 feet to a point;

THENCE continuing along the same, South 48 degrees 26 minutes 03 seconds East 67.13 feet to a point;

THENCE continuing along the same, South 63 degrees 04 minutes 48 seconds East 28.21 feet to a point;

THENCE continuing along the same, South 82 degrees 41 minutes 13 seconds East 70.27 feet to a point;

THENCE continuing along the same, South 80 degrees 25 minutes 11 seconds East 57.46 feet to a point;

THENCE continuing along the same, South 38 degrees 59 minutes 27 seconds East 241.02 feet to a point;

THENCE continuing along the same, South 69 degrees 12 minutes 44 seconds East 134.92 feet to a point;

THENCE continuing along the same, South 24 degrees 13 minutes 05 seconds East 627.35 feet to a point on an existing leasehold line and being 31.98 feet, more or less, from the U.S. Pierhead and Bulkhead line;

THENCE along the leasehold line, South 50 degrees 34 minutes 54 seconds West 654.52 feet to a point;

THENCE continuing along the same, North 39 degrees 25 minutes 06 seconds West 32.00 feet to a point on the Block Line (2770 and 2781);

THENCE along the Block Line, South 50 degrees 34 minutes 54 seconds West 13.65 feet to a point; thence

THENCE along the existing lease line, North 23 degrees 27 minutes 41 seconds West 144.21 feet to a point; and

THENCE continuing along the same, South 78 degrees 21 minutes 32 seconds West 7.30 feet to the point of TRUE BEGINNING.

TOGETHER WITH a non-exclusive ingress/egress easement to Food Center Drive, bounded and more particularly described as follows:

BEGINNING at the aforesaid point of TRUE BEGINNING; and

RUNNING THENCE along an existing leasehold, North 78 degrees 21 minutes 32 seconds East 7.30 feet to a point;

THENCE continuing along the same, South 23 degrees 27 minutes 41 seconds East 57.38 feet to a point on a curve;

THENCE along the proposed easement with a non-tangent curve to the left having a radius of 100.00 feet, an arc length of 107.93 feet, a central angle of 61 degrees 50 minutes 18 seconds and a chord bearing South 22 degrees 46 minutes 53 seconds West 102.77 feet to a point of tangency;

THENCE continuing along the same, South 08 degrees 08 minutes 16 seconds East 40.97 feet to a point on a curve being the northerly right-of-way line of Food Center Drive;

THENCE along the right-of-way line with a curve to the left having a radius of 300.00 feet, an arc length of 111.48 feet, a central angle of 21 degrees 17 minutes 25 seconds and a chord bearing North 68 degrees 11 minutes 44 seconds West 110.84 feet to a non-tangent point;

THENCE along an existing leasehold, North 36 degrees 29 minutes 08 seconds East 89.22 feet to a point;

THENCE continuing along the same, North 13 degrees 12 minutes 58 seconds East 67.43 feet to a point; and

THENCE continuing along the same, North 78 degrees 21 minutes 32 seconds East 39.24 feet to the point of TRUE BEGINNING.

**EXHIBIT A-1**

(Description of Mortgaged Lease)

Agreement of Lease dated as of April 26, 2012 made by and between The City of New York, acting by and through its Department of Small Business Services, as lessor, and Dairyland HP LLC, as lessee, a memorandum of which lease dated as of April 26, 2012 is being recorded immediately prior hereto in the New York City Register's office for Bronx County, New York.

JOINT AND SEVERAL  
GUARANTY OF PAYMENT

White Plains, New York  
April 26, 2012

WHEREAS, DAIRYLAND HP LLC, a Delaware limited liability company having an office at c/o Dairyland USA Corporation, 100 East Ridge Road, Ridgefield, Connecticut 06877 (the "**Borrower**"), has applied to COMMERCIAL LENDING II LLC, a Delaware limited liability company having an office at 106 Corporate Park Drive, White Plains, New York 10604 (its successors, assigns, affiliates, including subsidiaries hereinafter referred to as "**Lender**"), for a loan in the principal sum of \$11,000,000.00 (the "**Loan**"), which Loan will be evidenced by the Note, secured by the Mortgage and advanced pursuant to the Building Loan Agreement and a Loan Agreement, all as described and defined in Exhibit A attached hereto;

WHEREAS Lender is willing to make the Loan to the Borrower only if the undersigned execute and deliver this Guaranty and guarantee payment to Lender of the Debt (as herein defined) in the manner hereinafter provided;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, and in order to induce Lender to make the Loan to the Borrower, the undersigned hereby acknowledge, agree and confirm that all of the above recitals are true, correct and complete and hereby covenants and agrees with Lender as follows:

1. The undersigned guarantees, absolutely, irrevocably and unconditionally, to Lender the payment of the Debt notwithstanding that advances of the Loan have been, or may be, made in the face of a default or Event of Default (as defined in the Mortgage) under the Loan Documents (hereinbelow defined) or otherwise not in compliance with the lending criteria set forth in the Loan Agreement. The term "Debt" as used in this Guaranty shall mean all liabilities of the Borrower to Lender of whatever nature, whether now existing or hereafter incurred, whether created directly or acquired by Lender, by assignment or otherwise, whether matured or unmatured and whether absolute or contingent, evidenced by or arising out of or in connection with, the Note, the Mortgage, the Building Loan Agreement, or any other document or instrument now or hereafter executed and/or delivered in connection therewith or otherwise with respect to the Loan (said Note, Mortgage, Building Loan Agreement and other documents and instruments, as the same may be amended, modified, supplemented or restated from time to time, collectively, the "Loan Documents") including, without limitation, all principal, interest, additional interest (including specifically all interest accruing from and after the commencement of any case, proceeding or action under any existing or future laws relating to bankruptcy, insolvency or similar matters with respect to the Borrower) and other sums of any nature whatsoever arising under the Loan Documents which may or shall become due and payable (all of the above unaffected by modification thereof in any bankruptcy or insolvency proceeding), and even though Lender may not have an allowed claim for the same against the Borrower as a result of any bankruptcy or insolvency proceeding.

2. The undersigned agree that the undersigned shall indemnify and hold Lender harmless and defend Lender at the undersigned's sole cost and expense against any loss or liability, cost or expense (including, but not limited to, reasonable attorneys' fees and disbursements of Lender's counsel, whether in-house staff, retained firms or otherwise), and all claims, actions, procedures and suits arising out of or in connection with:

(a) any ongoing matters arising out of the transaction contemplated hereby, this Guaranty, the Debt, the Mortgage, the Note, the Building Loan Agreement or any other Loan Document, including, but not limited to, all costs of appraisals and reappraisals of the property encumbered by the Mortgage or any part thereof;

(b) any amendment to, or restructuring of, this Guaranty, the Debt and the Mortgage, the Note, the Building Loan Agreement or any of the other Loan Documents; and

(c) any and all lawful action that may be taken by Lender in connection with the enforcement of the provisions of this Guaranty, the Note, the Mortgage, or any of the other Loan Documents, whether or not suit is filed in connection with the same, or in connection with the undersigned, the Borrower and/or any partner, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding;

provided however that the above indemnifications shall exclude any and all loss or liability, cost or expense (including, but not limited to, reasonable attorneys' fees and disbursements of Lender's counsel, whether in-house staff, retained firms or otherwise), and all claims, actions, procedures and suits arising out of the gross negligence, bad faith, or willful misconduct of the Lender, its agents and employees.

All sums expended by Lender shall be payable on demand and, until reimbursed by the Borrower or by the undersigned pursuant hereto, shall bear interest at the Default Rate as set forth in the Note.

3. The undersigned hereby represents and warrants that all financial statements of the undersigned heretofore delivered to Lender by or on behalf of the undersigned are true and correct in all material respects and fairly present the financial condition of the undersigned as of the respective dates thereof, and no material adverse change has occurred in the financial conditions reflected therein since the respective dates thereof. The undersigned agrees to comply with all terms of that certain loan agreement of even date herewith among Borrower, the undersigned and Lender.

4. [reserved]

5. All moneys available to Lender for application in payment or reduction of the Debt may be applied by Lender in such manner and in such amounts and at such time or times and in such order, priority and proportions as Lender may see fit to the payment or reduction of such portion of the Debt as Lender may elect.

6. The undersigned hereby expressly agrees that this Guaranty is independent of, and in addition to, all collateral granted, pledged or assigned under the Loan Documents, and the undersigned hereby consents that from time to time, before or after any Event of Default under the Note, the Mortgage, the Building Loan Agreement or the other Loan Documents, with or without further notice to or assent from the undersigned:

(a) any security at any time held by or available to Lender for any obligation of the Borrower, or any security at any time held by or available to Lender for any obligation of any other person or party primarily, secondarily or otherwise liable for all or any portion of the Debt and all of the other obligations of the undersigned under this Guaranty, including fees, contracted with or acquired by Lender, whether joint, several, absolute, contingent, secured, matured or unmatured (for the purposes of this paragraph 4 and paragraphs 6, 8, 10 and 16 below, collectively, the "**Liabilities**") and/or any other

obligations of the Borrower or any other person or party, other than Lender, under any of the Loan Documents (“**Other Obligations**”), including any guarantor of the Debt and/or any of such Other Obligations, may be accelerated, settled, exchanged, surrendered or released and Lender may fail to set off and may release, in whole or in part, any balance of any deposit account or credit on its books in favor of the Borrower, or of any such other person or party;

(b) any obligation of the Borrower, or of any such other person or party, may be changed, altered, renewed, extended, continued, accelerated, surrendered, compromised, settled, waived or released in whole or in part, or any default with respect thereto waived; and

(c) Lender may extend further credit in any manner whatsoever to the Borrower, and generally deal with the Borrower or any of the above-mentioned security, deposit account, credit on its books to which it has rights or other person or party as Lender may see fit;

and the undersigned shall remain bound in all respects under this Guaranty, without any loss of any rights by Lender and without affecting the liability of the undersigned, notwithstanding any such exchange, surrender, release, change, alteration, renewal, extension, continuance, compromise, waiver, inaction, extension of further credit or other dealing. In addition, all moneys available to Lender for application in payment or reduction of the Debt and/or any Other Obligations may be applied by Lender in such manner and in such amounts and at such time or times and in such order, priority and proportions as Lender may see fit.

7. The undersigned hereby waives:

- (a) notice of acceptance of this Guaranty and of the making of the Loan or any advance thereof by Lender to the Borrower;
- (b) presentment and demand for payment of the Debt or any portion thereof;
- (c) protest and notice of dishonor or default to any of the undersigned or to any other person or party with respect to the Debt or any portion thereof;
- (d) all other notices to which any of the undersigned might otherwise be entitled; and
- (e) any demand under this Guaranty.

8. [reserved]

9. This is a guaranty of payment and not of collection and the undersigned further waives any right to require that any action be brought against the Borrower or any other person or party or to require that resort be had to any security or to any balance of any deposit account or credit on the books of Lender in favor of the Borrower or any other person or party. Any payment on account of or reacknowledgment of the Debt by the Borrower, or any other party liable therefor, shall be deemed to be made on behalf of the undersigned and shall serve to start anew the statutory period of limitations applicable to the Debt.

10. Each reference herein to Lender shall be deemed to include its successors and assigns, in whose favor the provisions of this Guaranty shall also inure. Each reference herein to the undersigned shall be deemed to include the successors and assigns of the undersigned, all of whom shall be bound by the provisions of this Guaranty, provided, however, that the undersigned shall in no event nor under any circumstance have the right, without obtaining the prior written consent of Lender, to assign or transfer the undersigned’s obligations and liabilities under this Guaranty, in whole or in part, to any other person, party or entity in conjunction with the loan.

11. The term “undersigned” as used herein shall, if this Guaranty is signed by more than one party, unless otherwise stated herein, mean the “undersigned and each of them” and each undertaking herein contained shall be their joint and several undertaking. If this Guaranty is signed by more than one party, all singular references to the undersigned shall be deemed to be plural. Lender may proceed against none, one or more of the undersigned at one time or from time to time as it sees fit in its sole and absolute discretion. If any party hereto shall be a partnership, the agreements and obligations on the part of the undersigned herein contained shall remain in force and application notwithstanding any changes in the individuals composing the partnership and the term “undersigned” shall include any altered or successive partnerships, but the predecessor partnerships and their partners shall not thereby be released from any obligations or liability hereunder. If any party hereto shall be a corporation, the agreements and obligations on the part of the undersigned herein contained shall remain in force and application notwithstanding the merger, consolidation, reorganization or absorption thereof, and the term “undersigned” shall include such new entity, but the old entity shall not thereby be released from any obligations or liabilities hereunder.

12. No delay on the part of Lender in exercising any right or remedy under this Guaranty or failure to exercise the same shall operate as a waiver in whole or in part of any such right or remedy. No notice to or demand on any of the undersigned shall be deemed to be a waiver of the obligations of any of the undersigned or of the right of Lender to take further action without notice or demand as provided in this Guaranty. No course of dealing between any of the undersigned and Lender shall change, modify or discharge, in whole or in part, this Guaranty or any obligations of the undersigned hereunder.

13. This Guaranty may only be modified, amended, changed or terminated by an agreement in writing signed by Lender and the undersigned; provided should the Lender, in its sole and absolute discretion decide to release any one of the undersigned from its obligations hereunder, that a release of any one of the undersigned from its obligations hereunder shall be effective upon execution and delivery of a release, in form and content acceptable by the Lender, signed by the Lender and the applicable undersigned guarantor to be released alone. No waiver of any term, covenant or provision of this Guaranty shall be effective unless given in writing by Lender and if so given by Lender shall only be effective in the specific instance in which given. The execution and delivery hereafter to Lender by any of the undersigned of a new instrument of guaranty or any reaffirmation of guaranty, of whatever nature, shall not terminate, supersede or cancel this instrument, unless expressly so provided therein, and all rights and remedies of Lender hereunder or under any instrument of guaranty hereafter executed and delivered to Lender by any of the undersigned shall be cumulative and may be exercised singly or concurrently.

14. The undersigned acknowledges that this Guaranty and the undersigned’s obligations under this Guaranty are and shall at all times continue to be absolute, irrevocable and unconditional in all respects, and shall at all times be valid and enforceable irrespective of any other agreements or circumstances of any nature whatsoever which might otherwise constitute a defense to this Guaranty and the obligations of any of the undersigned under this Guaranty or the obligations of any other person or party (including, without limitation, the Borrower) relating to this Guaranty or the obligations of any of the undersigned hereunder or otherwise with respect to the Debt, including, but not limited to, a foreclosure of the Mortgage or the realization upon any other collateral given, pledged or assigned as security for all or any portion of the Debt, or the filing of a petition under Title 11 of the United States Code with regard to the Borrower or any of the undersigned, or the commencement of an action or proceeding for the benefit of the creditors of the Borrower or the undersigned, or the obtaining by Lender of title to, respectively, the premises encumbered

by the Mortgage or any other collateral given, pledged or assigned as security for the Debt by reason of the foreclosure or enforcement of the Mortgage or any other pledge or security agreement, the acceptance of a deed or assignment in lieu of foreclosure or sale, or otherwise. This Guaranty sets forth the entire agreement and understanding of Lender and the undersigned with respect to the matters covered by this Guaranty and the undersigned acknowledges that no oral or other agreements, understandings, representations or warranties exist with respect to this Guaranty or with respect to the obligations of the undersigned under this Guaranty, except those specifically set forth in this Guaranty.

15. This Guaranty has been validly authorized, executed and delivered by the undersigned. The undersigned represents and warrants to Lender that it has the corporate power to do so and to perform its obligations under this Guaranty and this Guaranty constitutes the legally binding obligation of the undersigned fully enforceable against the undersigned in accordance with the terms hereof. The undersigned further represents and warrants to Lender that:

(a) neither the execution and delivery of this Guaranty nor the consummation of the transactions contemplated hereby nor compliance with the terms and provisions hereof will violate any applicable provision of law or any applicable regulation or other manifestation of governmental action; and

(b) all necessary approvals, consents, licenses, registrations and validations of any governmental regulatory body, including, without limitation, approvals required to permit the undersigned to execute and carry out the provisions of this Guaranty, for the validity of the obligations of the undersigned hereunder and for the making of any payment or remittance of any funds required to be made by the undersigned under this Guaranty, have been obtained and are in full force and effect.

16. Notwithstanding any payments made by any of the undersigned pursuant to the provisions of this Guaranty, until such time as (i) the Debt shall have been satisfied in full and the Lender shall have no obligations under the Loan Documents or otherwise with respect thereto and (ii) Lender shall have received payment in full in cash satisfaction of the Debt and the other Liabilities and there shall be no basis under which any such payment made to the Lender might be deemed voidable, set aside, reversed or disgorged, the undersigned irrevocably waives all rights to enforce or collect upon any rights which it now has or may acquire against the Borrower either by way of subrogation, indemnity, reimbursement or contribution for any amount paid under this Guaranty or by way of any other obligations whatsoever of the Borrower to any of the undersigned, nor shall any of the undersigned file, assert or receive payment on any claim, whether now existing or hereafter arising, against the Borrower in the event of the commencement of a case by or against the Borrower under Title 11 of the United States Code. In the event either a petition is filed under said Title 11 of the United States Code with regard to the Borrower or the commencement of an action or proceeding for the benefit of the creditors of the Borrower, this Guaranty shall at all times thereafter remain effective in regard to any payments or other transfers of assets to Lender received from or on behalf of the Borrower prior to notice of termination of this Guaranty and which are or may be held voidable on the grounds of preference or fraud, whether or not the Debt has been paid in full. The provisions of this paragraph 16 shall survive the term of this Guaranty, the payment in full of the Debt and all other Liabilities, and the termination of any commitment to make any further advances of Loan proceeds pursuant to the Building Loan Agreement.

17. Any notice, request or demand given or made under this Guaranty shall be in writing and shall be hand delivered or sent by Federal Express, UPS or other reputable nationally recognized overnight delivery service (with written confirmation of receipt) or by postage prepaid certified mail, return receipt requested, and shall be deemed given when actually received at the following addresses or, if refused, on the date of such refusal:

**If to Lender:**

COMMERCIAL LENDING II LLC  
JPMorgan Chase Bank, N.A.  
106 Corporate Park Drive  
White Plains, New York 10604  
Attention: Patricia Stone, Senior Vice President

With a copy to:

JPMorgan Lender Bank, N.A.  
Legal Department  
237 Park Avenue—12th Floor  
Mail Code NY1-R065  
New York, New York 10017  
Attention: Charles J. Janoff, Esq.

**If to the undersigned:**

The Chefs' Warehouse, Inc.  
Chefs' Warehouse Parent, LLC  
Dairyland USA Corporation  
The Chefs' Warehouse Mid-Atlantic, LLC  
Bel Canto Foods, LLC  
The Chefs' Warehouse West Coast, LLC  
The Chefs' Warehouse of Florida, LLC  
c/o Dairyland USA Corporation  
100 East Ridge Road  
Ridgefield, Connecticut 06877  
Attention: Kenneth Clark, Chief Financial Officer

**With a copy to:**

Reed Smith LLP  
599 Lexington Avenue, 29th Floor  
New York, New York 10022  
Attention: Joseph M. Marger, Esq.

it being understood and agreed that each party will use reasonable efforts to send copies of any notices to the addresses marked "With a copy to" hereinabove set forth; provided, however, that failure to deliver such copy or copies shall have no consequence whatsoever to the effectiveness of any notice made to any of the undersigned or Lender. Each party to this Guaranty may designate a change of address by notice given, as herein provided, to the other party fifteen (15) days prior to the date such change of address is to become effective.

18. This Guaranty is, and shall be deemed to be, a contract entered into under and pursuant to the laws of the State of New York and shall be in all respects governed, construed, applied and enforced in accordance with the laws of the State of New York without regard to principles of conflicts of laws. The undersigned acknowledges and agrees that this Guaranty is, and is intended to be, an instrument for the payment of money only, as such phrase is used in §3213 of the Civil Practice Law and Rules of the State of New York, and the undersigned has been fully advised by its counsel of Lender's rights and remedies pursuant to said §3213.

19. The undersigned agrees to submit to personal jurisdiction in the State of New York in any action or proceeding arising out of this Guaranty. In furtherance of such agreement, the undersigned hereby agrees and consents that without limiting other methods of obtaining jurisdiction, personal jurisdiction over the undersigned in any such action or proceeding may be obtained within or without the jurisdiction of any court located in New York and that any process or notice of motion or other application to any such court in connection with any such action or proceeding may be served upon the undersigned by registered or certified mail to, or by personal service at, the last known address of the undersigned, whether such address be within or without the jurisdiction of any such court. The undersigned hereby further agrees that the venue of any litigation arising in connection with the Debt or in respect of any of the obligations of the undersigned under this Guaranty, shall, to the extent permitted by law, be in New York County. Nothing in this paragraph shall limit the right of Lender to bring an action or proceeding arising out of the Guaranty in any other jurisdiction.

20. The undersigned absolutely, unconditionally and irrevocably waives any and all right to assert or interpose any defense (other than the final and indefeasible payment in full of the Debt), setoff, counterclaim or crossclaim of any nature whatsoever with respect to this Guaranty or the obligations of the undersigned under this Guaranty, or the obligations of any other person or party (including without limitation, the Borrower) relating to this Guaranty, or the obligations of the undersigned hereunder or otherwise with respect to the Loan in any action or proceeding brought by Lender to collect the Debt, or any portion thereof, or to enforce the obligations of the undersigned under this Guaranty (provided, however, that the foregoing shall not be deemed a waiver of the right of the undersigned to assert any compulsory counterclaim maintained in a court of the United States, or of the State of New York if such counterclaim is compelled under local law or rule of procedure, nor shall the foregoing be deemed a waiver of the right of the undersigned to assert any claim which would constitute a defense, setoff, counterclaim or crossclaim of any nature whatsoever against Lender in any separate action or proceeding). The undersigned hereby undertakes and agrees that this Guaranty shall remain in full force and effect for all of the obligations and liabilities of the undersigned hereunder, notwithstanding the maturity of the Loan, whether by acceleration, scheduled maturity or otherwise.

21. No exculpatory provisions which may be contained in the Note, the Mortgage or in any other Loan Document shall in any event or under any circumstances be deemed or construed to modify, qualify, or affect in any manner whatsoever the obligations and liabilities of the undersigned under this Guaranty.

22. The obligations and liabilities of the undersigned under this Guaranty are in addition to the obligations and liabilities of the undersigned under the Other Guaranties (as hereinafter defined). The discharge of any or all of the undersigned's obligations and liabilities under any one or more of the Other Guaranties by the undersigned or by reason of operation of law or otherwise shall in no event or under any circumstance constitute or be deemed to constitute a discharge, in whole or in part, of the undersigned's obligations and liabilities under this Guaranty. Conversely, the discharge of any of the undersigned's obligations and liabilities under this Guaranty by the undersigned or by reason of operation of law or

otherwise shall in no event or under any circumstance constitute or be deemed to constitute a discharge, in whole or in part, of the undersigned's obligations and liabilities under any of the Other Guaranties. The term **"Other Guaranties"** as used herein shall mean any other guaranty of payment, guaranty of performance, completion guaranty, indemnification agreement or other guaranty or instrument creating any obligation or undertaking of any nature whatsoever (other than this Guaranty) now or hereafter executed and delivered by any of the undersigned to Lender in connection with the Loan.

23. This Guaranty may be executed in one or more counterparts by some or all of the parties hereto, each of which counterparts shall be an original and all of which together shall constitute a single agreement of guaranty. The failure of any party listed below to execute this Guaranty, or any counterpart hereof, or the ineffectiveness for any reason of any such execution, shall not relieve the other signatories from their obligations hereunder nor shall any implication arise from the failure of any of the original guarantors to sign this Guaranty that such non-signing guarantor, or any other guarantor, is released from any of his/her/its respective obligations under the original guaranty.

24. Upon execution and delivery after the date hereof by the Lender and a Subsidiary (as defined in Existing Credit Agreement which is defined in the Loan Agreement) of an instrument in the form of Annex 1, such Subsidiary shall become a Guarantor hereunder with the same force and effect as if originally named as a Guarantor herein. The execution and delivery of any such instrument shall not require the consent of any other Guarantor hereunder. The rights and obligations of each Guarantor hereunder shall remain in full force and effect notwithstanding the addition of any new Guarantor as a party to this Guaranty Agreement.

25. The obligations of THE CHEFS' WAREHOUSE MID-ATLANTIC, LLC under this Guaranty are secured in part by certain payments paid into a sinking fund account to be opened and maintained at JPMorgan Chase Bank,, N.A. (the **"Sinking Fund Reserve"**) to be pledged to and controlled by Lender (the **"Sinking Fund Reserve Pledge"**) to secure in part THE CHEFS' WAREHOUSE MID-ATLANTIC, LLC's obligations under the Guaranty.

**26. The undersigned hereby irrevocably and unconditionally waives, and Lender by its acceptance of this Guaranty irrevocably and unconditionally waives, any and all right to trial by jury in any action, suit or counterclaim arising in connection with, out of or otherwise relating to this Guaranty.**

**[NO FURTHER TEXT ON THIS PAGE]**

IN WITNESS WHEREOF, the undersigned have duly executed this Guaranty the day and year first above set forth.

THE CHEFS' WAREHOUSE, INC.,  
a Delaware corporation

By: /s/ Christopher Pappas  
Name: Christopher Pappas  
Title: Chief Executive Officer

CHEFS' WAREHOUSE PARENT, LLC,  
a Delaware limited liability company

By: THE CHEFS' WAREHOUSE, INC.,  
a Delaware corporation,  
its sole member

By: /s/ Christopher Pappas  
Name: Christopher Pappas  
Title: Chief Executive Officer

DAIRYLAND USA CORPORATION,  
a New York corporation

By: /s/ Christopher Pappas  
Name: Christopher Pappas  
Title: Chief Executive Officer

THE CHEFS' WAREHOUSE MID-ATLANTIC, LLC,  
a Delaware limited liability company

By: CHEFS' WAREHOUSE PARENT, LLC,  
a Delaware limited liability company,  
its sole member and manager

By: THE CHEFS' WAREHOUSE, INC.,  
a Delaware corporation,  
its sole member

By: /s/ Christopher Pappas  
Name: Christopher Pappas  
Title: Chief Executive Officer

BEL CANTO FOODS, LLC,  
a New York limited liability company

By: DAIRYLAND USA CORPORATION,  
a New York corporation,  
its sole member and manager

By: /s/ Christopher Pappas  
Name: Christopher Pappas  
Title: Chief Executive Officer

THE CHEFS' WAREHOUSE WEST COAST, LLC,  
a Delaware limited liability company

By: CHEFS' WAREHOUSE PARENT, LLC,  
a Delaware limited liability company,  
its sole member and manager

By: THE CHEFS' WAREHOUSE, INC.,  
a Delaware corporation,  
its sole member

By: /s/ Christopher Pappas  
Name: Christopher Pappas  
Title: Chief Executive Officer

THE CHEFS' WAREHOUSE OF FLORIDA, LLC,  
a Delaware limited liability company

By: CHEFS' WAREHOUSE PARENT, LLC,  
a Delaware limited liability company,  
its sole member and manager

By: THE CHEFS' WAREHOUSE, INC.,  
a Delaware corporation,  
its sole member

By: /s/ Christopher Pappas  
Name: Christopher Pappas  
Title: Chief Executive Officer

STATE OF NEW YORK            )  
  ) ss.:  
COUNTY OF NEW YORK        )

On the 16<sup>th</sup> day of April in the year 2012 before me, the undersigned, a Notary Public in and for said State, personally appeared Christopher Pappas, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacities, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Raquel Mehlman  
Notary Public  
Raquel Mehlman  
Notary Public State of New York  
New York County  
LIC. #01ME6193851  
Comm. Exp. 9/22/2012

**EXHIBIT A**

Building Loan Agreement: The term **“Building Loan Agreement”** as used in this Guaranty shall mean a certain Building Loan Agreement dated as of April 26, 2012, to be entered into between Lender and the Borrower, together with any and all modifications, supplements, extensions, replacements or substitutions therefor as may exist from time to time.

Mortgage: The term **“Mortgage”** as used in this Guaranty shall mean a certain Leasehold Mortgage and Security Agreement and Assignment of Leases and Rents dated April 26, 2012, in the principal sum of \$11,000,000.00 to be given by the Borrower to Lender covering the leasehold estate of the Borrower in the Premises and the Improvements and intended to be duly recorded in Bronx County, State of New York, together with any and all modifications, supplements, extensions, replacements or substitutions therefor as may exist from time to time.

Note: The term **“Note”** as used in this Guaranty shall mean a certain Mortgage Note dated April 26, 2012, in the principal sum of \$11,000,000.00 to be given by the Borrower to Lender, together with any and all modifications, supplements, extensions, replacements or substitutions therefor as may exist from time to time.

Loan Agreement: The term **“Loan Agreement”** as used in this Guaranty shall mean a certain Loan Agreement dated as of April 26, 2012, to be entered into between Lender and the Borrower and the guarantors referred to therein, together with any and all modifications, supplements, extensions, replacements or substitutions therefor as may exist from time to time.

ANNEX 1 TO THE GUARANTY AGREEMENT

**FORM OF SUPPLEMENT**

SUPPLEMENT NO. \_\_\_\_\_, dated as of \_\_\_\_\_, to the JOINT AND SEVERAL GUARANTY OF PAYMENT, dated as of April 26, 2012, among Chefs' Warehouse, Inc. and Dairyland USA Corporation (collectively referred to as the "**Corporate Guarantors**"); and Chefs' Warehouse Parent, LLC, The Chefs' Warehouse Mid-Atlantic, LLC, Bel Canto Foods, LLC, The Chefs' Warehouse West Coast, LLC and The Chefs' Warehouse of Florida, LLC (the "**Entity Guarantors**") and any additional subsidiaries of the Borrower or any of the foregoing, their successors and assigns, including by merger, all of which shall become guarantors hereof pursuant to the terms and conditions of this Agreement, collectively the "**Guarantors**") and Commercial Lending II LLC, as lender (as amended, supplemented or otherwise modified from time to time, the "**Guaranty Agreement**").

A. Reference is made to that certain construction loan to the Borrower in the principal amount of \$11,000,000.00 made on April 26, 2012 (the "**Loan**") evidenced by certain building loan notes (the "**Note**") and secured by a certain building loan, leasehold mortgage, assignment of lessor's interest in leases and rents and security agreement (the "**Mortgage**") held by the Lender.

WHEREAS, the Guarantors have guaranteed repayment of the Loan pursuant to a guaranty of even date herewith (the "**Guaranty**"); and

B. The Guarantors have entered into the Guaranty Agreement in order to induce the Lender to make the Loan. Section 24 of the Guaranty Agreement provides that additional Subsidiaries may become Guarantors under the Guaranty Agreement by execution and delivery of an instrument in the form of this Supplement. The undersigned Subsidiary (the "**New Guarantor**") is executing this Supplement to become a Guarantor under the Guaranty Agreement as consideration for the Loan previously made.

Accordingly, the Lender and the New Guarantor agree as follows:

Section 1. In accordance with Section 24 of the Guaranty Agreement, the New Guarantor by its signature below becomes a Guarantor under the Guaranty Agreement with the same force and effect as if originally named therein as a Guarantor, and the New Guarantor hereby (a) agrees to all the terms and provisions of the Guaranty Agreement applicable to it as a Guarantor thereunder and (b) represents and warrants that the representations and warranties made by it as a Guarantor thereunder are true and correct on and as of the date hereof. Each reference to a "**Guarantor**" in the Guaranty Agreement shall be deemed to include the New Guarantor. The Guaranty Agreement is hereby incorporated herein by reference.

Section 2. The New Guarantor represents and warrants to the Lender that this Supplement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms.

Section 3. This Supplement may be executed in counterparts, each of which shall constitute an original, but all of which, when taken together, shall constitute but one contract. This Supplement shall become effective when the Lender shall have received counterparts of this Supplement that, when taken together, bear the signatures of the New Guarantor and the Lender. Delivery of an executed counterpart of this Supplement by facsimile transmission shall be as effective as delivery of a manually executed counterpart of this Supplement.

Section 4. Except as expressly supplemented hereby, the Guaranty Agreement shall remain in full force and effect.

Section 5. **THIS SUPPLEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.**

Section 6. In case any one or more of the provisions contained in this Supplement should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and in the Guaranty Agreement shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision hereof in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties hereto shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 7. All communications and notices hereunder shall be in writing and given as provided in Section 17 of the Guaranty Agreement. All communications and notices hereunder to the New Guarantor shall be given to it at the address set forth under its signature below, with a copy to the Borrower.

Section 8. The New Guarantor agrees to reimburse the Lender for its out-of-pocket expenses in connection with this Supplement, including the fees, disbursements and other charges of counsel for the Lender.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, the New Guarantor and the Lender have duly executed this Supplement to the Guaranty Agreement as of the day and year first above written.

**New Guarantor:**

\_\_\_\_\_  
\_\_\_\_\_,  
a \_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Name:  
Title:

**COMMERCIAL LENDING II LLC**

By: \_\_\_\_\_

\_\_\_\_\_  
Name:  
Title:

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**DAIRYLAND HP LLC**

**TO**

**COMMERCIAL LENDING II LLC**

**BUILDING LOAN AGREEMENT  
(Leasehold)**

**Dated: April 26, 2012**

**Location: 200-240 Food Center Drive, Bronx, New York**

**The premises are also known as Section 10, Block 2770, p/o Lot 1 and Section 10, Block 2781, p/o Lot 500 on the Tax Map of the City of New York for County of Bronx, City and State of New York**

**RECORD AND RETURN TO:**

**Mayo Crowe LLC  
600 North Broadway, Suite 220  
White Plains, New York 10603  
Attention: Nicholas J. Chivily, Esq.**

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## BUILDING LOAN AGREEMENT

THIS BUILDING LOAN AGREEMENT made the 26<sup>th</sup> day of April, 2012, between COMMERCIAL LENDING II LLC, a Delaware limited liability company having an office at 106 Corporate Park Drive, White Plains, New York 10604 (its successors and/or assigns, hereinafter referred to as the “**Lender**”), and DAIRYLAND HP LLC, a Delaware limited liability company having an office located at c/o Dairyland USA Corporation, 100 East Ridge Road, Ridgefield, Connecticut 06877 (hereinafter referred to as the “**Borrower**”);

### W I T N E S S E T H:

WHEREAS the Borrower is the owner of a leasehold estate in certain premises, as more particularly described in Exhibit A (hereinafter referred to as the “**Premises**”);

WHEREAS, at the request of the Borrower, the Lender has agreed to fund to the Borrower a construction loan of \$11,000,000.00 (hereinafter referred to as the “**Building Loan**”), to finance actual costs incurred by the Borrower in connection with the construction of the Improvements on the Premises by the Borrower, as defined and described in Exhibit B;

WHEREAS, the Building Loan will be advanced in full on the date hereof pursuant to the terms of this Agreement and a Loan Agreement of even date herewith (the “**Loan Agreement**”) into an account of the Borrower opened by the Borrower with JPMorgan Chase Bank, N.A. (the “**Bank**”) and pledged to the Lender to secure the Building Loan (the “**Borrower Disbursement Account**”);

WHEREAS, the proceeds of the Building Loan will be released from the Borrower Disbursement Account to the Borrower in connection with the construction of the Improvements on the Premises by the Borrower pursuant to the terms and conditions of this Agreement and subject to compliance with the Loan Agreement;

NOW, THEREFORE, in consideration of ten dollars (\$10) and other good and valuable consideration, the receipt of which is hereby acknowledged, the Lender and the Borrower hereby covenant and agree as follows:

1. Definition. All terms as used in this Agreement shall, unless otherwise defined in the main body of this Agreement, have the meaning given to such terms in Exhibit B.

2. Note and Mortgage. The Building Loan (i) shall be evidenced by the Building Loan Note, (ii) shall be secured by the Building Loan Mortgage constituting a lien on the leasehold estate of the Borrower in the Premises, the Improvements and other property, rights and interests of the Borrower described therein (the Premises, the Improvements and such other property, rights and interests being hereinafter collectively referred to as the “**Property**”), and (iii) shall be advanced into the Borrower Disbursement Account and released therefrom for application to costs incurred by Borrower in connection with the construction of the Improvements on the Premises in accordance with the provisions of this Agreement and the Loan Agreement. The terms and conditions and the covenants set forth therein are herein incorporated by reference.

3. **The Improvements.** The Borrower has submitted to the Lender and the Construction Consultant a set of final plans and specifications for the Improvements prepared by the Architect, as more particularly described in Exhibit C attached hereto (hereinafter referred to as the **“Plans and Specifications”**), which Plans and Specifications have been reviewed and accepted by the Lender and the Construction Consultant. The Borrower acknowledges that (i) the Construction Consultant has been retained by the Lender to act as a consultant and only as a consultant to the Lender in connection with the construction of the Improvements, (ii) the Construction Consultant shall in no event or under any circumstance have any power or authority to make any decision or to give any approval or consent or to do any other act or thing which is binding upon the Lender and any such purported decision, approval, consent, act or thing by the Construction Consultant on behalf of the Lender shall be void and of no force or effect, (iii) the Lender reserves the right to make any and all decisions required to be made by the Lender under this Agreement and to give or refrain from giving any and all consents or approvals required to be given by the Lender under this Agreement and to accept or not accept any matter or thing required to be accepted by the Lender under this Agreement, in each instance, in its reasonable discretion (provided that after an Event of Default hereunder, any decision or consent to be made herein shall be made at the Lender’s sole and absolute discretion), subject to the provisions hereof but without in any instance being bound or limited in any manner or under any circumstance whatsoever by any opinion expressed or not expressed, or advice given or not given, or information, certificate or report provided or not provided, by the Construction Consultant to the Lender or any other person or party with respect thereto, (iv) the Lender reserves the right in its sole and absolute discretion to disregard or disagree, in whole or in part, with any opinion expressed, advice given or information, certificate or report furnished or provided by the Construction Consultant to the Lender or any other person or party, and (v) the Lender reserves the right in its sole and absolute discretion to replace the Construction Consultant with another construction consultant at any time and without prior notice to or approval by the Borrower. The Borrower represents and warrants to the Lender that the Plans and Specifications have been submitted to the General Contractor, and the General Contractor has agreed to perform its obligations under the Design Build Contract in a manner consistent with the requirements of the Plans and Specifications. The Borrower represents and warrants to the Lender that (i) to the extent required by law on the basis of the present stage of development and construction of the Improvements, the Borrower has obtained from the appropriate Governmental Authorities all required approvals (including, without limitation, all environmental approvals) with respect to the Plans and Specifications and the Improvements, and (ii) all necessary permits, certificates, licenses and other approvals required for the construction of the Improvements have to the extent required by applicable law been issued or obtained from the appropriate Governmental Authorities and (iii) the Improvements and their contemplated use will upon completion in accordance with the Plans and Specifications comply with all applicable zoning resolutions, building codes, environmental and other applicable laws, rules and regulations. Subject to the provisions of paragraph 4 of this Agreement, each addition or modification to the Plans and Specifications must be acceptable to the Lender, the Construction Consultant and, to the extent required by law, shall be approved by the appropriate Governmental Authorities. The Borrower shall not commence any work on any stage or phase of the Improvements unless all required permits, certificates, licenses and approvals therefor have been issued or obtained from appropriate Governmental Authorities. The Borrower shall construct and equip the Improvements substantially in accordance with the Plans and Specifications free and clear of all mechanics’ liens, notices of pendency, or comparable liens or filings and all other liens, encumbrances and security instruments of any nature whatsoever (other than those permitted under the Mortgage and the Mortgage and other exceptions to title specifically set forth in the policy of title insurance insuring the lien of the Mortgage or as may otherwise be permitted under the Mortgage or specifically approved by the Lender). The Lender shall without additional cost or expense have the use of the Plans and Specifications as accepted by the Lender and the Construction Consultant upon the occurrence and during the continuance (for the purposes of this Agreement, the term “continuance” shall refer to an Event of Default beyond any notice or cure period which shall not have been waived by the Lender in

writing) of an Event of Default under the Loan Documents. The Improvements shall be constructed and equipped in compliance with the provisions of this Agreement, the Loan Agreement and the requirements of the Governmental Authorities and the appropriate Board of Fire Underwriters, if any, or other similar body, if any, acting in and for the locality in which the Premises are situated. Compliance with the provisions of this paragraph and any other provisions of this Agreement relating to the construction and equipping of the Improvements shall be determined by the Lender in its reasonable discretion (provided that after an Event of Default hereunder, any decision or consent to be made herein shall be made at the Lender's sole and absolute discretion). At all times the Lender, the Construction Consultant and their respective agents and employees, shall have the right of entry and free access to the Premises to inspect the Improvements (subject to the rights of existing subtenants under subleases for portions of the Premises and provided that such inspections do not unreasonably interfere with the construction of the Improvements).

4. Change Orders. Notwithstanding anything to the contrary contained in this Agreement, the Borrower shall have the right to enter into or to authorize the entering into of change orders with respect to the Improvements without obtaining the Lender's and the Construction Consultant's prior acceptance, provided that (i) no such change order will materially change the gross square feet or the net rentable square feet of space to be contained in the Improvements, or materially alter the basic layout of the Improvements, or the number of parking spaces to be located on the Premises after completion of construction of the Improvements, or involve the use of materials, furniture, fixtures or equipment which will not be at least equal in quality to the materials, furniture, fixtures and equipment originally specified in or required by the Plans and Specifications, as accepted by the Lender and the Construction Consultant, (ii) no such change order shall, in a single instance, result in an increase or decrease in the cost of constructing the Improvements of more than \$100,000, (iii) the aggregate cost of all change orders whether or not they have been accepted by the Lender and the Construction Consultant shall not, result in an increase or decrease in the cost of constructing the Improvements of more than \$250,000; and (iv) shall not extend the time for completion of the Improvements. The Borrower shall also have the right, without obtaining the Lender's or the Construction Consultant's prior acceptance, to enter into change orders or field changes which do not increase or decrease the cost of constructing the Improvements, provided that the requirements of clause (i) of the preceding sentence are satisfied with respect thereto. The Borrower shall submit to the Lender and the Construction Consultant copies of all change orders entered into with respect to the Improvements within fifteen (15) days after the same are entered into and irrespective of whether the same require the prior acceptance of the Lender and the Construction Consultant pursuant to this Agreement.

5. Commencement of Construction. The Borrower shall commence construction of the Improvements on or shortly after the Commencement Date and shall continue with such construction until the Improvements are completed in accordance with the Plans and Specifications and the provisions of this Agreement in accordance with the project timeline approved by the Borrower and Lender.

6. Completion of Improvements. Subject to the provisions of paragraph 7 of this Agreement, construction of the Improvements shall be substantially completed substantially in accordance with the Plans and Specifications and the provisions of this Agreement on or before the Completion Date. For the purposes of this Agreement, the Improvements shall not be deemed to have been completed until (i) the Improvements have, in the reasonable opinion of the Lender and the Construction Consultant, been substantially completed (exclusive of punch list items) substantially in accordance with the Plans and Specifications, (ii) the Improvements shall contain all furniture, fixtures and equipment required for the use and operation of the Improvements, or which may be required by any Governmental Authority or by any law, regulation or rule of any Governmental Authority, (iii) all temporary certificates of occupancy (or their local equivalent) and all other certificates, licenses, consents and approvals required for the use and operation of the Improvements shall have been issued by or obtained from the appropriate Governmental

Authorities, (iv) all Direct Construction Costs, Other Costs of Improvement, and other costs and expenses incurred in connection with the construction and equipping of the Improvements (other than Direct Construction Costs and other costs and expenses which will be incurred in completing punch list work, landscaping and other minor work with respect to the Improvements and which in the aggregate will not in the opinion of the Lender and the Construction Consultant exceed \$100,000, and the remaining balance of the Retainage, if any) shall have been paid in full.

7. Force Majeure. The Completion Date shall be extended for a period of time equal to the number of days during which the Borrower is prevented from proceeding with the construction of the Improvements by reason of force majeure, provided that (i) no Event of Default shall have occurred and shall be continuing under the Loan Documents, (ii) the aggregate of any such respective extensions of the Completion Date pursuant to the provisions of this paragraph shall in no event be for a period of time in excess of sixty (120) days, and (iii) the Borrower notifies the Lender of the events constituting such force majeure within 30 days after the Borrower has knowledge of their occurrence. No extension of the Completion Date pursuant to this paragraph shall be construed as extending the maturity date of the Note. The term "**force majeure**" as used in this paragraph shall include acts of God, flooding, strikes, lockouts or other labor trouble, materially adverse weather conditions, fire or other casualty, governmental preemption in connection with a national emergency, any rule, order or regulation of any governmental agency or any department or subdivision thereof, or inability to secure materials or labor because of any such emergency, rule, order, regulation, war, civil disturbance or other emergency, cause or event beyond the reasonable control of the Borrower.

8. Title Insurance and Survey. The Borrower shall deliver to the Lender a title insurance policy or a title binder or a certificate of title of the Title Company containing the agreement of the Title Company to issue its policy of title insurance insuring the lien of the Mortgage, which title insurance policy shall be in an amount equal to the principal amount of the Building Loan secured by the Mortgage and, shall be sufficient to satisfy all co-insurance requirements and shall otherwise be in form and substance satisfactory to and approved in all respects by the Lender and its counsel. The Borrower shall deliver to the Lender the Preliminary Survey, which Preliminary Survey shall be certified to the Title Company and to the Lender. The state of facts shown in the Preliminary Survey shall be satisfactory in all respects to the Lender and its counsel, the Construction Consultant and the Title Company. If the footprint of the Improvement at the Premises changes from the Preliminary Survey, the Borrower shall deliver to the Lender an as-built survey of the Improvements within thirty (30) days after the completion of Improvements, and any additional surveys requested or required by the Lender, the Construction Consultant or the Title Company within thirty (30) days after request, it being agreed that any change in the state of facts shown in any such updated survey shall be satisfactory in all respects to the Lender, its counsel, the Construction Consultant and the Title Company.

9. Hazard Insurance. The Borrower shall maintain the insurance required under the Mortgaged Lease (as defined in the Building Loan Mortgage) and in the Building Loan Mortgage, including Paragraph 3 of the Building Loan Mortgage (including without limitation the All Risk and Builder's Risk coverage required thereunder) and furnish to the Lender (with evidence of the payment of premiums therefor), or if the Borrower shall fail to do so after the expiration of any applicable notice and grace period, the Lender may obtain at the Borrower's expense, insurance as required by the Building Loan Mortgage.

10. Building Loan Advance; Release of Building Loan Proceeds.

(a) The Building Loan shall be advanced in full by deposit into the Borrower Disbursement Account on the date hereof. The Borrower Disbursement Account, all amounts deposited therein, and all earnings thereon, shall be pledged to, and subject to the control of, Lender. The proceeds of the Building Loan so deposited into the Borrower Disbursement Account shall be deemed advanced under this Agreement and the Building Loan Note for all purposes and shall accrue interest at the interest rate under the Building Loan Note from and after the date of such deposit into the Borrower Disbursement Account until repaid. Borrower agrees that it shall include in its income all interest and earnings, if any, on the funds deposited into the Borrower Disbursement Account. The Borrower Disbursement Account shall be assigned the federal tax identification number of Borrower.

(b) Subject to compliance by the Borrower with the terms, provisions and conditions of the Loan Agreement and this Agreement, the proceeds of the Building Loan shall be released from the Borrower Disbursement Account to the Borrower (i) for direct construction costs incurred by the Borrower in connection with the construction of the Improvements (hereinafter referred to as **“Direct Construction Costs”**), as itemized in a trade breakdown schedule reviewed and accepted by the Lender and the Construction Consultant (hereinafter referred to as the **“Trade Breakdown Schedule”**), as the same may be revised from time to time after the date hereof with the prior review and acceptance of the Lender and the Construction Consultant, and (ii) for costs, other than Direct Construction Costs, incurred by the Borrower in connection with the Building Loan or the construction of the Improvements (hereinafter referred to as **“Other Costs of Improvement”**), as itemized in a schedule reviewed and accepted by the Lender (hereinafter referred to as the **“Schedule of Other Costs of Improvement”**), as the same may be revised from time to time after the date hereof with the prior review and acceptance of the Lender. Except as hereinafter specifically provided to the contrary in paragraph 11 of this Agreement, the Lender shall not be required to release proceeds of the Building Loan from the Borrower Disbursement Account for costs incurred by the Borrower with respect to materials stored on or off the Premises unless the Lender shall, in its reasonable discretion, deem it advisable to so approve. The Lender shall not be obligated to release proceeds of the Building Loan from the Borrower Disbursement Account more frequently than once every thirty (30) days. Each request by the Borrower to the Lender for a release of Building Loan proceeds from the Borrower Disbursement Account shall be in the form attached hereto as Exhibit D or in such other form as may be satisfactory in all respects to the Lender and shall in each case be signed by a duly authorized representative of the Borrower (any such request being hereinafter referred to as a **“Request for Advance”**). Each Request for Advance shall be delivered to the Lender not less than fifteen (15) days prior to the date upon which a release of Building Loan proceeds from the Borrower Disbursement Account is requested. Each Request for Advance shall be based upon the Trade Breakdown Schedule and the Schedule of Other Costs of Improvement and shall be accompanied by (i) a currently dated sworn statement and request for partial payment from the General Contractor in the form specified in Exhibit E or in such other form as may be acceptable to the Lender and the Title Company, as approved by the Construction Consultant, and accompanied by a waiver of lien from the General Contractor in form reasonably satisfactory to the Lender and the Title Company, (ii) such waivers of lien and other documents and instruments as may reasonably be requested or required by the Lender with respect to subcontractors and materialmen engaged in the construction of the Improvements or as may be requested or required by the Title Company (to induce the Title Company to insure each release of Building Loan proceeds made by the Lender pursuant to this Agreement against all mechanics' and materialmen's liens for labor furnished and materials supplied in connection with the construction of the Improvements), (iii) at the request of the Lender, the requisitions for payment from subcontractors and materialmen engaged in the construction of the Improvements, and (iv) such other information and documents as may be requested or required by the Lender or the Construction Consultant. All requests and requisitions for payment shall be approved by the Borrower and recommended for payment by the Construction Consultant. Each release of Building Loan proceeds from the Borrower Disbursement Account shall be made, in whole or in part, (i) by crediting the amount thereof to a separate account of the Borrower to be maintained with the Lender, or (ii) in such other manner as shall be mutually agreed upon by the Borrower and the Lender. The Lender shall not be

obligated to make aggregate releases of Building Loan proceeds from the Borrower Disbursement Account in excess of the amount, from time to time, of Verified Costs of Improvement, unless the Lender, in its sole and absolute discretion, deems it advisable to do so. The Lender shall not be obligated to release Building Loan proceeds from the Borrower Disbursement Account unless the Lender is satisfied, in its sole and absolute discretion, that the conditions precedent to authorizing such release from the Borrower Disbursement Account as set forth in this Agreement and all restrictions on the use of Building Loan proceeds set forth in the Loan Agreement, have been satisfied by the Borrower. Anything in this Agreement or any other agreement made with respect to the Building Loan to the contrary notwithstanding, any release of Building Loan proceeds from the Borrower Disbursement Account or approval or acceptance given by the Lender or the Construction Consultant, herein or therein, whether or not before or after a site observation of the Improvements by the Construction Consultant or otherwise, shall not be deemed to be an approval or acceptance by the Lender or the Construction Consultant of any work performed thereon or approval or acceptance by the Lender or the Construction Consultant of any work or materials done or furnished with respect thereto or a representation by the Lender or the Construction Consultant as to fitness of such work and materials for any other purpose other than to permit any release of Building Loan proceeds from the Borrower Disbursement Account as provided and required herein.

11. Releases of Loan Proceeds for Stored Materials. Notwithstanding anything to the contrary contained in this Agreement, the Lender shall release Building Loan proceeds from the Borrower Disbursement Account to pay for Direct Construction Costs actually incurred by the Borrower for materials which are stored on the site of the Improvements or in a bonded warehouse and which are required in connection with the construction of the Improvements, provided that (i) such materials are consistent with the Plans and Specifications approved by the Lender and the Construction Consultant, (ii) such materials are securely stored on site or in a bonded warehouse, properly inventoried, and otherwise marked to indicate that they are the property of the Borrower, (iii) the bills of sale and contracts under which such materials are being provided shall be in form and substance satisfactory to the Lender and the Construction Consultant, (iv) such materials are insured against casualty, loss and theft in a manner satisfactory to the Lender, (v) the Borrower owns such materials free and clear of all liens and encumbrances of any nature whatsoever and establishes such ownership by evidence satisfactory to the Lender, (vi) the Borrower executes and delivers to the Lender such additional security documents as the Lender shall deem necessary to create and perfect a first lien in such materials as additional security for the payment of the Debt, (vii) [reserved] and (viii) the aggregate amount of such releases of Building Loan proceeds from the Borrower Disbursement Account for such materials which are stored on-site and which is outstanding at any given time shall in no event exceed \$250,000. The Lender shall in no event or under any circumstance have any obligation to authorize the release of any proceeds of the Building Loan from the Borrower Disbursement Account for materials which are stored off-site unless the Lender shall agree to the contrary in its sole and absolute discretion. Any application for a release of Building Loan proceeds from the Borrower Disbursement Account for stored materials shall be made in the form annexed hereto as Exhibit G.

12. Additional Conditions to Releases of Building Loan Proceeds. The obligation of the Lender to release Building Loan proceeds from the Borrower Disbursement Account pursuant to this Agreement is subject to the following additional conditions precedent:

(a) The Borrower shall invest an amount equal to the amount in excess over the Building Loan necessary to complete the Improvements (such sum is now estimated to be approximately \$9,128,468.00 plus all Indirect Project Costs incurred by the Borrower in connection with the Building Loan and the completion of the improvements (hereinafter referred to as the “**Initial Equity Requirement**”) in the Property in a manner satisfactory to the Lender. The Initial Equity Requirement is the amount estimated by the Lender and the Borrower to be the amount

necessary, in addition to the Building Loan, to complete the Improvements and pay all Direct Construction Costs and Indirect Project Costs. The investment of the Initial Equity Requirement by the Borrower in the Property shall be substantiated by evidence satisfactory to the Lender. In order to comply with NMTC Program Requirements (as defined in the Loan Agreement) the Initial Equity Requirement may not be required to be advanced before the Building Loan Proceeds are released by the Lender and may be used to complete the construction of the Improvements after all Building Loan Proceeds have been released hereunder.

(b) Each Request for Advance shall be accompanied by a certificate or report of the Construction Consultant to the Lender based upon a site observation of the Improvements made by the Construction Consultant not more than thirty (30) days prior to the date of such Request for Advance, in which the Construction Consultant shall in substance (i) verify that the portion of the Improvements completed as of the date of such site observation has been completed substantially in accordance with the Plans and Specifications, and (ii) state its estimate of (aa) the percentage of construction of the Improvements completed as of the date of such site observation on the basis of work in place as part of the Improvements and the Trade Breakdown Schedule, (bb) Direct Construction Costs actually incurred for work in place as part of the Improvements as of the date of such site observation, (cc) the sum necessary to complete construction of the Improvements in accordance with the Plans and Specifications, and (dd) the amount of time from the date of such inspection which will be required to complete construction of the Improvements in accordance with the Plans and Specifications.

(c) Prior to each release of Building Loan proceeds from the Borrower Disbursement Account, the Title Company shall have issued (i) a written continuation of title showing the leasehold interest of the Borrower in the Premises and to the Property to be vested in the Borrower and no exceptions to the title of the Property other than those exceptions appearing on the title policy delivered at the closing of the Building Loan and previously approved by the Lender in writing, and (ii) a written commitment (or endorsement to the policy issued at closing) to insure the priority of the lien of the Building Loan Mortgage, subject only to exceptions previously approved by the Lender in writing, for an amount equal to the full amount of each release of Building Loan proceeds from the Borrower Disbursement Account and all previous releases of Building Loan proceeds from the Borrower Disbursement Account authorized by the Lender to the Borrower pursuant to this Agreement. If required by the Lender, such continuations of title shall contain affirmative insurance that covenants and restrictions, if any, reported against the Property have not been violated by the Improvements.

(d) Prior to each release of Building Loan proceeds from the Borrower Disbursement Account by the Lender to the Borrower pursuant to this Agreement, the Borrower shall, upon request of the Lender, furnish the Lender with evidence satisfactory to the Lender, showing payment of all bills and charges for which releases of the Building Loan proceeds have been previously made pursuant to this Agreement. The Borrower shall also deliver to the Lender, upon request, such bills, receipts, invoices and other evidence as may reasonably be required by the Lender to substantiate the actual incurrence by the Borrower of Direct Construction Costs and Other Costs of Improvement.

(e) The Borrower shall, if required by the Lender, deliver to the Lender a written statement executed by the General Contractor certifying that the General Contractor has received payment in full of all monies owed to the General Contractor which are due and payable at such time.

(f) The Borrower shall, if required by the Lender, deliver to the Lender a written statement executed by each subcontractor and materialman engaged in the construction of the Improvements on behalf of the General Contractor or the Borrower certifying that each such subcontractor and materialman has received payment in full of all monies owed to each such subcontractor and materialman by the General Contractor or by the Borrower.

(g) Construction of the Improvements shall comply with all applicable laws, rules, restrictions, orders and regulations of the Governmental Authorities.

(h) The Borrower shall have delivered to the Lender all necessary certificates, authorizations, permits and licenses which are required to permit the construction and completion of the Improvements, as issued by the appropriate Governmental Authorities. The Borrower, to the full extent permitted by applicable law, hereby assigns to the Lender as additional security for the payment of the Debt and the observance and performance by the Borrower of the terms, covenants and provisions of the Loan Documents all right, title and interest which the Borrower may now have or may hereafter acquire in and to such certificates, authorization, permits and licenses.

(i) The Borrower shall make available to the Construction Consultant, upon request, all shop and related drawings used in connection with the Plans and Specifications and the construction of the Improvements at the office and location where the same are kept.

(j) The Lender and the Construction Consultant shall be of the reasonable opinion that the Improvements can be substantially completed by the Completion Date, as the same may be extended pursuant to paragraph 7 of this Agreement.

(k) The Borrower shall have delivered to the Lender and the Construction Consultant a copy of the Design Build Contract, which Design Build Contract shall be in form and substance satisfactory in all respects to the Lender. The Borrower hereby assigns to the Lender as additional security for the payment in full of the Debt and the observance and performance by the Borrower of the terms, covenants and provisions of the Loan Documents all right, title and interest which the Borrower may now have or may hereafter acquire in and to the Design Build Contract. The Borrower shall not agree to any modification or to any termination of the Design Build Contract without the prior approval of the Lender. The Borrower shall furnish the Lender with such information regarding the Architect as the Lender may request and the identity of the Architect shall be subject to approval by the Lender.

(l) The Borrower shall have delivered to the Lender and the Construction Consultant a copy of the Design Build Contract, which Design Build Contract shall be in form and substance satisfactory in all respects to the Lender. A satisfactory Design Build Contract has been received. The Borrower hereby assigns to the Lender as additional security for the payment of the Debt and the observance and performance by the Borrower of the terms, covenants and provisions of the Loan Documents all right, title and interest which the Borrower may now have or may hereafter acquire in and to the Design Build Contract. Except as may otherwise be permitted by paragraph 4 of this Agreement, the Borrower shall not agree to any modification or to any termination of the Design Build Contract without the prior approval of the Lender.

(m) The Borrower shall (to the extent required by the Lender) have delivered to the Lender and the Construction Consultant copies of all the Major Subcontracts now or hereafter entered into, each of which Major Subcontracts shall be in form and substance reasonably satisfactory in all respects to the Lender. The Borrower hereby assigns to the Lender as additional security for the payment of the Debt and the observance and performance by the Borrower of the terms, covenants and provisions of the Loan Documents all right, title and interest which the Borrower may now have or may hereafter acquire in and to the Major Subcontracts. Except as may otherwise be permitted by paragraph 4 of this Agreement, the Borrower shall not agree to any modification or to any termination of any Major Subcontract without the prior approval of the Lender.

(n) The Borrower shall (to the extent required by the Lender) make available for inspection at all times by the Construction Consultant and the Lender copies of all Other Subcontracts, and shall furnish to the Construction Consultant and the Lender, upon request, copies of the same. The Borrower hereby assigns to the Lender as additional security for the payment of the Debt and the observance and performance by the Borrower of the terms, covenants and provisions of the Loan Documents all right, title and interest which the Borrower may now have or may hereafter acquire in and to the Other Subcontracts. Except as may otherwise be permitted by paragraph 4 (Change Orders) of this Agreement, the Borrower shall not agree to any modification or to any termination of the Other Subcontracts without the prior approval of the Lender.

(o) The Major Subcontracts, to the extent not already awarded as of the date hereof, shall be awarded in accordance with a time table reasonably acceptable to the Lender and the Construction Consultant. The Borrower shall cause the Architect/General Contractor, to the extent required by the Lender, the Major Subcontractors and materialmen under the Major Subcontracts to respectively execute and deliver to the Lender, contemporaneously with the execution and delivery of their respective contracts, letter agreements pursuant to the provisions of which the Architect, the General Contractor and such Major Subcontractors and Materialmen shall agree to perform their respective contracts at no additional cost or expense for the benefit of the Lender, its nominee, or wholly-owned subsidiary, in the Event of a Default under the Loan Documents or a foreclosure of the Building Loan Mortgage which letter agreements shall be in form and substance satisfactory to the Lender.

(p) Intentionally Omitted.

(q) The Borrower shall observe and perform all of the terms, covenants and conditions of the Design Build Contract, the Design Build Contract, the Major Subcontracts and the Other Subcontracts on the Borrower's part to be observed or performed.

(r) The Lender shall not be obligated to release Building Loan proceeds from the Borrower Disbursement Account with respect to any contractor, subcontractor or materialman providing work or materials with respect to the Improvements unless such subcontractor or materialman is providing such work or materials under a signed contract or purchase order.

(s) No Event of Default shall have occurred under the Note, the Building Loan Mortgage, the Loan Agreement or the other Loan Documents. .

All conditions and requirements of this Agreement relating to the obligation of the Lender to release Building Loan proceeds from the Borrower Disbursement Account are for the sole benefit of the Lender and no other person or party (including, without limitation, the General Contractor and subcontractors and materialmen engaged in the construction of the Improvements) shall have the right to rely on the satisfaction

of such conditions and requirements by the Borrower as a condition precedent to the Lender authorizing a release of the Building Loan proceeds from the Borrower Disbursement Account. The Lender shall have the right, in its sole and absolute discretion, to waive any such condition or requirement as a condition precedent to making a release of the Building Loan proceeds from the Borrower Disbursement Account.

13. [reserved]

14. Contingency Reserve. A portion of the Building Loan in the amount of five percent (5%) of the cost to complete the Improvements and pay all Direct Construction Costs and Indirect Project Costs under the Design Build Contract (hereinafter referred to as the “**Contingency Reserve**”) shall be reserved to cover the payment of contingencies incurred in connection with the construction of the Improvements (including, without limitation, the payment of additional unanticipated costs incurred with respect to particular line items set forth in the Trade Breakdown Schedule and the Schedule of Other Costs of Improvement and additional costs incurred in connection with change orders entered into in conformity with the provisions of this Agreement), and shall not be released from the Borrower Disbursement Account for any other purpose prior to the completion of construction of the Improvements pursuant to this Agreement unless agreed to the contrary by the Lender in its sole and absolute discretion. All releases of funds designated as the Contingency Reserve shall be subject to specific prior review and approval in all respects by the Lender.

15. Deficiency. The Lender shall not be obligated to make any release of Building Loan proceeds from the Borrower Disbursement Account to the Borrower if, in the sole opinion of the Lender or the Construction Consultant, or both, the balance of the Building Loan yet to be released from the Borrower Disbursement Account by the Lender pursuant to this Agreement plus the Initial Equity Requirement yet to be invested is at any time less (the amount by which it is less being hereinafter referred to as the “**Deficiency**”) than the actual sum, as estimated by the Lender and the Construction Consultant, which will be required to complete the construction of the Improvements in accordance with the Plans and Specifications and this Agreement and to pay all Direct Construction Costs, Other Costs of Improvement and all other costs and expenses of any nature whatsoever which will be incurred in connection with the completion of construction of the Improvements.

Notwithstanding that the Initial Equity Requirement might not be required to be invested ahead of the release of the Building Loan Proceeds in order to meet NMTC Program Requirements, the Borrower shall, within fifteen (15) days after being notified by the Lender that there is or will be a Deficiency or even if there is no Deficiency, if an Event of Default has occurred, (i) deliver to the Lender evidence, reasonably satisfactory to the Lender if no Event of Default has occurred hereunder or under the Building Loan Mortgage or, if an Event of Default has occurred, in the Lender’s sole and absolute discretion, confirming that the Borrower has sufficient available cash or reserves to make cover any such Deficiency and to pay the costs thereof when required to complete the Improvements or (ii) deposit into the Borrower Disbursement Account an amount sufficient to eliminate the Deficiency or in the case of an Event of Default, the Initial Equity Requirement. Any amounts deposited by the Borrower into the Borrower Disbursement Account pursuant to clause (ii) of the preceding sentence of this paragraph to cover a Deficiency shall be released from the Borrower Disbursement Account by the Lender to the Borrower and shall be applied by the Borrower to cover the payment of Direct Construction Costs and Other Costs of Improvement incurred in connection with the construction of the Improvements, and until so released shall be held by the Borrower Disbursement Account. If an Event of Default (as hereinafter defined) shall occur and be continuing, the Lender, in addition to all other rights which it may have, shall have the absolute and unconditional right in its discretion to apply the undisbursed balance of any Deficiency deposit, together with interest earned thereon, in whole or in part to the payment of the Debt in such order, priority and proportion as the Lender in its sole and absolute discretion deems to be appropriate.

16. Specific Additional Covenants of Borrower. The Borrower shall comply with each of the following terms and conditions:

(a) The Borrower shall obtain and furnish to the Lender within ninety (90) days after the completion of the Improvements the originals or copies of all temporary permanent certificates of occupancy (or their local equivalent) and all other certificates, licenses, consents and other approvals of the Governmental Authorities which are required for the use and occupancy of the Improvements. In no event shall the Lender be required to make the last release of Building Loan proceeds from the Borrower Disbursement Account pursuant to this Agreement until a temporary certificate of occupancy has been obtained and the Improvements have been substantially completed (except punch list items). Notwithstanding the foregoing, if Borrower shall have timely completed work and filed or submitted requests for any such certificates and licenses, then the failure of the applicable governmental authorities to timely provide same shall not be an Event of Default hereunder.

(b) The Borrower shall furnish to the Lender from time to time upon request (i) the names of all persons with whom the Borrower or the General Contractor has contracted or intends to contract for the construction of the Improvements or the furnishing of labor or materials in connection therewith, (ii) a list of all unpaid bills for labor and materials with respect to Major Contractors for the construction of the Improvements, (iii) budgets of the Borrower and revisions thereof showing estimated Direct Construction Costs and Other Costs of Improvement and other costs and expenses to be incurred in connection with the completion of construction of the Improvements, (iv) lien waivers, receipted bills or other evidences of payment of all Direct Construction Costs, Other Project Costs and other costs and expenses incurred in connection with the construction of the Improvements and any other costs and expenses relating to the Property, and (v) such other information relating to the Borrower, the Property, the Building Loan, the construction of the Improvements or any collateral for the Building Loan or other source of repayment of the Building Loan, as the Lender may reasonably request.

(c) The Borrower shall proceed promptly if the Improvements are partially or totally damaged or destroyed by fire or other casualty with the repair and restoration thereof and shall diligently prosecute the work of repair and restoration to completion, it being agreed that (i) if such casualty is covered by fire or other casualty insurance, the Borrower's obligation to proceed with such repair and restoration shall be contingent upon the Lender and the lessor under the Mortgaged Lease (as defined in the Building Loan Mortgage) disbursing to the Borrower the proceeds of such insurance to pay the cost of such repair and restoration, and (ii) the cost of such repair and restoration shall in no event or under any circumstance be made the basis of any advance of the Building Loan or release of Building Loan proceeds pursuant to this Agreement. If the Lender and the lessor under the Mortgaged Lease (as defined in the Building Loan Mortgage) agree to disburse insurance proceeds for such repair and restoration, such insurance proceeds shall be disbursed on the basis of certifications of the Construction Consultant as to costs incurred by the Borrower for work in place as part of such repair and restoration and otherwise on terms and conditions satisfactory in all respects to the Lender.

(d) The Borrower shall pay when due all Direct Construction Costs, Other Costs of Improvement and other costs and expenses incurred by the Borrower in connection with the construction of the Improvements or any repair and restoration of the Improvements pursuant to the provisions of this paragraph hereinabove set forth.

(e) The Borrower shall pay all fees and charges incurred in the procuring and making of the Building Loan, including, without limitation, reasonable attorneys' fees incurred by the Lender, fees of the Construction Consultant, appraisal fees, and fees and expenses relating to examination of title, title insurance premiums, surveys, and mortgage recording, documentary, transfer or other similar taxes and revenue stamps.

(f) The Lender shall not be required to pay any brokerage fees or commissions arising from the making of the Building Loan and the Borrower agrees to defend, indemnify and hold the Lender harmless from and against any and all such claims in connection therewith.

(g) The Borrower shall not assign this Agreement or the moneys to be advanced and released hereunder or convey, assign, pledge, encumber or mortgage (except for the Building Loan Mortgage ) any part of the Property without the prior consent of the Lender, but if the Borrower does any of the foregoing, the Lender may, in its discretion, continue to release Building Loan proceeds from the Borrower Disbursement Account to the Borrower or to those who succeed to the interest of the Borrower in the Property pursuant to the terms of this Agreement, and all sums so released shall be deemed to be releases of Building Loan Proceeds made in pursuance and not in modification hereof and shall be evidenced and secured by the Building Loan Note and the Building Loan Mortgage.

17. Events of Default. The term "**Event of Default**" as used in this Agreement shall mean the occurrence of any one or more of the following events:

(a) If the Borrower shall continue to be in default under any of the provisions of this Agreement for ten (10) days after notice from the Lender in the case of any default which can be cured by the payment of a sum of money, or for thirty (30) days after notice from the Lender in the case of any other default, provided that if such default cannot reasonably be cured within such twenty (20) day period and the Borrower shall have commenced to cure such default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as it shall require the Borrower in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of ninety (90) days, or shall be construed as having the effect of extending the Completion Date as the same may be extended pursuant to paragraph 7 of this Agreement ;

(b) If an Event of Default shall occur and be continuing (for the purposes of this Agreement the term "continuing" meaning an Event of Default that has not been cured and such cure accepted by the Lender or waived in writing at the Lender's sole and absolute discretion) under the Loan Agreement, the Mortgage or any of the other Loan Documents;

(c) [reserved];

(d) If the Improvements are not substantially completed in accordance with the provisions of this Agreement on or before the Completion Date, as the same may be extended pursuant to paragraph 7 of this Agreement;

(e) If construction of the Improvements is suspended for a period of ten (10) consecutive business days other than by reason of the occurrence of an event of force majeure, or if construction of the Improvements in the reasonable judgment of the Lender or the Construction Consultant is not carried on with reasonable diligence, or if the Lender or the Construction Consultant is of the reasonable opinion that the Improvements cannot be substantially completed by the Completion Date, as the same may be extended pursuant to paragraph 7 of this Agreement;

(f) If the Borrower shall fail to satisfy Lender as to Borrower's financial wherewithal to cover any Deficiency as required in paragraph 15 of this Agreement and such failure continues for ten (10) business days after notice thereof to the Borrower;

(g) If the Borrower executes any chattel mortgage or other security agreement with respect to any Equipment, or if any such Equipment are not substantially in accordance with the Plans and Specifications or are leased or purchased pursuant to any conditional sales contract or other security agreement or otherwise so that the ownership thereof will not vest unconditionally in the Borrower free from encumbrances upon being made a part of the Property, or if the Borrower does not furnish to the Lender on request the contracts, bills of sale, statements, receipted vouchers or other agreements, under which the Borrower claims title to such materials, equipment, furniture, fixtures or articles of personal property; or

Upon the occurrence of an Event of Default, the Lender (i) may, at its option and in its sole and absolute discretion, declare the Debt immediately due and payable, and (ii) may, at its option and in its sole and absolute discretion, cease to release Building Loan proceeds from the Borrower Disbursement Account, and (iii) may pursue any and all remedies provided for in the Loan Documents, or otherwise available.

18. Other Remedies. Upon the occurrence of an Event of Default, whether or not the Debt shall be or shall have been declared due and payable or the Lender shall have instituted any foreclosure or other action for the enforcement of the Loan Documents, the Lender may, in addition to any other remedies which the Lender may have under the Loan Documents and in the Lender's sole and absolute discretion, (a) enter upon the Premises and complete the Improvements in accordance with the Plans and Specifications with such changes therein as the Lender may deem appropriate (provided any such changes made by Lender would not increase the liability of any completion guarantors under any guaranties of completion) and employ watchmen to protect the Improvements, all at the risk, cost and expenses of the Borrower, (b) at any time discontinue any work commenced in respect of the Improvements or change any course of action undertaken by it and not bound by any limitations or requirements of time whether set forth herein or otherwise (provided any such changes made by Lender would not increase the liability of any completion guarantors under any guaranties of completion), (c) assume any construction contract made by the Borrower in any way relating to the Improvements and take over and use all or any part of the labor, materials, equipment, furniture, fixtures and articles of personal property contracted for by the Borrower, whether or not previously incorporated into the Improvements, and (d) in connection with any construction of the Improvements undertaken by the Lender pursuant to the provisions of this paragraph (w) engage builders, contractors, architects, engineers and others for the purpose of furnishing labor, materials, equipment, furniture, fixtures and articles of personal property in connection with the construction of the Improvements, (x) pay, settle or compromise all bills or claims which may become liens against the Property, or any portion thereof, or which have been or may be incurred in any manner in connection with completing construction of the Improvements, and irrespective of whether any of the same have been incurred by the Borrower, the Lender or any other person or party, (y) pay all sums and take all action necessary to effect the discharge of liens or encumbrances on, or to effect the cure of defects in, the title of the Property, or any portion thereof, , and (z) take or refrain from taking such action hereunder as the Lender may from time to time determine in

its sole discretion. The Borrower shall be liable to the Lender for all sums paid or incurred by the Lender to construct and equip the Improvements whether the same shall be paid or incurred pursuant to the provisions of this paragraph or otherwise, and all payments made or liabilities incurred by the Lender hereunder of any kind whatsoever shall be paid by the Borrower to the Lender upon demand, with interest thereon (calculated for the actual number of days elapsed on the basis of a 360 day year) at a rate per annum equal to the Default Rate as defined in the Note , provided that such interest rate shall in no event exceed the maximum interest rate which the Borrower may by law pay, from the date of payment by the Lender to the date of payment to the Lender, which sums and interest shall be secured by the Mortgage. Solely for the purpose of exercising the rights granted by this paragraph, the Borrower hereby irrevocably constitutes and appoints the Lender its true and lawful attorney-in-fact to execute, acknowledge and deliver any instruments and to do and perform any acts in the name and on behalf of the Borrower after an Event of Default.

19. Incorporation of Provisions. The Building Loan Note and the Building Loan Mortgage are subject to the conditions, stipulations, agreements and covenants contained in this Agreement to the same extent and effect as if fully set forth therein until this Agreement is terminated by the completion of the Improvements and the payment in full of the Debt.

20. Further Assurances. The Borrower shall on demand of the Lender do any act or execute any additional documents required by the Lender to confirm the lien of the Building Loan Mortgage or comply with the Lien Law of the State of New York.

21. Representations and Warranties. The Borrower is duly qualified to do business in the State in which the Property is located. The Borrower (and the undersigned representatives of the Borrower) have the full power and authority to execute and deliver this Agreement and the other Loan Documents, and the same constitute the binding and enforceable obligations of the Borrower in accordance with their terms.

22. Construction of Agreement. The titles and headings of the paragraphs of this Agreement have been inserted for convenience of reference only and are not intended to summarize or otherwise describe the subject matter of such paragraphs and shall not be given any consideration in the construction of this Agreement.

23. Trust Fund. Pursuant to Section 13 of the Lien Law of New York, the Borrower shall receive the releases of Building Loan proceeds to be made under this Agreement and shall hold the right to receive such releases of Building Loan proceeds as a trust fund to be applied first for the purpose of paying the cost of the Improvements, and the Borrower shall apply the same first to the payment of the cost of the Improvements before using any part of the total of the same for any other purpose.

24. Parties Bound, etc. The provisions of this Agreement shall be binding upon and inure to the benefit of the Borrower, the Lender and their respective successors and assigns (except as otherwise prohibited by this Agreement).

25. Waivers. The Lender may at any time and from time to time waive any one or more of the conditions contained herein, but any such waiver shall be deemed to be made in pursuance hereof and not in modification thereof, and any such waiver in any instance or under any particular circumstance shall not be effective unless in writing and shall not be considered a waiver of such condition in any other instance or any other circumstance.

26. **Governing Law.** This Agreement is and shall be deemed to be a contract entered into pursuant to the laws of the State of New York and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of New York.

27. **Severability.** If any term, covenant or provision of this Agreement shall be held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such term, covenant or provision.

28. **Notices.** Any notice, request or demand given or made under this Agreement shall be in writing and shall be hand delivered or sent by Federal Express, UPS or other reputable nationally recognized courier service (that provides written confirmation of receipt) or by postage prepaid certified mail, return receipt requested, and shall be deemed given when actually received at the following addresses, or if delivery is refused, on the date of such refusal:

**If to the Lender:**

COMMERCIAL LENDING II LLC  
JPMorgan Chase Bank, N.A.  
106 Corporate Park Drive  
White Plains, New York 10603  
Attention: Patricia Stone, Senior Vice President

**With copies to:**

JPMorgan Chase Bank, N.A.  
270 Park Avenue, Floor 45  
Mail Code: NY1-K875  
New York, New York 10017-2014  
Attention: En Jung Kim

JPMorgan Chase Bank, N.A.  
10 S. Dearborn, 19<sup>th</sup> Floor  
Mail Code: IL1-0953  
Chicago, Illinois 60603-5506  
Email: nmtc.reporting@chase.com  
Attention: NMTC Asset Manager

JPMorgan Chase Bank, N.A.  
Legal Department  
237 Park Avenue, 12<sup>th</sup> Floor  
Mail Code NY1-R065  
New York, New York 10017  
Attention: Charles J. Janoff, Esq.

**If to the Borrower:**

Dairyland HP LLC  
c/o Dairyland USA Corporation  
100 East Ridge Road  
Ridgefield, Connecticut 06877  
Attention: Kenneth Clark, Chief Financial Officer

**With a copy to:**

Reed Smith LLP  
599 Lexington Avenue, 29th Floor  
New York, New York 10022  
Attention: Joseph M. Marger, Esq.

Each party may designate a change of address by notice to the other party, given at least fifteen (15) days before such change of address is to become effective.

29. Fees and Expenses. Anything in this Agreement, the Note, the Building Loan Mortgage, the Loan Agreement or any of the other Loan Documents to the contrary notwithstanding, the Borrower shall indemnify and hold the Lender harmless and defend the Lender at the Borrower's sole cost and expense against any loss or liability, cost or expense (including, without limitation, reasonable attorneys' fees and disbursements of the Lender's counsel, whether in-house staff, retained firms or otherwise), and all claims, actions, procedures and suits arising out of or in connection with:

(i) any ongoing matters arising out of this Agreement, the Note, the Building Loan Mortgage, the Loan Agreement, any of the other Loan Documents or the transaction contemplated hereby or thereby, including, but not limited to the Premises, all costs of appraisal or reappraisal of all or any portion of any collateral for the Debt (including without limitation, the Premises) and all costs of reappraisal of the Premises whether required by law or regulation of the Lender or any governmental or quasi governmental agency or of the granting by the Lender, in its sole and absolute discretion, of any lease non-disturbance agreements,

(ii) any amendment to, or restructuring of, the Debt, this Agreement, the Note, the Building Loan Mortgage or any of the other Loan Documents, and

(iii) any and all lawful action that may be taken by the Lender in connection with the enforcement of the provisions of this Agreement, the Note, the Building Loan Mortgage, the Loan Agreement or any of the other Loan Documents, whether or not suit is filed in connection with the same, or in connection with the Lender, any Guarantor of all or any portion of the Debt and/or any partner, joint venturer or shareholder thereof becoming subject of a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding;

provided however that the above indemnifications shall exclude any and all loss or liability, cost or expense (including, but not limited to, reasonable attorneys' fees and disbursements of the Lender's counsel, whether in-house staff, retained firms or otherwise), and all claims, actions, procedures and suits arising out of the gross negligence, bad faith, or willful misconduct of the Lender, its agents and employees.

All sums expended by the Lender on account of any of the foregoing shall be reimbursable on demand, and until reimbursed by the Borrower pursuant hereto, shall be deemed additional principal evidenced by the Note and secured by the Mortgage and shall bear interest at the Default Rate (as defined in the Note). The obligations of the under this paragraph shall, notwithstanding any exculpatory or other provisions of any nature whatsoever which may be set forth herein, in this Mortgage, the Note, the Building Loan Mortgage, the Loan Agreement or the other Loan Documents, constitute recourse undertakings, obligations and liabilities of the Mortgagor and shall be secured by the Building Loan Mortgage.

30. [reserved]

31. Modification. This Agreement may not be modified, amended or terminated, except by an agreement in writing executed by the parties hereto. The Borrower acknowledges that this Agreement and the other Loan Documents set forth the entire agreement and understanding of the Lender and the Borrower with respect to the Building Loan and that no oral or other agreements, understandings, representations or warranties exist with respect to the Building Loan other than those set forth in this Agreement and the other Loan Documents.

32. Affidavit. An affidavit pursuant to Section 22 of the Lien Law of New York is attached hereto as Exhibit F and made a part hereof.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, the Lender and the Borrower have duly executed this Agreement the day and year first above written.

DAIRYLAND HP LLC,  
a Delaware limited liability company

By: DAIRYLAND USA CORPORATION,  
a New York corporation,  
its sole member and manager

By: /s/ Christopher Pappas  
Name: Christopher Pappas  
Title: Chief Executive Officer

COMMERCIAL LENDING II LLC

By: /s/ Patricia T. Stone  
Name: Patricia T. Stone  
Title: Authorized Officer

STATE OF NEW YORK            )  
  ) ss:  
COUNTY OF NEW YORK        )

On the 16<sup>th</sup> day of April in the year 2012 before me, the undersigned, a Notary Public in and for said State, personally appeared Christopher Pappas, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Raquel Mehlman  
Notary Public  
Raquel Mehlman  
Notary Public State of New York  
New York County  
LIC. #01ME6193851  
Comm. Exp. 9/22/2012

STATE OF NEW YORK            )  
  ) ss:  
COUNTY OF WESTCHESTER    )

On the 25<sup>th</sup> day of April in the year 2012 before me, the undersigned, a Notary Public in and for said State, personally appeared Patricia T. Stone, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Joshua S. Cole  
Notary Public  
Joshua S. Cole  
Notary Public, State of New York  
Qual. In Westchester Co. No. 02C06091583  
Commission Expires October 11, 2015

**EXHIBIT A**

(Description of Premises)

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough and County of the Bronx, City and State of New York, being part of Tax Lot 1 in Block 2770 and part of Tax Lot 500 in Block 2781, and bounded and more particularly described as follows:

COMMENCING at the intersection of the northerly line of Food Center Drive with the easterly right-of-way line of Halleck Street (100 feet wide); and

RUNNING THENCE along the northerly right-of-way line of Food Center Drive, North 78 degrees 17 minutes 45 seconds East 1,446.07 feet to a point;

THENCE continuing along the same, North 86 degrees 55 minutes 54 seconds East 180.95 feet to a point of curvature;

THENCE continuing along the same with a curve to the left having a radius of 264.00 feet, an arc length of 39.78 feet and a central angle of 08 degrees 38 minutes 00 seconds to a point of tangency;

THENCE continuing along the same, North 78 degrees 17 minutes 54 seconds East 128.52 feet to a point of curvature;

THENCE continuing along the same with a curve to the right having a radius of 300.00 feet, an arc length of 119.70 feet and a central angle of 22 degrees 51 minutes 39 seconds to a point on the curve;

THENCE along an existing leasehold, North 36 degrees 29 minutes 08 seconds East 89.22 feet to a point;

THENCE continuing along the same, North 13 degrees 12 minutes 58 seconds East 67.43 feet to a point; and

THENCE continuing along the same, North 78 degrees 21 minutes 32 seconds East 39.24 feet to the point of TRUE BEGINNING;

THENCE along the existing leasehold, North 11 degrees 38 minutes 28 seconds West 707.60 feet to a point;

THENCE continuing along the same, North 78 degrees 21 minutes 32 seconds East 17.00 feet to a point;

THENCE continuing along the same, North 11 degrees 56 minutes 13 seconds West 310.20 feet to a point;

THENCE continuing along the same, North 23 degrees 01 minutes 04 seconds West 95.50 feet to a point;

THENCE continuing along the same, North 37 degrees 28 minutes 49 seconds West 85.25 feet to a point;

THENCE continuing along the same, North 41 degrees 35 minutes 56 seconds East 26.80 feet to a point;

THENCE continuing along the same, North 56 degrees 23 minutes 24 seconds West 21.30 feet to a point;

THENCE continuing along the same, North 24 degrees 55 minutes 08 seconds East 29.63 feet to a point being 100.37 feet, more or less, upland of the U.S. Pierhead and Bulkhead line;

THENCE along the proposed leasehold line, South 66 degrees 30 minutes 05 seconds East 95.49 feet to a point;

THENCE continuing along the same, South 60 degrees 56 minutes 09 seconds East 49.88 feet to a point;

THENCE continuing along the same, South 48 degrees 26 minutes 03 seconds East 67.13 feet to a point;

THENCE continuing along the same, South 63 degrees 04 minutes 48 seconds East 28.21 feet to a point;

THENCE continuing along the same, South 82 degrees 41 minutes 13 seconds East 70.27 feet to a point;

THENCE continuing along the same, South 80 degrees 25 minutes 11 seconds East 57.46 feet to a point;

THENCE continuing along the same, South 38 degrees 59 minutes 27 seconds East 241.02 feet to a point;

THENCE continuing along the same, South 69 degrees 12 minutes 44 seconds East 134.92 feet to a point;

THENCE continuing along the same, South 24 degrees 13 minutes 05 seconds East 627.35 feet to a point on an existing leasehold line and being 31.98 feet, more or less, from the U.S. Pierhead and Bulkhead line;

THENCE along the leasehold line, South 50 degrees 34 minutes 54 seconds West 654.52 feet to a point;

THENCE continuing along the same, North 39 degrees 25 minutes 06 seconds West 32.00 feet to a point on the Block Line (2770 and 2781);

THENCE along the Block Line, South 50 degrees 34 minutes 54 seconds West 13.65 feet to a point; thence

THENCE along the existing lease line, North 23 degrees 27 minutes 41 seconds West 144.21 feet to a point; and

THENCE continuing along the same, South 78 degrees 21 minutes 32 seconds West 7.30 feet to the point of TRUE BEGINNING.

TOGETHER WITH a non-exclusive ingress/egress easement to Food Center Drive, bounded and more particularly described as follows:

BEGINNING at the aforesaid point of TRUE BEGINNING; and

RUNNING THENCE along an existing leasehold, North 78 degrees 21 minutes 32 seconds East 7.30 feet to a point;

THENCE continuing along the same, South 23 degrees 27 minutes 41 seconds East 57.38 feet to a point on a curve;

THENCE along the proposed easement with a non-tangent curve to the left having a radius of 100.00 feet, an arc length of 107.93 feet, a central angle of 61 degrees 50 minutes 18 seconds and a chord bearing South 22 degrees 46 minutes 53 seconds West 102.77 feet to a point of tangency;

THENCE continuing along the same, South 08 degrees 08 minutes 16 seconds East 40.97 feet to a point on a curve being the northerly right-of-way line of Food Center Drive;

THENCE along the right-of-way line with a curve to the left having a radius of 300.00 feet, an arc length of 111.48 feet, a central angle of 21 degrees 17 minutes 25 seconds and a chord bearing North 68 degrees 11 minutes 44 seconds West 110.84 feet to a non-tangent point;

THENCE along an existing leasehold, North 36 degrees 29 minutes 08 seconds East 89.22 feet to a point;

THENCE continuing along the same, North 13 degrees 12 minutes 58 seconds East 67.43 feet to a point; and

THENCE continuing along the same, North 78 degrees 21 minutes 32 seconds East 39.24 feet to the point of TRUE BEGINNING.

**EXHIBIT B**

(Definition of Certain Terms)

**Architect:** The term “**Architect**” as used in this Agreement shall mean Food Tech LLC having an office at 300 Ledgewood Place, Suite 304, Rockland, MA 02370 in its capacity under the Design Build Contract as Architect.

**Design Build Contract:** The term “**Design Build Contract**” as used in this Agreement shall mean a certain Design Build Contract dated January 9, 2012, entered into between the Borrower and the Architect/Contractor.

**Building Loan Mortgage:** The term “**Building Loan Mortgage**” as used in this Agreement shall mean a certain mortgage and security agreement and assignment of lessors interest in leases and rents dated the date hereof in the principal sum of \$11,000,000.00 executed and delivered by the Borrower and intended to be duly recorded in Bronx County, State of New York securing the Building Loan Note.

**Building Loan Note:** The term “**Building Loan Note**” as used in this Agreement shall mean a certain note dated as of the date hereof in the principal sum of \$11,000,000.00 given by the Borrower to the Lender.

**Commencement Date:** The term “**Commencement Date**” as used in this Agreement shall mean the date which is sixty (60) days following the date of this Agreement.

**Completion Date:** The term “**Completion Date**” as used in this Agreement shall mean (i) January 31, 2013 with respect to the Phase 1 Building Renovation (Bazzini Areas) as set forth and described in the Design Build Contract, (ii) June 30, 2013 with respect to the Phase II Building Renovation (Dairyland SW) as set forth and described in the Design Build Contract, and (iii) March 31, 2014 with respect to the Phase III Renovation (RBest Area) as set forth and described in the Design Build Contract.

**Construction Consultant:** The term “**Construction Consultant**” as used in this Agreement shall mean Ali Mahjouri, 100 East Ridge Road, Ridgefield, Connecticut 06877.

**Debt:** The term “**Debt**” as used in this Agreement shall mean all principal, interest, additional interest and other sums of any nature whatsoever which shall or may become due and payable to the Lender pursuant to the provisions of the Loan Documents.

**General Contractor:** The term “**General Contractor**” as used in this Agreement shall mean Food Tech LLC in their capacity as Design Builder for the Improvements.

**Governmental Authorities:** The term “**Governmental Authorities**” as used in this Agreement shall mean all governmental authorities having jurisdiction over the Property.

**Improvements:** The term “**Improvements**” as used in this Agreement shall mean renovation of the entire existing 176,406 square foot warehouse at 240 Food Center Drive, Bronx, New York into several renovated areas: meat cooler, freezer, dairy-deli cooler, chocolate room, dry storage, refrigerated dock, dry dock, dock office, forklift charging area, employee amenities and offices.

**Loan Documents:** The term “**Loan Documents**” as used in this Agreement shall collectively mean the Building Loan Note, the Building Loan Mortgage, this Agreement, the Loan Agreement (as defined in the Mortgage) and all other documents and instruments of any nature whatsoever now or hereafter executed and delivered in connection with the Building Loan, as the same may be amended and modified, supplemented, replaced, and restated from time to time.

**Major Subcontracts:** The term “**Major Subcontracts**” as used in this Agreement shall mean any contract or contracts entered into with any single subcontractor or materialman employed by the General Contractor or the Borrower in connection with the construction of the Improvements and providing for aggregate payments to such subcontractor or materialman equal to or in excess of \$1,000,000.00.

**Other Subcontracts:** The term “**Other Subcontracts**” as used in this Agreement shall mean any contracts other than Major Subcontracts entered into by the General Contractor or the Borrower with subcontractors or materialmen in connection with the construction of the Improvements.

**Preliminary Survey:** The term “**Preliminary Survey**” as used in this Agreement shall mean a survey prepared by Mercator Land Surveyors dated March 1, 2012.

**Retainage:** The term “**Retainage**” as used in this Agreement shall mean 10% of the aggregate Direct Construction Costs (until the construction of the Improvements is 50% complete) actually incurred by the Borrower for work in place as part of the construction of the Improvements, as verified from time to time by the Construction Consultant pursuant to the provisions of this Agreement. The Retainage shall not be released until the construction of the Improvements has been substantially completed in accordance with the Plans and Specifications accepted by the Lender and the Construction Consultant and the provisions of this Agreement (other than punch list work, landscaping and other minor work with respect to the Improvements and which in the aggregate will not in the opinion of the Lender and the Construction Consultant exceed \$100,000). In addition to the foregoing, the portion of the Retainage being held by the Lender with respect to work or materials supplied by any particular subcontractor or materialman in connection with the construction of the Improvements will be released by the Lender, upon request by the Borrower, provided (a) no Event of Default has occurred and is continuing under the Note, this Agreement, the Mortgage, or the other Loan Documents, (b) the Construction Consultant verifies to the Lender that such subcontractor or materialman has completed 100% of all work and has supplied 100% of all materials in compliance with such subcontractor’s or materialman’s subcontract and in conformity with the Plans and Specifications accepted by the Lender and the Construction Consultant, (c) such subcontractor or materialman will be paid in full upon the release of the portion of the Retainage being held with respect to such subcontractor or materialman, (d) such subcontractor or materialman executes and delivers all lien waivers which may be reasonably requested or required by the Lender or by the Title Company to induce the Title Company to insure the lien of the Mortgage against any mechanic’s or materialman’s lien which may be filed by such subcontractor or materialman, and (e) if required by the Lender, such release of such portion of the Retainage shall be approved by any surety company which has issued a payment or performance bond with respect to such subcontractor or materialman.

**Title Company:** The term “**Title Company**” as used in this Agreement shall mean First American Title Insurance Company of New York.

**Verified Costs of Improvement:** The term “**Verified Costs of Improvement**” as used in this Agreement shall mean the aggregate, from time to time, of (a) Other Costs of Improvement actually incurred by the Borrower in connection with the construction of the Improvements and as substantiated by evidence reasonably satisfactory to the Lender, and (b) Direct Construction Costs actually incurred by the Borrower for work in place as part of the construction of the Improvements, as verified by the Construction Consultant, from time to time, pursuant to the provisions of this Agreement, minus the Retainage.



<u>Drawing Number:</u>	<u>Drawing Name:</u>	<u>Latest Drawing Date:</u>
<b><u>PLUMBING</u></b>		
P-100.00	Plumbing Cover Sheet	3/21/12
P-101.00	Plumbing Specs	3/21/12
P-201.00	Plumbing Key Plan	3/21/12
P-301.00	Plumbing Plan – Ground Floor – Sec 1	3/21/12
P-401.00	Plumbing Details	3/21/12
P-402.00	Plumbing Seismic Details	3/21/12
<b><u>ELECTRICAL</u></b>		
E-011.00	Electrical Legend & Details	3/21/12
E-012.00	Cooler Fire Alarm Floor Plan	3/21/12
E-021.00	Cooler Lighting Floor Plan	3/21/12
E-031.00	Cooler Power Floor Plan	3/21/12
E-041.00	Luminaire Schedule & Details	3/21/12
E-051.00	Partial Distribution One Line Diagram	3/21/12
<b><u>REFRIGERATION</u></b>		
R-100.00	Refrigeration Cover Sheet	3/21/12
R-101.00	Refrigeration Specs	3/21/12
R-200.00	Cooler Key Plan	3/21/12
R-201.00	Ground Floor – Section 1 – Cooler Refrigeration Plan	3/21/12
R-100.00	Cooler Key Plan	3/21/12
R-300.00	Ground Floor – Section 1 – Cooler Piping Plan	3/21/12
R-400.00	Refrigeration Schedules	3/21/12
RE-100.00	Electrical Cover Sheet	3/21/12
RE-200.00	Key Plan Refrigeration Power	3/21/12
RE-201.00	Ground Floor – Section 1 - Refrigeration Power Plan	3/21/12
<b><u>FIRE PROTECTION</u></b>		
FP-100.00	Fire Protection Cover Sheet	3/21/12
FP-101.00	Fire Protection Seismic Specs	3/21/12
FP-201.00	Fire Protection Key Plan	3/21/12
FP-301.00	Fire Protection Sprinkler Plan Ground Floor – Section 1	3/21/12
FP-401.00	Fire Protection Details	3/21/12

**INTERIOR RENOVATIONS**

<u>Drawing Number:</u>	<u>Drawing Name:</u>	<u>Latest Drawing Date:</u>
<b><u>STRUCTURAL</u></b>		
S-001.00	Structural Notes	3/21/12
S-002.00	Schedules	3/21/12
S-101.00	Footing & Foundation Plan	3/21/12
S-102.00	Footing & Foundation Plan	3/21/12
S201.00	Details	3/21/12
<b><u>ARCHITECTURAL</u></b>		
A-000.00	Cover Sheet	3/21/12
A001.00	Demo Floor Plan	3/21/12
A101.00	Main Floor Plan – Warehouse Areas	3/21/12
A104.00	Slab Details	3/21/12
A201.00	Roof Plan – Warehouse Areas	3/21/12
A202.00	Roof Details	3/21/12
A401.00	Bldg Sections	3/21/12
A402.00	Bldg Sections	3/21/12
A501.00	Door Schedules & Details	3/21/12
A502.00	Room Finish Schedules & Details	3/21/12
A503.00	Door Elevations	3/21/12
A504.00	Door Details	3/21/12
A601.00	Misc Details Concrete	3/21/12
A701.00	Misc Details Steel	3/21/12
A702.00	Misc Details Steel	3/21/12
<b><u>PLUMBING</u></b>		
P-100.00	Plumbing Cover Sheet	3/21/12
P-101.00	Plumbing Specs	3/21/12
P-201.00	Plumbing Key Plan	3/21/12
P-301.00	Plumbing Plan Ground Floor Section 2	3/21/12
P-302.00	Plumbing Plan Ground Floor Section 3	3/21/12
P-401.00	Plumbing Details	3/21/12
P-402.00	Plumbing Seismic Details	3/21/12
<b><u>MECHANICAL</u></b>		
M-100.00	HVAC Cover Sheet	3/21/12
M-101.00	HVAC Spec Sheet	3/21/12
M-200.00	HVAC Keyplan	3/21/12
M-201.00	HVAC Floor Plan Section 2	3/21/12
M-202.00	HVAC Floor Plan Section 3	3/21/12

Drawing Number:  
M-300.00

Drawing Name:  
HVAC Schedules & Details

Latest Drawing Date:  
3/21/12

**ELECTRICAL**

E-011.00	Electrical Legend & Details	3/21/12
E-012.00	Overall Electrical Demo Plan	3/21/12
E-013.00	Warehouse Areas Fire Alarm Floor Plan	3/21/12
E-014.00	Office Areas Fire Alarm Floor Plan and Riser Diagram	3/21/12
E-021.00	Warehouse Areas Lighting Floor Plan	3/21/12
E-022.00	Office Areas Lighting Floor Plans	3/21/12
E-031.00	Warehouse Areas Power Floor Plan	3/21/12
E-032.00	Office Areas Power Floor Plan	3/21/12
E-041.00	Luminaire Schedule and Details	3/21/12
E-051.00	Electrical Dist One Line Diagram	3/21/12
E-052.00	Panelboard Schedules	3/21/12
E-053.00	Panelboard Schedules	3/21/12

**REFRIGERATION**

R-100.00	Refrigeration Cover Sheet	3/21/12
R-101.00	Refrigeration Specs	3/21/12
R-200.00	Ground Floor Section 2 Key Plan Refrigeration Plan	3/21/12
R-201.00	Ground Floor Section 2 Key Plan Refrigeration Floor Plan	3/21/12
R-100.00	Ground Floor Key Plan	3/21/12
R-300.00	Ground Floor Section 2 Refrigeration Piping Plan	3/21/12
R-400.00	Refrigeration Schedules	3/21/12
RE-100.00	Electrical Coversheet	3/21/12
RE-200.00	Key Plan Refrigeration Power	3/21/12
RE-202.00	Ground Floor – Section 2 Refrigeration Power Plan	3/21/12
RE-203.00	Refrigeration Panel Schedules	3/21/12

**FIRE PROTECTION**

FP-100.00	Fire Protection Cover Sheet	3/21/12
FP-101.00	Fire Protection Seismic Specs	3/21/12
FP-201.00	Fire Protection Key Plan	3/21/12
FP-301.00	Fire Protection Sprinkler Plan Ground Floor Section 2	3/21/12
FP-302.00	Fire Protection Sprinkler Plan Ground Floor Section 3	3/21/12
FP-401.00	Fire Protection Details	3/21/12

**EXHIBIT D**

REQUEST FOR ADVANCE

(No.                    )

**DAIRYLAND HP LLC**, a Delaware limited liability company (the “**Borrower**”), the borrower under a certain Building Loan Agreement (the “**Building Loan Agreement**”) dated April                    , 2012, entered into between **COMMERCIAL LENDING II LLC** (the “**Lender**”) and the Borrower, hereby certifies to and requests the Lender as follows:

(a) Direct Construction Costs. Attached hereto as Schedule A is a true and correct statement of the reimbursable Direct Construction Costs incurred to date, the aggregate releases of Building Loan proceeds previously made by the Lender to the Borrower for Direct Construction Costs, the aggregate Retainage applicable to Direct Construction Costs incurred to date, and the total release of Building Loan proceeds from the Borrower Disbursement Account requested hereby for Direct Construction Costs.

(b) Other Costs of Improvement. Attached hereto as Schedule B is a true and correct statement of the reimbursable Other Costs of Improvement incurred to date, the aggregate releases of Building Loan proceeds previously made by the Lender to the Borrower for Other Costs of Improvement, and the total release of Building Loan proceeds from the Borrower Disbursement Account requested hereby for Other Costs of Improvement.

(c) Request to Lender for Advance. The Borrower hereby requests the Lender to release Building Loan proceeds from the Borrower Disbursement Account in the amount of \$                    .

(d) Representations. The Borrower hereby represents to the Lender that (i) all Direct Construction Costs and Other Costs of Improvement set forth in previous Requests for Advance have been paid in full, (ii) all Direct Construction Costs and Other Costs of Improvement incurred to date, as set forth in this Request for Advance, have been or will be paid in full out of the release of Building Loan Proceeds requested hereby, (iii) all of the representations and warranties of the Borrower contained in the Loan Documents continue to be true and correct, and (iv) we have no actual knowledge that any Event of Default exists under the Loan Documents and no event has occurred which but for notice, or lapse of time, or both, would constitute an Event of Default under the Loan Documents.

Dated:                    , 20

DAIRYLAND HP LLC,  
a Delaware limited liability company

By: DAIRYLAND USA CORPORATION,  
a New York corporation,  
its sole member and manager

By: \_\_\_\_\_

\_\_\_\_\_  
Name:

Title:

**SCHEDULE A**

Direct Construction Costs

A	B	C	D	E	F Disbursement Requested (Column C minus Column D & E)
<u>Categories</u>	<u>Total Est. as of Date of Request</u>	<u>Aggregate Incurred to Date</u>	<u>Aggregate Disbursement to Date</u>	<u>Applicable Retainage</u>	

Total

**SCHEDULE B**

Other Project Costs

A	B	C	D	E	F
<u>Categories</u>	<u>Total Est. as of Date of Request</u>	<u>Aggregate Incurred to Date</u>	<u>Aggregate Disbursement to Date</u>	<u>Applicable Retainage</u>	<u>Disbursement Requested (Column C minus Column D &amp; E)</u>

Total

32

**EXHIBIT E**

(Direct Construction Cost Breakdown  
and Request for Partial Payment)

The term **“Direct Construction Cost Breakdown and Request for Partial Payment”** as used in this Agreement shall mean the Application and Certificate for Payment (AIA Document G 702 and AIA Document G 703 or their equivalent), with such changes therein as the Lender or the Construction Consultant may reasonably request, or such other form of Direct Construction Cost Breakdown and Request for Partial Payment as may be reasonably acceptable to the Lender and the Construction Consultant.

**EXHIBIT F**

AFFIDAVIT PURSUANT TO SECTION 22 OF THE  
LIEN LAW OF THE STATE OF NEW YORK

STATE OF NEW YORK            )  
  ) :ss.:  
COUNTY OF NEW YORK        )

Christopher Pappas, being duly sworn, deposes and says:

I maintain an office located at 100 East Ridge Road, Ridgefield, Connecticut 06877.

I am the Chief Executive Officer of Dairyland USA Corporation, which is the sole member and manager of DAIRYLAND HP LLC, the Borrower mentioned in the within Building Loan Agreement.

The consideration paid, or to be paid, by the Borrower for the Building Loan described therein is \$0.00, and all other expenses constituting cost of the improvement incurred, or to be incurred, in connection with the Building Loan, and advanced or to be advanced pursuant to the Building Loan Agreement are as follows:

(a)	Interest on the Building Loan during construction	\$122,000.00
(b)	Taxes, assessments, water rents and sewer rents, paid or to be paid for periods prior to or during construction	\$300,000.00
(c)	Insurance during construction	\$268,750.00
(d)	Commitment fee, if any, in addition to the consideration stated above which is allocable to the Building Loan	\$0.00
(e)	Commitment fee for subsequent financing either (i) required by the Lender, or (ii) to be borrowed within four months after completion of the improvements	\$0.00
(f)	Title examination, insurance premium and recording fees which are allocable to the Building Loan	\$15,587.00
(g)	Survey	\$12,500.00
(h)	Engineer's fees	\$0.00
(i)	Architect's fees	\$0.00
(j)	Bond premiums	\$0.00

(k)	Legal fees of the Lender's counsel which are allocable to the Building Loan	\$90,855.00
(l)	Broker's commissions incurred with respect to obtaining the Building Loan	\$0.00
(m)	Broker's commissions incurred with respect to obtaining subsequent financing either (i) required by the Lender, or (ii) to be borrowed within four months after the completion of the improvements	\$0.00
(n)	Brokerage Commissions for leases of space (other than residential space) in the improvements with terms in excess of three (3) years	\$0.00
(o)	Ground rents accruing during construction	\$731,000.00
(p)	Mortgage recording tax allocable to the Building Loan	\$308,000.00
(q)	Appraisal	\$7,500.00
(r)	Sums paid to take by assignment prior existing mortgages which are consolidated with building loan mortgages and also the interest charges on such mortgages	\$0.00
(s)	Sums paid to discharge or reduce the indebtedness under mortgages and accrued interest thereon and other prior existing encumbrances	\$0.00
(t)	Sums paid to discharge building loan mortgages whenever recorded	\$0.00
(u)	Contingency cost of the improvement, other than the "improvement," as defined in subdivision 4 of Section 2 of the Lien Law	\$0.00
(v)	Sums paid to reimburse the Lender for advances made pursuant to a certain Notice of Lending dated       , 20       , duly filed on       , 20       , in the Office of       , County	\$0.00

In addition to the above items the following sums shall be disbursed to the Borrower for the cost of the improvements incurred and paid for by the Borrower subsequent to the commencement of construction of the improvement, but prior to the date of the initial advance of the Building Loan under the Building Loan Agreement:

**[DETAILED ITEMIZED LIST]**

The net sum available to the Borrower for the improvement is Nine Million One Hundred Forty Three Thousand Eight Hundred Eight and 00/100 Dollars (\$9,143,808.00) less such amounts (i) as, may not be advanced and disbursed under the Building Loan Agreement due to the non-satisfaction of conditions to the advance and disbursement of such amounts contained in the Building Loan Agreement, and (ii) as may become due or payable for additional insurance premiums, interest on the Building Loan, ground rents, taxes, assessments, water rents and sewer rents accruing during the construction of the improvement.

[NO FURTHER TEXT ON THIS PAGE]

This statement is made pursuant to Section 22 of the Lien Law of the State of New York and is hereby made a part of the Building Loan Agreement.

The facts herein stated are true to the knowledge of the deponent.

/s/ Christopher Pappas

Name: Christopher Pappas

Sworn to before me this  
16<sup>th</sup> day of April, 2012

/s/ Raquel Mehlman  
Notary Public

Raquel Mehlman  
Notary Public State of New York  
New York County  
LIC. #01ME6193851  
Comm. Exp. 9/22/2012

**EXHIBIT G**

**APPLICATION FOR STORED MATERIALS**

Project:

Application No:

Contractor:

Period From: To:

**SUB CONTRACTOR'S APPLICATION FOR STORED MATERIALS**

Material Description	Location Stored	Cost
_____	_____	_____
_____	_____	_____
_____	_____	_____

Previous Balance of Stored Materials:	\$
Plus Material Received This Month:	\$
Less Material Installed This Month:	\$
Total Stored Material:	\$

1. This form must be completed for each subcontractor's invoice for which payment is being requested for stored material or when there is any balance remaining on previously paid stored material. The total of this summary must match application summary for each line item.
2. Provide invoice or bill of sale back-up for all stored material items.
3. For *off-site* stored materials, provide a certificate of insurance assigned to the owner and bank in a value sufficient to cover the cost of the material and list specific items covered.
4. For *off-site* stored materials, provide an inspection affidavit, complete name and address for the bonded warehouse.

A request for confidential treatment has been made with respect to portions of the following document that are marked [\*CONFIDENTIAL\*]. The redacted portions have been filed separately with the SEC.

### LOAN AGREEMENT

THIS LOAN AGREEMENT, made this 26<sup>th</sup> day of April, 2012 among (i) DAIRYLAND HP LLC, a Delaware limited liability company having an office located at c/o Dairyland USA Corporation, 100 East Ridge Road, Ridgefield, Connecticut 06877 (hereinafter referred to as the “**Borrower**”), (ii) THE CHEFS’ WAREHOUSE, INC., a Delaware corporation having an office located at 100 East Ridge Road, Ridgefield, Connecticut 06877, CHEFS’ WAREHOUSE PARENT, LLC, a Delaware limited liability company having an office located 100 East Ridge Road, Ridgefield, Connecticut 06877, DAIRYLAND USA CORPORATION, a New York corporation having an office located at 100 East Ridge Road, Ridgefield, Connecticut 06877, THE CHEFS’ WAREHOUSE MID-ATLANTIC, LLC, a Delaware limited liability company having an office located at 100 East Ridge Road, Ridgefield, Connecticut 06877, BEL CANTO FOODS, LLC, a New York limited liability company having an office located at 100 East Ridge Road, Ridgefield, Connecticut 06877, THE CHEFS’ WAREHOUSE WEST COAST, LLC, a Delaware limited liability company having an office located at 100 East Ridge Road, Ridgefield, Connecticut 06877, and THE CHEFS’ WAREHOUSE OF FLORIDA, LLC, a Delaware limited liability company having an office located at 100 East Ridge Road, Ridgefield, Connecticut 06877, and all present and future material subsidiaries and affiliates as defined in the Existing Credit Agreement (defined below) (collectively, the “**Guarantors**”), and (iii) COMMERCIAL LENDING II LLC, a Delaware limited liability company-having an office at 106 Corporate Park Drive, White Plains, New York 10604 (hereinafter referred to as the “**Lender**”).

### WITNESSETH:

WHEREAS, the Lender made a construction loan to the Borrower in the principal amount of \$11,000,000 (the “**Loan**”) on this date; and

WHEREAS, the Loan is evidenced by a certain Mortgage Note (as amended, modified, supplemented, replaced or restated from time to time, the “**Note**”), and secured by a certain leasehold mortgage, assignment of lessor’s interest in leases and rents and security agreement held by the Lender (as amended, modified, supplemented, replaced or restated from time to time, the “**Mortgage**”) as set forth on Schedule A attached hereto, and which mortgage encumbers certain premises located at 200-240 Food Center Drive, Bronx, New York, as more particularly described in the Mortgages (the “**Premises**”); and

WHEREAS, the Loan has been advanced in full on the date hereof into a separate bank account opened by the Borrower with JPMorgan Chase Bank, N.A. (the “**Bank**”) and pledged to the Lender to secure the Loan (the “**Borrower Disbursement Account**”); and

WHEREAS, subject to the terms and conditions of a Building Loan Agreement (as amended, modified, supplemented, replaced or restated from time to time, the “**Building Loan Agreement**”) between the Borrower and the Lender dated the date hereof and review and approval by the Lender’s construction monitor as provided for therein, loan proceeds in the Borrower Disbursement Account shall be released on approval by the Lender, for application by Borrower to direct construction costs representing costs of the improvement (as defined in the New York Lien Law Section 13) for work in place as determined by the Lender’s construction consultant (less applicable retainage) in accordance with the Building Loan Agreement upon satisfaction of all terms and conditions contained therein; and

WHEREAS, the Guarantors have guaranteed repayment of the Loan pursuant to a guaranty of even date herewith (the “**Guaranty**”); and

WHEREAS, the Borrower, Guarantors and the Lender have agreed to certain additional terms governing the Loan.

NOW, THEREFORE, in consideration of the Premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto, the parties hereto agree for themselves, their successors and assigns as follows:

**A. Definitions:**

As used herein, the terms defined in the preamble shall have the same meaning when used in this Agreement and the following words and terms shall have the following meanings:

“Allocation Agreement” means that certain New Markets Tax Credit Allocation Agreement entered into among the Lender, National New Markets Tax Credit Fund, Inc., one or more additional subsidiaries thereof, and the CDFI Fund dated January 5, 2005 governing the Lender’s use and application of investment funds with respect to which an allocation of New Markets Tax Credits has been received by the Lender.

“Average Value” means the cost basis of the Borrower’s owned property as determined under Section 1012 of the Code plus the reasonable value of its leased property established by the Borrower and reasonably acceptable to the Lender.

“Building” means the existing building and the Improvements to be developed upon the Premises that are leased and/or owned by Borrower.

“CDFI Fund” means the Community Development Financial Institutions Fund of the U. S. Department of Treasury or any successor agency charged with oversight responsibility for the NMTC program.

“Census Tract” means population census tract #36005010500, located in Bronx, New York.

“Code” means the Internal Revenue Code of 1986, as amended from time to time, or any corresponding provision or provisions of prior or succeeding law.

“Collectibles” has the meaning set forth in Section 408(m)(2) of the Code, including (a) any work of art; (b) any rug or antique; (c) any metal or gem; (d) any stamp or coin; (e) any alcoholic beverage; or (f) any other tangible personal property specified by the IRS; provided, however, that certain coins and bullion are not Collectibles as provided in Section 408(m)(3) of the Code.

“Excluded Business” means any of the following (which are those trades or businesses that do not constitute a “qualified business” under NMTC Program Requirements): (a) any trade or business consisting of the operation of any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises; (b) any trade or business the principal activity of which is farming (within the meaning of section 2032A(e)(5)(A) or (B)); (c) any trade or business consisting predominantly of the development or holding of intangibles for sale or license; and (d) the ownership or leasing of “residential rental property” as defined under Section 168(e)(2)(A) of the Code.

“Financial Projections” means those certain financial projections prepared by the Borrower and attached hereto as **Exhibit 1** reflecting anticipated sources and uses for the development of the Premises, and pro forma cash.

“Improvements” has the meaning set forth in the Building Loan Agreement.

“Investor” means JPMorgan Chase & Co.

“IRS” means the Internal Revenue Service of the United States Treasury Department, or any successor thereof.

“Loan Documents” shall mean this Agreement, the Note, the Mortgage, the Building Loan Agreement, the Guaranty and the other documents, instruments and agreements, executed and delivered in connection herewith and therewith with respect to the Loan, as the same may be amended, modified, restated and replaced from time to time.

“NMTC” and “New Markets Tax Credit” means the new markets tax credit provided for in Section 45D of the Code.

“NMTC Certification Application” means the Community Development Entity Certification Application of Lender, as the same may have been supplemented or amended, together with the notice of the certification of Lender as a CDE issued by the CDFI Fund.

“NMTC Control” means, with respect to an entity, the direct, indirect, or common ownership (based on value) of more than fifty percent (50%) of an entity, or the direct, indirect, or common control (based on voting rights or “management rights”) of more than fifty percent (50%) of such entity, in each case as such terms are used in Treasury Regulations Section 1.45D-1(d)(6)(ii)(B). For this purpose, the term “management rights” means the power to influence the management policies or investment decisions of an entity.

“NMTC Program Requirements” as used in this Agreement shall mean, collectively, all provisions of Section 45D of the Code, the Treasury Regulations and Guidance, the NMTC Certification Application, the Allocation Agreement.

“NMTC Recapture Event” means any event or condition arising as a result of the action or inaction of Borrower or its affiliates that would cause or result in a recapture or disallowance of all or any portion of the New Markets Tax Credits expected to be claimed by the Investor (on account of Investor’s indirect ownership of Lender) pursuant to Section 45D of the Code or the Treasury Regulations and Guidance thereunder.

“Nonqualified Financial Property” as used in this Agreement shall mean debt, stock, partnership interests, options, futures contracts, forward contracts, warrants, notional principal contracts, annuities, and other similar property as described in Treasury Regulations Section 1.45D-1(d)(4)(i)(E).

“Project” means the development of the Improvements upon the Premises and the acquisition of the equipment in connection therewith.

“**Project Business**” means the development, ownership, operation and leasing and/or subleasing of the Premises and the acquisition, installation and leasing of related equipment.

“**Tenant Excluded Business**” means (i) the ownership or leasing of residential rental property as defined under Section 168(e)(2)(A) of the Code and (ii) any trade or business consisting of the operation of any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.

“**Treasury Regulations**” means and includes any proposed, temporary and/or final regulations promulgated under the Code published by the United States Treasury Department.

“**Treasury Regulations and Guidance**” means the Treasury Regulations and any guidance, rule, or procedure published by the CDFI Fund or the United States Treasury Department.

**B. Condition to Funding Borrower Disbursement Account:**

Lender shall not be required to advance the proceeds of the Loan into the Borrower Disbursement Account unless and until Lender shall have determined that the Borrower’s development of the Project and its ownership, operation and leasing of the Premises constitute a “portion of the business” of Borrower’s sole member in accordance with Treasury Regulations Section 1.45D-1(d)(4)(iii), such that the activities and operations of the Borrower constitute and are reasonably expected to constitute a “qualified active low-income community business” under the Code and the Treasury Regulations throughout the term of the Loan.

**C. Prepayment Restrictions:**

Borrower shall make no prepayment, in whole or in part, of the principal of the Note during the period commencing on the date hereof and ending on the Lockout Date (as defined in the Note).

**D. NMTC Representations and Warranties.**

The Borrower represents (as of the date hereof) and warrants to the Lender as follows:

1. Borrower is a “qualified active low income community business”, as defined in Section 45D(d)(2) of the Code and Treasury Regulation Section 1.45D-1(d)(4).
2. The Premises are located in the Census Tract and the Census Tract constitutes a “low-income community”, as defined in Section 45D(e)(1) of the Code.
3. The Census Tract is characterized by the following additional economic distress criteria; (i) a poverty rate greater than 30 percent; (ii) a median family income that does not exceed 60 percent of the greater of statewide median family income of the metropolitan area median family income; and (iii) an unemployment rate in excess of 1.5 times the national average.
4. With respect to the current taxable year, at least fifty percent (50%) of the total gross income of Borrower is and will be derived from the active conduct of its trade or business within the Census Tract.

5. Borrower does not have any employees and does not expect to have any employees during the term of the Loan.
6. With respect to the current taxable year, at least eighty-five percent (85%) of the use of the tangible property of Borrower (whether owned or leased) is and will be within the Census Tract (for purposes of this representation, the percentage of tangible property owned or leased by Borrower during the taxable year in the Census Tract, and shall be determined based on a fraction, (i) the numerator of which is the Average Value of tangible property (owned or leased) used by Borrower within the Census Tract, and (ii) the denominator of which is the Average Value of the tangible property owned or leased by Borrower and used by Borrower during the taxable year).
7. With respect to the current taxable year, less than five percent (5%) of the average of the aggregate unadjusted basis of the property of Borrower is and shall be attributable to Nonqualified Financial Property.
8. With respect to the current taxable year, less than five percent (5%) of the average of the aggregate unadjusted basis of the Borrower's property is and shall be attributable to Collectibles.
9. [reserved].
10. The Borrower is disregarded as separate from its sole member for federal income tax purposes; notwithstanding the foregoing, Borrower maintains complete and separate books and records for the Project Business, which books and records are separate and distinct from the books and records maintained by Borrower's sole member or any other direct or indirect owner of Borrower.
11. The sole business and activity of Borrower consists of the operation of the Project Business, and Borrower has no plans to change its business in a material manner that would affect Borrower's continued compliance with the covenants in this Agreement or its qualification as a "qualified active low-income community business".
12. Borrower is not a bank, credit union or other financial institution.
13. All documents provided to Lender by Borrower or Guarantors regarding the Borrower contain information that is complete and accurate in all material respects and represents the entire business of Borrower in all material respects.
14. The factual assumptions with respect to the Borrower, Guarantors, and the Project underlying the Financial Projections are reasonable in all material respects.
15. The amount of reserves, receivables, assets or other items of working capital shown on the balance sheet of the Borrower submitted to Lender is reasonable based upon Borrower's reasonably anticipated working capital needs.
16. Borrower's trade or business does not consist of the operation of any Excluded Business.
17. No tenant, subtenant, or other occupant of the Premises is engaged nor shall Borrower permit any tenant, subtenant, or other occupant to engage in any Tenant Excluded Business.
18. No portion of the Building is a "qualified low-income building" as such term is defined in Section 42 of the Internal Revenue Code

19. Borrower reasonably expects that the completion of the Project and the operation, leasing and subleasing of the Building will, within three (3) years of the date of this Loan Agreement, generate revenues.
20. Neither Borrower nor any affiliate of Borrower has had any communication with the CDFI Fund or the U.S. Department of the Treasury concerning non-compliance with, or deficiencies in, reporting practices.
21. Borrower expects to use all the proceeds of the Loan deposited into the Borrower Disbursement Account within 12 months following the Closing Date.
22. The fair market value of the Premises, (as determined by the appraisal performed by Lender) after completion and stabilization, is not expected to be less than the aggregate amount of all indebtedness secured by the Premises.
23. To Borrower's knowledge, there have been no irregularities or illegal acts that would have a material effect on the matters described in this Section, and there has been no: fraud involving management or employees who have significant roles in the internal control structure of the Borrower; fraud involving other employees that could have a material effect on the matters described in this Section; or communications from the CDFI Fund or other regulatory agencies concerning noncompliance with, or deficiencies in, financial reporting practices that could have a material effect on the matters described in this Section.
24. Neither the Borrower nor any Guarantor, nor any of their respective principals, as defined in 31 C.F.R. 19.995 (it being understood that shareholders of Chef's Warehouse, Inc. who do not have management or supervisory responsibilities with respect to such corporation are not principals for the purpose of this representation), has been or is presently debarred, suspended, declared ineligible, or voluntarily excluded from participation in a covered transaction by any Federal department or agency, as such terms are defined in Executive Order 12549, nor is any such action pending or proposed. Borrower and each Guarantor shall simultaneously with execution and delivery of this Agreement, execute and deliver a certification regarding debarment, suspension, ineligibility and voluntary exclusion in the form attached hereto as **Exhibit 2** to further evidence this representation and warranty.
25. [reserved]
26. [reserved]
27. [reserved]
28. The Borrower is duly formed, in good standing, and qualified to do business in the state in which the Premises are located. The sole member of Borrower is duly incorporated, in good standing, and qualified to do business in the state in which the Premises are located.
29. The Borrower (and the undersigned representatives of the Borrower) has the full power and authority to execute and deliver this Agreement and the other Loan Documents, and the same constitute the binding and enforceable obligations of the Borrower in accordance with their terms.

## **E. NMTC Covenants.**

The Borrower covenants, for the benefit of the Lender, as follows:

1. Borrower shall be a “qualified active low income community business”, as defined in Section 45D of the Code and Treasury Regulation Section 1.45D-1(d)(4), meeting all requirements therefor, and shall take all actions necessary to maintain such status required by Section 45D of the Code and the related Treasury Regulations and Guidance.
2. Borrower shall take all actions within its control necessary to maintain the status of the Loan as a “qualified low-income community investment”, as defined under Section 45D of the Code and Treasury Regulations Section 1.45D-1(d).
3. Borrower shall engage in no business other than the Project Business, and Borrower shall conduct its business exclusively upon the Premises within the Census Tract.
4. With respect to each taxable year during the term of the Loan, fifty percent (50%) or more of the total gross income of the Borrower shall be derived from the active conduct of a qualified business (as defined in Section 45D(d)(3) of the Code and the related Regulations) within the Census Tract, as determined pursuant to Section 1.45D-1(d)(4)(i)(A) of the Treasury Regulations.
5. Borrower shall not hire any employees during the term of the Loan, and with respect to each taxable year during the term of the Loan, eighty-five percent (85%) or more of the use of the tangible property of the Borrower (whether owned or leased) is and shall continue to be within the Census Tract (for purposes of this covenant, the percentage of tangible property owned or leased by Borrower during the taxable year in the Census Tract, and shall be determined based on a fraction, (i) the numerator of which is the Average Value of tangible property used by Borrower within the Census Tract, and (ii) the denominator of which is the Average Value of the tangible property owned or leased by Borrower and used by Borrower during the taxable year).
6. Notwithstanding the foregoing and without limiting Borrower’s covenants in the preceding **Section E 5**, if in any taxable year Borrower has employees, then at least forty percent (40%) of the services performed for Borrower by its employees, or by the employees of an affiliate primarily engaged in providing services to Borrower, will be within the Census Tract (for purposes of this covenant, this percentage is determined based on a fraction, (i) the numerator of which is the total amount paid by Borrower for employee services performed in the Census Tract during the taxable year, and (ii) the denominator of which is the total amount paid by Borrower for employee services during the taxable year).
7. Borrower shall not purchase, acquire or allow the build-up of Nonqualified Financial Property to the extent such purchase, acquisition or build-up would cause the aggregate unadjusted basis of the Borrower’s Nonqualified Financial Property to be five percent (5%) or more of the average of the aggregate unadjusted bases of all property of the Borrower nor shall Borrower dispose of any asset if the disposition would cause the aggregate unadjusted basis of the Borrower’s Nonqualified Financial Property to be five percent (5%) or more of average of the aggregate unadjusted bases of all property of the Borrower.
8. Borrower shall not acquire any Collectible to the extent that, after such acquisition, the aggregate unadjusted bases of Collectibles owned by the Borrower would equal or exceed five percent (5%) of the average of the aggregate unadjusted bases of all property of the Borrower nor shall Borrower dispose of any asset if the disposition would cause the aggregate unadjusted basis of the Borrower’s Collectibles to be five percent (5%) or more of the average of the aggregate unadjusted bases of all property of the Borrower.

9. Borrower shall not conduct any Excluded Business.
10. Borrower shall not lease any portion of the Premises to, or allow the use of any portion of the Premises by, any tenant, subtenant or occupant engaged in any Tenant Excluded Business nor shall Borrower permit any tenant, subtenant or occupant to engage in any Tenant Excluded Business.
11. At no time shall the Building (or any portion thereof) constitute “residential rental property” under Section 168(e)(2)(A) of the Code.
12. Borrower shall keep books and records of account in accordance with sound accounting practices consistently applied, or in accordance with other methods acceptable to Lender in its reasonable discretion.
13. Borrower will treat all funds in the Borrower Disbursement Account as an asset on the financial statements of the Borrower.
14. Borrower will treat the Loan as indebtedness for all purposes, and will not take any positions contrary to such treatment.
15. Borrower shall be an entity disregarded as separate from any other entity for federal income tax purposes and shall comply in all respects with the terms and conditions of **Section-F** hereof.
16. Borrower shall not be a bank, credit union or other financial institution.
17. The Premises shall not be a “qualified low-income building” under Section 42 of the Code and no proceeds of the Loan shall be used to finance costs included in the “eligible basis” of a “qualified low-income building” under Section 42 of the Code.
18. [reserved]
19. Borrower shall not change its name, or relocate, move or otherwise change its principal place of business from the Census Tract.
20. [reserved]
21. Borrower acknowledges and agrees that the Loan shall be subject to NMTC Program Requirements, and Borrower covenants to reasonably and promptly cooperate with Lender in strictly complying with the NMTC Program Requirements to the extent within Borrower’s control.
22. Borrower shall promptly supply Lender with any reports, records, statements, documents or other information reasonably requested by the Lender in connection with responding to any request by the CDFI Fund or reporting obligation pursuant to Sections 6.3 and 6.5 of the Allocation Agreement (e.g., financial and activity reports, records, statements, documents and other information for purposes of complying with this **Section E-22**) or any other request by the IRS or the CDFI Fund (or any other governmental authority designated for such purpose) as may be required to comply with the NMTC Program Requirements.

23. Borrower shall collaborate with Lender with respect to the response to be made to any notice received by the Lender pursuant to Section 8.6 of the Allocation Agreement relating to the Loan, the Project, or the Borrower.

24. Borrower shall not permit a change in ownership of membership interests in the Borrower or any affiliate which would result in the Lender or its direct or indirect owners having NMTC Control of the Borrower, and Borrower shall not take any action, which would result in the Lender or its direct or indirect owners having NMTC Control of the Borrower; provided, however, that it shall not be a violation of this covenant if Lender or any of its constituent owners shall acquire NMTC Control as a result of the purchase by any such entity of the stock of Chef's Warehouse, Inc. in a public market. Borrower shall notify the Lender in writing reasonably promptly after obtaining knowledge that JPMorgan Chase & Co, or a subsidiary thereof has obtained NMTC Control of the Borrower on account of the purchase by such entity of the stock of Chef's Warehouse, Inc

25. Borrower shall not, by its action or inaction, cause a NMTC Recapture Event, and Borrower shall cooperate with the Lender and its Members to avoid causing a NMTC Recapture Event, and, to the extent necessary and permitted pursuant to NMTC Program Requirements, to cure any such NMTC Recapture Event caused by Borrower.

26. Borrower shall be responsible for informing the Lender of any of default or compliance failure under this **Section E** of which the Borrower has knowledge reasonably promptly after Borrower has become aware of such default or compliance failure.

27. Borrower shall maintain records of:

(i) the gross income of the Borrower and sources from which such gross income is derived sufficient to establish compliance with the requirements of **Section E 4** above;

(ii) if applicable, the activities and services performed by employees of Borrower (and the employees of any affiliate primarily engaged in providing services to Borrower) and the administration of their employment (including the amount paid for such services, where their services are performed and, in instances where such employees also perform services for persons or entities other than Borrower, the allocation of their time between Borrower and any such other person or entity and including amounts paid by Borrower for employee services performed in the Census Tract and total amounts paid by Borrower for employee services, in each case during the taxable year) that are sufficient to establish compliance with the requirements of **Section E-6** above;

(iii) the Average Values and locations of its tangible property that are sufficient to establish compliance with the requirements of **Section E 5** above; and

(iv) the unadjusted bases of its property generally and in particular, any Nonqualified Financial Property and any Collectibles it may own, that are sufficient to establish compliance with the requirements of **Sections E 7 and E 8** above.

28. The Borrower shall promptly supply the Lender the following information:

(i) at closing of the Loan, an estimate of the number of construction jobs, if any, involved in the Project, including the jobs held by low-income persons or residents of low-income communities as defined in Section 45D of the Code to the extent the latter information is available, and a breakdown of the construction jobs based upon wages;

(ii) an estimate of the number of full-time equivalent jobs as of the date hereof, and the projected full-time equivalent jobs to be created or retained, and within forty-five (45) days of the close of each tax year, the jobs actually created or retained as a result of the financing, including an estimate of the number of permanent jobs held by low-income persons or residents of low-income communities as defined in Section 45D of the Code and a breakdown of such jobs based on wages;

(iii) the number of square feet of space being improved with the proceeds of the Loan;

(iv) at closing of the Loan, the projected annual gross revenues of Borrower as of its fiscal year ending prior to the Loan, and within forty-five (45) days of the close of each tax year, the annual gross revenues of Borrower for each preceding tax year, if applicable; and

(v) to the extent such information is available to Borrower, the number of minority, woman or low-income person-owned or controlled businesses involved in the construction of the Project and that are tenants the Premises.

29. Borrower shall promptly provide to Lender such other information respecting the condition or operations, financial or otherwise, of Borrower and/or the Premises or the economic impact of the Project on the community as Lender may from time to time reasonably request.

30. At six (6) month intervals (on May 15 and November 15 of each year during the loan term or on such other dates as the Lender shall specify), Borrower shall certify in writing to Lender that it remains in compliance with the provisions this **Section E**.

31. On an annual basis no later than 60 days after the end of each fiscal year, Borrower shall deliver to Lender a QALICB compliance certification in the form attached hereto as **Exhibit -3** with respect to the immediately preceding fiscal year.

32. Borrower shall pay, promptly upon demand, (i) any annual fee of Lender assessed by and payable to the CDFI Fund on or after the date hereof pursuant to Section 7.1 of the Allocation Agreement; and (ii) all other fees and costs incurred by Lender arising out of or relating to NMTC Program Requirements pertaining to the Project, the Loan or Borrower's acts or omissions under the Loan Documents.

33. Borrower acknowledges and agrees that the Lender, its members, partners, and shareholder(s), as applicable, and their respective legal counsel may rely on the representations, warranties and covenants contained herein.

**F. Portion of the Business Covenants:**

1. Even though the Borrower is a separate limited liability company under Delaware state law, Borrower shall conduct the Project Business as a distinct portion of the business of Borrower's sole member for the purpose of Section 45 D of the Code and Treasury Regulation Section 1.45 D-1(d) (4) (iii) in the manner provided in Sections D and E of this Agreement.

2. Borrower acknowledges that the status of the Loan as a "qualified low-income community investment" is dependent upon Borrower's compliance with Treasury Regulations Section 1.45D-1(d)(4)(iii), in order to establish the Project Business as a "qualified active low-income community business". Accordingly, in order to establish and maintain the Project Business as a distinct portion of the business of Borrower's sole member for the purpose of Section 45 D of the Code and Treasury Regulations Section 1.45 D-1(d) (4) (iii):

(i) Borrower shall provide documentation satisfactory to Lender that the proceeds of the Loan will be used solely to pay or reimburse costs incurred for the Project Business.

(ii) Borrower shall maintain complete and separate books and records for the Project Business, which books and records shall be separate and distinct from the books and records generally maintained by Borrower's sole member with respect to its other businesses, activities, and operations and which shall include such information and be maintained with sufficient detail in order to evidence compliance by the Project Business with the covenants set forth in **Section E**, and Borrower shall retain such books and records for a period of not less than four (4) years from the Lockout Date hereof. In the event further regulatory guidance is hereafter issued detailing additional requirements that must be met in order to demonstrate that complete and separate books and records are being maintained for purposes of Treasury Regulations Section 1.45D-1(d)(4)(iii), Borrower agrees to comply with such additional requirements within a reasonable time following issuance of such guidance. Subject to modification based on further guidance, such books and records shall include, without limitation, financial statements (including balance sheets, income statements and statements of cash flow) for the Project Business. Borrower shall produce financial statements for the Project Business for each fiscal quarter and provide a copy of such financial statements to Lender no later than sixty (60) days after the end of each fiscal quarter, and Borrower shall produce financial statements for the Project Business for each fiscal year and provide a copy of such financial statements to Lender no later than sixty (60) days after the end of each fiscal year,

(iii) The Project Business shall consist solely of the development of the Project and the ownership, leasing, and subletting of the Premises and Borrower shall not include any other asset or property or any income or expense not directly related to the Premises within the Project Business.

(iv) All assets of the Borrower shall be separately identified, maintained and segregated from the assets of the other businesses, activities, and operations of Borrower's affiliates, including without limitation, its sole member, and in furtherance thereof, (A) all funds of the Project Business shall be deposited or invested separately from the rest of Borrower's affiliates (including without limitation its sole member's) funds, and (B) all such funds of the Project Business shall be used only for the Project Business.

**G. Remedies.** Without limiting any other rights or remedies of Lender, Borrower acknowledges and agrees that (i) the failure of the Loan to constitute a "qualified low-income community investment", as well as the failure of Borrower to provide the certifications and other information that Lender may require in order to confirm and report that the Loan constitutes a qualified low-income community investment, will have a material, adverse effect on Lender, and (ii) accordingly, in the event that any Event of Default shall arise as a result of (A) a breach or violation of any of the representations and warranties in **Section D** or (B) a breach, violation, or failure to comply with any of the covenants set forth in **Sections E or F**, such Event of Default shall be material and shall entitle Lender to exercise any and all remedies available under the Loan Documents, or at law or in equity, on account of any such Event of Default.

#### **H. Other Covenants.**

1. In addition, the Guarantors shall comply with all of negative and affirmative covenants contained in that certain Credit Agreement among The Chefs' Warehouse, Inc. and Chefs' Warehouse Parent, LLC, 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, and JPMorgan Chase Bank, N.A. as Administrative Agent and the lenders referenced therein dated as of April 25, 2012 (as the same may be amended and/or restated, waived, supplemented, substituted or replaced by another financing agreement, from time to time, the "**Existing Credit Agreement**") provided that any waiver of any such covenant pursuant to the Existing Credit Agreement shall constitute a waiver for the purposes hereof. In the event that the Existing Credit Agreement expires or terminates, and the same is not replaced, the negative and affirmative covenants contained in the Existing Credit Agreement shall remain in full force and effect with respect to Guarantors and the Loan until such time as a new or replacement credit agreement is entered into, at which time the covenants contained in such new, restating or replacing agreement shall be incorporated, all of which are hereby incorporated by reference. The negative and affirmative covenants contained in the Existing Credit Agreement are hereby incorporated by reference and shall survive repayment thereof and termination of the Loans described in the Existing Credit Agreement.

2. The Borrower and the Guarantors shall give the Lender prompt written notice of the creation, establishment or acquisition, in any manner, of any Subsidiary not existing on the date hereof, and (i) cause such Subsidiary to execute and deliver to the Lender a guaranty, substantially in the form executed and delivered to the Lender by the Guarantors on the date hereof, of the Borrower's Debt (as defined in the Guaranty) to the Lender, which shall be joint and several with the other Guarantors, and (ii) thereafter submit to the Lender consolidated and consolidating financial statements of the Borrower and all such Subsidiaries and thereafter submit to the Lender financial statements of such subsidiary or affiliate in accordance with the provisions of this Agreement.

3. [reserved]

4. Commencing on the earlier of (a) the first day of the first month following the one-year anniversary of the date hereof, (b) the first day of the first month following the completion of construction of the Improvements (as defined in the Building Loan Agreement) as determined by the Lender under the Building Loan Agreement and receipt of a certificate of occupancy for the Improvements, The Chefs' Warehouse Mid-Atlantic LLC will be required to make monthly payments into a sinking fund account to be opened and maintained at JPMorgan Chase Bank, N.A. (the "**Sinking Fund Reserve**") to be pledged to and controlled by Lender (the "**Sinking Fund Reserve Pledge**") to secure The Chefs' Warehouse Mid-Atlantic LLC's obligations under the Guaranty. Each monthly payment shall be in an amount equal to the principal amount of the Loan divided by 180 (\$61,111.11 per month). The Sinking Fund Reserve may be made available by the Guarantor to the Borrower to assist in the refinancing of the Loan and will also secure the obligations of the Guarantor under the Guaranty. Notwithstanding anything herein to the contrary, the Sinking Fund Reserve shall not at any time be required to exceed the outstanding principal balance of the Loan and in the event thereof, upon the written request to the Lender, provided that the Loan has been fully advanced and/or released to the Borrower and the Lender has no more obligations to make any further advances under the Loan Documents, any such excess shall be released to the The Chefs' Warehouse Mid-Atlantic LLC.

**I. Events of Default.** The term "**Event of Default**" as used in this Agreement shall mean the occurrence of any one or more of the following events:

(a) If any representation or warranty of Borrower made herein shall have been incorrect when made in any material respect, or if the Borrower or any Guarantor shall be in default under any of the provisions of Section E.1 through 19, 24, 25 or 27, or Section F of this Agreement;

(b) If the Borrower or any Guarantor shall be in default under any of the provisions of this Agreement not specified in Section I(a) above (other than section H (1), which shall be governed by clause (d) below) for five (5) days after notice from the Lender in the case of any default which can be cured by the payment of a sum of money, or for twenty (20) days after notice from the Lender in the case of any other default, provided that if such default cannot reasonably be cured within such twenty (20) day period and the Borrower shall have commenced to cure such default within such twenty (20) day period and thereafter diligently and expeditiously proceeds to cure the same, such twenty (20) day period shall be extended for so long as it shall require the Borrower in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of sixty (60) days, or shall be construed as having the effect of extending the Completion Date (as defined in the Building Loan Agreement);

(c) If a default shall occur and be continuing beyond any applicable grace and cure period under any of the Loan Documents;

(d) a default beyond any applicable cure period or at maturity by the Borrower or any Guarantor in any payment of principal or interest due on or in the performance of any other provision contained in the Existing Credit Agreement (as defined above) including the breach of any covenant thereunder, if (x) with respect to a payment default, such payment is a payment at maturity or a final payment, or (y) the effect of such default is to cause the lender (or lead bank acting as agent) under the Existing Credit Agreement (a “**Holder**”) to accelerate the balance due thereunder prior to its stated maturity (or under any agreement or instrument by which the Existing Credit Agreement is evidenced or secured) and, in any case, no waiver, extension or forbearance agreement is then in effect; provided further, that any subsequent waiver, extension or forbearance agreement or cure by payment or other satisfaction accepted by the Holder shall be concurrently deemed a cure of the default created under this clause; or

Upon the occurrence of an Event of Default, the Lender (i) may, at its option and in its sole and absolute discretion, declare the Debt (as defined in the Building Loan Agreement) immediately due and payable, and (ii) may, at its option and in its sole and absolute discretion, cease to release funds from the Borrower Disbursement Account, and (iii) may pursue any and all remedies provided for in the Loan Documents, or otherwise available.

## **J. General Provisions.**

1. [reserved]
2. Neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be modified, amended, changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.
3. This Agreement may be executed in one or more counterparts each of which shall be an original but all of which when taken together shall constitute one and the same instrument. The failure of any party listed below to execute, acknowledge or join in this Agreement, or any counterpart hereof, shall not relieve the other signatories from the obligations hereunder.
4. This Agreement is and shall be deemed to be a contract entered into pursuant to the laws of the State of New York and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of New York.

5. This Agreement is binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns.

6. Nothing in this Agreement or any other Loan Document is intended to or shall be deemed to create any rights or obligations of partnership, joint venture, or similar association among the parties hereto.

7. If any term, covenant, provision or condition of this Agreement or any of the other Loan Documents shall be held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such term, covenant, provision or condition.

**8. The parties hereto hereby voluntarily, knowingly, irrevocable and unconditionally waive and right to have a jury participate in resolving any dispute (whether based on contract, tort, or otherwise) between the undersigned and the Lender arising out of or in any way related to this Agreement, the Note, the Mortgage and every other Loan Document heretofore, now or hereafter executed and/or delivered in connection therewith, the Loan and all other obligations of the Borrower or Guarantor related thereto or in any way related to this transaction or otherwise with respect to the Premises. This provision is a material inducement to the Lender to provide the financing evidenced by the Note.**

9. Each of the undersigned, and the Lender hereby, each waives, to the maximum extent not prohibited by law, any right such party may have to claim or recover from the other in any legal action or proceeding any special, exemplary, punitive or consequential damages.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

BORROWER:

DAIRYLAND HP LLC,  
a Delaware limited liability company

By: DAIRYLAND USA CORPORATION,  
a New York corporation,  
its sole member and manager

By: /s/ Christopher Pappas  
Name: Christopher Pappas  
Title: Chief Executive Officer

GUARANTORS:

THE CHEFS' WAREHOUSE, INC.,  
a Delaware corporation

By: /s/ Christopher Pappas  
Name: Christopher Pappas  
Title: Chief Executive Officer

CHEFS' WAREHOUSE PARENT, LLC,  
a Delaware limited liability company

By: THE CHEFS' WAREHOUSE, INC.,  
a Delaware corporation,  
its sole member

By: /s/ Christopher Pappas  
Name: Christopher Pappas  
Title: Chief Executive Officer

DAIRYLAND USA CORPORATION,  
a New York corporation

By: /s/ Christopher Pappas

Name: Christopher Pappas

Title: Chief Executive Officer

THE CHEFS' WAREHOUSE MID-ATLANTIC, LLC,  
a Delaware limited liability company

By: CHEFS' WAREHOUSE PARENT, LLC,  
a Delaware limited liability company,  
its sole member and manager

By: THE CHEFS' WAREHOUSE, INC.  
a Delaware corporation,  
its sole member

By: /s/ Christopher Pappas

Name: Christopher Pappas

Title: Chief Executive Officer

BEL CANTO FOODS, LLC,  
a New York limited liability company

By: DAIRYLAND USA CORPORATION,  
a New York corporation,  
its sole member and manager

By: /s/ Christopher Pappas

Name: Christopher Pappas

Title: Chief Executive Officer

THE CHEFS' WAREHOUSE WEST COAST, LLC,  
a Delaware limited liability company

By: CHEFS' WAREHOUSE PARENT, LLC,  
a Delaware limited liability company,  
its sole member and manager

By: THE CHEFS' WAREHOUSE, INC.,  
a Delaware corporation,  
its sole member

By: /s/ Christopher Pappas  
Name: Christopher Pappas  
Title: Chief Executive Officer

THE CHEFS' WAREHOUSE OF FLORIDA, LLC,  
a Delaware limited liability company

By: CHEFS' WAREHOUSE PARENT, LLC,  
a Delaware limited liability company,  
its sole member and manager

By: THE CHEFS' WAREHOUSE, INC.,  
a Delaware corporation,  
its sole member

By: /s/ Christopher Pappas  
Name: Christopher Pappas  
Title: Chief Executive Officer

LENDER:

COMMERCIAL LENDING II LLC,  
a Delaware limited liability company

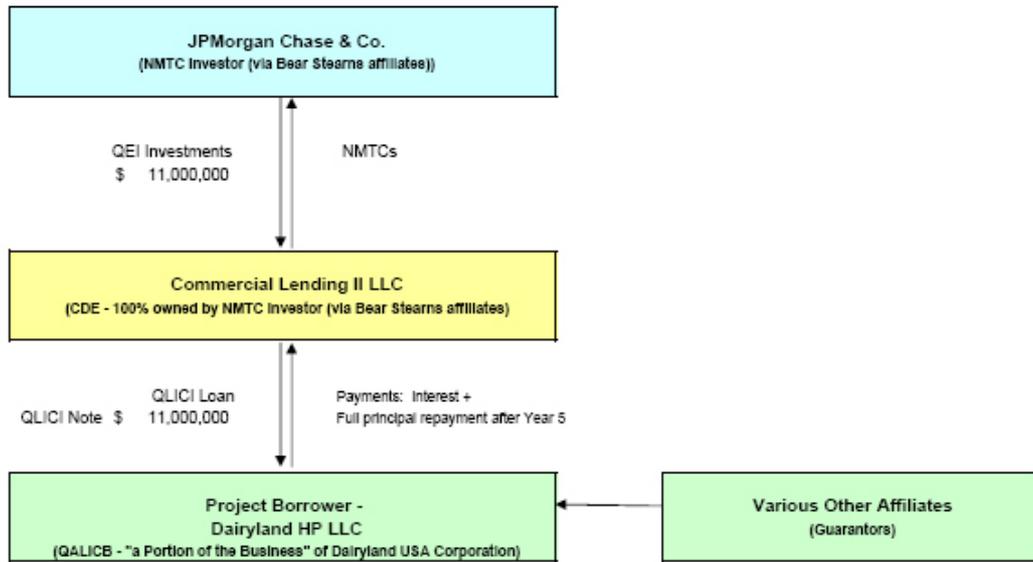
By: /s/ Patricia T. Stone  
Name: Patricia T. Stone  
Title: Authorized Officer

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**EXHIBIT 1**

**Financial Projections**

FLOW OF FUNDS



Acronym Key:

CDE = Community Development Entity

NMTC = New Markets Tax Credit

QALICB = Qualified Active Low Income Community Business

QEI = Qualified Equity Investment

QLICI = Qualified Low Income Investment

SOURCES & USES

<u>CL II Sources</u>	<u>Amount</u>
JPMC Capital Contribution (QEI)	\$ 11,000,000
	—
<b>Total Sources</b>	<b>\$ 11,000,000</b>

<u>QALICB Sources</u>	<u>Amount</u>
QLICI Loan	\$ 11,000,000
Sponsor Equity	[*CONFIDENTIAL*]

<u>CL II Uses</u>	<u>Amount</u>
QLICI Loan	\$ 11,000,000
<b>Total Uses</b>	<b>\$ 11,000,000</b>

<u>QALICB Uses</u>	<u>Amount</u>
Land Acquisition	[*CONFIDENTIAL*]
Construction Costs (includes all [*CONFIDENTIAL*] phases)	
General Conditions	[*CONFIDENTIAL*]
Site Work	[*CONFIDENTIAL*]
Demolition	[*CONFIDENTIAL*]
Concrete	[*CONFIDENTIAL*]
Steel	[*CONFIDENTIAL*]
Roofing	[*CONFIDENTIAL*]
Doors & Windows	[*CONFIDENTIAL*]
Finishes	[*CONFIDENTIAL*]
Specialties	[*CONFIDENTIAL*]
Equipment	[*CONFIDENTIAL*]
Cold Storage Insulation	[*CONFIDENTIAL*]
Plumbing	[*CONFIDENTIAL*]
HVAC	[*CONFIDENTIAL*]
Fire Projection	[*CONFIDENTIAL*]
Electrical	[*CONFIDENTIAL*]
Refridgeration	[*CONFIDENTIAL*]
Cooler Addition	[*CONFIDENTIAL*]
[*CONFIDENTIAL*] Contingency	[*CONFIDENTIAL*]
A&E	[*CONFIDENTIAL*]
Supervision/Project Management	[*CONFIDENTIAL*]
CM Fee [*CONFIDENTIAL*]	[*CONFIDENTIAL*]
Total Construction/Hard Costs	[*CONFIDENTIAL*]
Construction Period Interest Reserve	[*CONFIDENTIAL*]
Taxes, Assessments, Water/Sewer Rents (during construction)	[*CONFIDENTIAL*]
Insurance (during construction)	[*CONFIDENTIAL*]
Title & Recording	[*CONFIDENTIAL*]
Survey	[*CONFIDENTIAL*]
Ground Rent (during construction)	[*CONFIDENTIAL*]
Mortgage Recording Tax	[*CONFIDENTIAL*]
Appraisal	[*CONFIDENTIAL*]
Chase 3rd-Party Construction Inspection	[*CONFIDENTIAL*]
Chase Lender Legal	[*CONFIDENTIAL*]
Chase NMTC Legal	[*CONFIDENTIAL*]
QALICB Legal	[*CONFIDENTIAL*]

**Total Sources** [\*CONFIDENTIAL\*]

**Total Uses** [\*CONFIDENTIAL\*]

Notes:







**EXHIBIT 2**

**DEBARMENT CERTIFICATE**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS**

**Instructions for Certification**

1. The undersigned is providing the certification set out below in connection with a loan proposed to be made by Commercial Lending II LLC, a Delaware limited liability company, to Dairyland HP LLC, a Delaware limited liability company, in amount equal to \$11,000,000.
2. The certification below is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the undersigned knowingly rendered an erroneous certification, in addition to other remedies available to the federal government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The undersigned shall provide immediate written notice to the person to which this certification is submitted if at any time the undersigned learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms “covered transaction”, “debarred”, “suspended”, “ineligible”, “lower tier covered transaction”, “participant”, “person”, “primary covered transaction”, “principal”, “proposal”, and “voluntarily excluded”, as used in these instructions and the certification below, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549.
5. The undersigned agrees that by submitting this certification that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The undersigned further agrees by submitting this certification that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required below. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

(1) The undersigned certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the undersigned is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this certification.

Date: \_\_\_\_\_, 2012

\_\_\_\_\_, a  
By: \_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT 3

QALICB Compliance Certifications

The undersigned hereby certifies that [he/she] is an authorized representative of Dairyland HP LLC, a Delaware limited liability company (the "Borrower"), and pursuant to **Section E** of that certain Loan Agreement dated as of \_\_\_\_\_, 2012 (the "Loan Agreement"), between the Borrower and Commercial Lending II LLC, as lender thereto ("Lender"), further certifies to Lender as follows (capitalized terms not defined herein shall have the same meaning ascribed to them in the Loan Agreement):

1. Borrower (i) has used the proceeds of the Loan from the Lender solely in for the purposes set forth in the Loan Agreement and for no other purpose;
2. The Borrower has: \_\_\_\_\_ no employees OR \_\_\_\_\_ employees;
3. if the Borrower has no employees, eighty-five percent (85%) or more of the use of the tangible property of the Borrower (whether owned or leased) is at the Premises, calculated in accordance with Treasury Regulation 1.45D-1(d)(4)(i)(B) (*Attach summary information and calculations identifying the average values and locations of Borrower's tangible property in the form set forth on Exhibit A hereto*);
4. if the Borrower has employees:
  - i. fifty percent (50%) or more of the total gross income of the Borrower is derived from the active conduct of a qualified business (as defined in Treasury Regulation 1.45D-1(d)(5)) at the Premises, calculated in accordance with Treasury Regulation 1.45D-1(d)(4)(i)(A), or the requirements of subparagraph 4(ii) or 4(iii) are satisfied at a fifty percent (50%) threshold instead of forty percent (40%) (*Attach summary information and calculations identifying the gross income of the Borrower and the locations at which such gross income was derived in the form set forth on Exhibit A hereto*);
  - ii. forty percent (40%) or more of the use of tangible property of the Borrower is at the Premises (*Attach summary information and calculations identifying the average values and locations of Borrower's tangible property in the form set forth on Exhibit A hereto*); and
  - iii. forty percent (40%) or more of the services performed for the Borrower by its employees are at the Premises, calculated in accordance with Treasury Regulation 1.45D-1(d)(4)(i)(C) (*Attach summary information and calculations identifying the total amount paid by the Borrower for employee services and the amount paid by the Borrower for employee services and the locations at which such services are performed in the form set forth on Exhibit A hereto*);
5. less than five percent (5%) of the average of the aggregate unadjusted bases of the property of the Borrower is attributable to Collectibles not held primarily for sale to customers in the ordinary course of business (*Attach summary information and calculations identifying the unadjusted bases of the Borrower in its property generally and, in particular, any collectibles it may own in the form set forth on Exhibit A hereto*);

6. less than five percent (5%) of the average of the aggregate unadjusted bases of the property of the Borrower is attributable to Nonqualified Financial Property (*Attach summary information and calculations identifying the unadjusted bases of the Borrower in its property generally and, in particular, any nonqualified financial property it may own in the form set forth on Exhibit A hereto*);
7. the Borrower does not conduct any trade or business consisting of (i) the operation of (a) a private or commercial golf course, (b) a country club, (c) a massage parlor, (d) a hot tub facility, (e) a suntan facility, (f) a racetrack or other facility used for gambling, or (g) any store the principal business of which is the sale of alcoholic beverages for consumption off premises (collectively, the "Tenant Prohibited Activities"), (ii) the development or holding of intangibles for sale or license, or (iii) farming (within the meaning of Code Section 2032A(e)(5)(A) or (B) and the related Treasury Regulations);
8. the Borrower does not lease any part of the Premises to, or otherwise permit any portion of the Premises to be used by, any Person engaged in one or more Tenant Prohibited Activities;
9. the Borrower does not derive any portion of its rental revenue from residential rental of the Borrower's property, nor does the Borrower use low-income housing tax credits in connection with any of its assets or property; and
10. the Borrower has no plans to:
  - i. expand or change its business or operations in any manner that would not enable it to maintain compliance with the preceding paragraphs of this certification; or
  - ii. move or expand any existing operations to a new location.

THE FOREGOING IS HEREBY CERTIFIED AS TRUE, CORRECT, AND COMPLETE BY THE UNDERSIGNED OFFICER, AS OF THIS      DAY OF  
 , 20   .

\_\_\_\_\_, a  
 \_\_\_\_\_

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

Exhibit A

to QALICB Compliance Certification

1. **Gross Income Test** The Borrower has determined that the information set forth below accurately reflects the location of the source and the amount of the Borrower's gross income:

	<u>Income</u>	<u>Census Tract No.</u>	<u>Low-Income Community?</u>
<b>Total Annual Gross Income</b>			YES/NO
a. Property 1	\$		YES/NO
b. Property 2	\$		YES/NO
c. Property 3	\$		YES/NO
d. Property 4	\$		YES/NO
e. Property 5	\$		YES/NO
f. Property 6	\$		YES/NO
<b>Annual Income from LIC Tracts</b>	\$		
<b>% Annual Income - LIC Tracts</b>		%	

2. **Tangible Property Test** The Borrower has determined that the information set forth below accurately reflects the value and location of the Borrower's tangible property:

	<u>Value</u>	<u>Census Tract No.</u>	<u>Low-Income Community?</u>
<b>Owned (Cost Basis)</b>			
a. Property 1	\$		YES/NO
b. Property 2	\$		YES/NO
c. Property 3	\$		YES/NO
<b>Leased ("Reasonable" Basis)</b>			
d. Property 4	\$		YES/NO
e. Property 5	\$		YES/NO
f. Property 6	\$		YES/NO
<b>Total Annual Value</b>	\$		
<b>Total Annual Value in LIC Tracts</b>	\$		
<b>% Annual Value in LIC Tracts</b>		%	

*[If any property is used in more than one Census Tract, the value of such property shall be apportioned among Census Tracts in accordance with the example set forth in Treasury Regulation 1.45D-1(d)(4)(B)(2)]*

3. **Services Test** The Borrower has determined that the information set forth below accurately reflects the cost and location of services performed by the Borrower's employees:

	<u>Amount Paid for Employee Services</u>	<u>Census Tract No.</u>	<u>Low-Income Community?</u>
<b>Total Cost of Employee Services</b>			YES/NO
a. Property 1			YES/NO
b. Property 2			YES/NO
c. Property 3			YES/NO
d. Property 4			YES/NO
e. Property 5			YES/NO
f. Property 6			YES/NO
<b>Total Cost of Employee Services in LIC Tracts</b>			
<b>% Cost of Employee Services in LIC Tracts</b>	%		

*[If an employee (FTE) performs services in more than one Census Tract, the amount paid for such employee's services shall be apportioned among such locations on the basis of the percentage of such employee's time spent in each such location.]*

4. **Collectibles and Non Qualified Financial Property Tests** The Borrower has determined that the information set forth below accurately reflects the value of the Borrower's "collectibles" and "non-qualified financial property" relative to the value of the Borrower's assets:

	<u>Amount</u>	<u>% of Unadjusted Bases in Assets</u>
<b>Average Aggregate Unadjusted Bases of all Property</b>	\$	100%
<b>Basis attributable to Collectibles</b>	\$	%
<b>Basis attributable to Non Qualified Financial Property</b>	\$	%

A request for confidential treatment has been made with respect to portions of the following document that are marked [\*CONFIDENTIAL\*]. The redacted portions have been filed separately with the SEC.

---

# J.P.Morgan

## CREDIT AGREEMENT

dated as of

April 25, 2012

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 CHEFS' WAREHOUSE, INC.,  
CHEFS' WAREHOUSE PARENT, LLC, and  
The Other Loan Parties Party Hereto,  
as Guarantors,

The Lenders Party Hereto,

JPMORGAN CHASE BANK, N.A.,  
as Administrative Agent,

and

GENERAL ELECTRIC CAPITAL CORPORATION  
and WELLS FARGO BANK, NATIONAL ASSOCIATION  
as Co-Syndication Agents

---

J.P. MORGAN SECURITIES LLC,  
as Sole Bookrunner

J.P. MORGAN SECURITIES LLC, GENERAL ELECTRIC CAPITAL CORPORATION and WELLS  
FARGO BANK, NATIONAL ASSOCIATION,  
as Joint Lead Arrangers

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- Exhibit A – Form of Assignment and Assumption
- Exhibit B – Form of Increasing Lender Supplement
- Exhibit C – Form of Augmenting Lender Supplement
- Exhibit D – List of Closing Documents
- Exhibit E – Form of Compliance Certificate
- Exhibit F – Joinder Agreement
- Exhibit G-1 – Form of U.S. Tax Certificate (for Non-U.S. Lenders That Are Not Partnerships)
- Exhibit G-2 – Form of U.S. Tax Certificate (for Non-U.S. Lenders That are Partnerships)

CREDIT AGREEMENT dated as of April 25, 2012 (as it may be amended or modified from time to time, this “Agreement”) among DAIRYLAND USA CORPORATION, a New York corporation (“Dairyland”), THE CHEFS’ WAREHOUSE MID-ATLANTIC, LLC, a Delaware limited liability company (“CW Mid-Atlantic”), BEL CANTO FOODS, LLC, a New York limited liability company (“Bel Canto”), THE CHEFS’ WAREHOUSE WEST COAST, LLC, a Delaware limited liability company (“CW West Coast”), and THE CHEFS’ WAREHOUSE OF FLORIDA, LLC, a Delaware limited liability company (“CW Florida”), as Borrowers, the other Loan Parties party hereto, the Lenders party hereto, and JPMORGAN CHASE 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:

“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.

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

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

“Act” has the meaning assigned to such term in Section 9.14.

“Adjusted LIBO Rate” means, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/16 of 1%) equal to (a) the LIBO Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

“Administrative Agent” means Chase, in its capacity as administrative agent for the Lenders hereunder.

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

“Affected Foreign Subsidiary” means any Foreign Subsidiary to the extent 66 2/3% or more of the 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.

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

“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.

“Alternate Base Rate” means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus 1/2 of 1% and (c) the Adjusted LIBO Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 2.50%, provided that, for the avoidance of doubt, the Adjusted LIBO Rate for any day shall be based on the rate appearing on Reuters Screen LIBOR01 Page (or on any successor or substitute page of such page) at approximately 11:00 a.m. London time on such day. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate, respectively.

“Applicable Percentage” means, with respect to any Lender, (a) with respect to Revolving Loans, LC Exposure or Swingline Loans, a percentage equal to a fraction the numerator of which is such Lender’s Revolving Commitment and the denominator of which is the aggregate Revolving Commitments of all Revolving Lenders (if the Revolving Commitments have terminated or expired, the Applicable Percentages shall be determined based upon the Revolving Commitments most recently in effect, giving effect to any assignments) and (b) with respect to the Term Loans, a percentage equal to a fraction the numerator of which is such Lender’s outstanding principal amount of the Term Loans and the denominator of which is the aggregate outstanding amount of the Term Loans of all Term Lenders; 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) and (b) 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 a Foreign Subsidiary that is an Affected Foreign Subsidiary due to a Deemed Dividend Issue.

“Applicable Rate” means, for any day, with respect to any ABR Loan or any Eurodollar Loan, the applicable rate per annum set forth below under the caption “ABR Spread” or “Eurodollar Spread,” as the case may be:

<u>ABR Spread</u>	<u>Eurodollar Spread</u>
0.50%	3.00%

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

“Assignment and Assumption” means an assignment and assumption 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 the form of Exhibit A or any other form approved by the Administrative Agent.

“Augmenting Lender” has the meaning assigned to such term in Section 2.22.

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

“Available Revolving Commitment” means, at any time, the aggregate Revolving Commitments 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); it being understood and agreed that any Lender’s Swingline Exposure shall not be deemed to be a component of the Aggregate Revolving Exposure for purposes of calculating the commitment fee under Section 2.12(a).

“Banking Services” means each and any of the following bank services provided to any Loan Party 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 and (c) treasury management services (including, without limitation, controlled disbursement, automated clearinghouse transactions, return items, overdrafts and interstate depository network services).

“Banking Services Obligations” of the Loan Parties means any and all obligations of the Loan Parties, 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.

“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.

“Bel Canto” has the meaning ascribed to it in the preamble.

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

“Borrower” or “Borrowers” means, individually or collectively, Dairyland, CW Mid-Atlantic, Bel Canto, CW West Coast and CW Florida.

“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 Eurodollar Loans, as to which a single Interest Period is in effect, (b) a Term Loan made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect and (c) a Swingline Loan.

“Borrowing Request” means a request by the Borrower Representative for a Revolving 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; provided that, for purposes of calculating the Fixed Charge Coverage Ratio, up to \$4,000,000 of expenses incurred or investments made in Dairyland HP by Holdings or any of its Subsidiaries on or prior to the second anniversary of the Effective Date in connection with the improvements at the Dairyland HP Facility shall not constitute Capital Expenditures.

“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 date hereof) 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 (b) Holdings shall cease to own and control all of the outstanding Equity Interests of the Borrowers and CW Parent on a fully diluted basis.

“Change in Law” means the occurrence, after the date of this Agreement (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 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.

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

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

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

“Co-Syndication Agent” means each of General Electric Capital Corporation and Wells Fargo Bank, National Association 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 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 Lien in favor of the Administrative Agent, on behalf of itself and the Lenders and other holders of the Secured Obligations, 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 Documents” means, collectively, the Security Agreement, the Mortgages 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, the sum of such Lender’s Revolving Commitment and Term Loan Commitment. 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.

“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.

“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.

“Credit Exposure” means, as to any Lender at any time, the sum (without duplication) of (a) such Lender’s Revolving Exposure at such time, *plus* (b) an amount equal to the aggregate principal amount of its Term Loans outstanding at such time.

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

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

“CW Mid-Atlantic” has the meaning ascribed to it in the preamble.

“CW Parent” means Chefs’ Warehouse Parent, LLC, a Delaware limited liability company.

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

“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 200-230 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.

“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 Bankruptcy Event.

“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, in an aggregate amount not to exceed \$2,500,000 for any period of four (4) consecutive Fiscal Quarters, (vii) non-recurring cash charges related to workers’ compensation claims in an amount not to exceed \$250,000 per Fiscal Year and (viii) non-recurring fees, cash charges and other cash expenses, in an aggregate amount not to exceed \$1,000,000 for any period of four (4) consecutive Fiscal Quarters, *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 Subsidiaries on a consolidated basis in accordance with GAAP.

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

“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.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

“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 of any Plan to satisfy the applicable “minimum funding standard” (as defined in Section 412(a) of the Code) for any plan year; (c) the filing pursuant to Section 412(c) of the Code of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the failure to make to any Plan a minimum required contribution as determined under Section 430 of the Code and Section 303(j) of ERISA; (e) 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; (f) 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; (g) the incurrence by any Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (h) the receipt by any Borrower or any ERISA Affiliate of any notice concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, or that any Multiemployer Plan is adopting, or is expected to adopt, a rehabilitation plan, all within the meaning of Title IV of ERISA.

“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 LIBO Rate.

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

“Excess Cash Flow” means, without duplication, with respect to any Fiscal Year of Holdings and its Subsidiaries, (a) the sum of (i) EBITDA and (ii) the decrease, if any, in the Working Capital from the beginning 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 Subsidiaries during such period, and (iv) the increase, if any, in the Working Capital from the beginning to the end of such period. Excess Cash Flow shall be calculated without any deductions for cash used to fund acquisitions, including Permitted Acquisitions.

“Excluded Assets” means (a) any license, contract, document, instrument or agreement to which any Loan Party is a party, to the extent that the creation of a Lien on such assets would, under the express terms of such license, contract, document, instrument or agreement, result in a breach of the terms of, or constitute a default under, such license, contract, document, instrument or agreement (other than to the extent that any such term (i) has been waived or (ii) 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) any Equity Interests in any Affected Foreign Subsidiary representing more than 65% of the total voting Equity Interests in such Affected Foreign Subsidiary, (e) any property that is not owned by, but is leased by, a Loan Party, (f) any real property owned by a Loan Party, unless such real property (i) was purchased by such Loan Party with the proceeds of any Loans and (ii) had an individual fair market value at the time of purchase by such Loan Party of greater than \$1,000,000, (g) Fixtures (as defined in the Security Agreement) located at the Dairyland HP Facility and (h) rights and obligations in connection with the Master Operating Sublease, dated on or about the Effective Date, between Dairyland and Dairyland HP, relating to the Dairyland HP Facility, as the same may be amended from time to time.

“Excluded Subsidiary” means Dairyland HP, so long as such entity is a single purpose real estate holding entity.

“Excluded Taxes” means, with respect to any payment made by any Loan Party under any Loan Document, any of the following Taxes imposed on or with respect to a Recipient: (a) income or franchise Taxes imposed on (or measured by) net income by the United States of America, or by the jurisdiction under the laws of which such Recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, (b) any branch profits Taxes imposed by the United States of America or any similar Taxes imposed by any other jurisdiction in which any Borrower is located and (c) in the case of a Non U.S. Lender (other than an assignee pursuant to a request by a Borrower under Section 2.19(b)), any U.S. Federal withholding Taxes resulting from any law in effect (including FATCA) on the date such Non U.S. Lender becomes a party to this Agreement (or designates a new lending office) or that is attributable to such Non U.S. Lender’s failure to comply with Section 2.17(f), except to the extent that such Non U.S. Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from the Borrowers with respect to such withholding Taxes pursuant to Section 2.17(a).

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

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement and any regulations or official interpretations thereof.

“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 (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System 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 1/100 of 1%) of the quotations for such 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 March 28, 2012, among Borrowers and the Administrative Agent.

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

“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 Charges” means, for any period, without duplication, cash Interest Expense, *plus* prepayments (other than mandatory Excess Cash Flow prepayments) and scheduled principal payments on Indebtedness actually made, *plus* expense for taxes paid in cash, *plus* dividends or distributions paid in cash, *plus* Capital Lease Obligation payments, *plus* cash payments (excluding cash payments financed solely with the proceeds of issuances of equity 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 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 Subsidiaries on a consolidated basis in accordance with GAAP.

“Fixed Charge Coverage Ratio” means, for any period, the ratio of (a) EBITDA *minus* the unfinanced portion of Capital Expenditures to (b) Fixed Charges, all calculated for Holdings and its 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 Subsidiary” means any Subsidiary which is not a Domestic Subsidiary.

“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 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.

“Hostile Acquisition” means (a) the acquisition of the Equity Interests of a Person through a tender offer or similar solicitation of the owners of such Equity Interests which has not been approved (prior to such acquisition) by the board of directors (or any other applicable governing body) of such Person or by similar action if such Person is not a corporation and (b) any such acquisition as to which such approval has been withdrawn.

“Increasing Lender” has the meaning assigned to such term in Section 2.22.

“Incremental Extensions of Credit” has the meaning assigned to such term in Section 2.22.

“Incremental Term Loan” has the meaning assigned to such term in Section 2.22.

“Incremental Term Loan Amendment” has the meaning assigned to such term in Section 2.22.

“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.

“Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by any Loan Party under any Loan Document and (b) Other Taxes.

“Interest Election Request” means a request by the Borrower Representative to convert or continue a Borrowing in accordance with Section 2.07.

“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 (other than a Swingline Loan), the first Business Day of each calendar quarter and the Maturity Date, (b) with respect to any Eurodollar 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 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 Maturity Date, and (c) with respect to any Swingline Loan, the day that such Swingline Loan is required to be repaid and the Maturity Date.

“Interest Period” means, with respect to any Eurodollar Borrowing, the period commencing on the date of such Eurodollar Borrowing (including by continuation or conversion) and ending on the numerically corresponding day in the calendar month that is one, two, three, six or nine months thereafter, 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 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. 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 Chase, in its capacity as the issuer of Letters of Credit, and its successors in such capacity as provided in Section 2.06(i). The Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of the Issuing Bank, in which case the term “Issuing Bank” shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

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

“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 (without duplication) of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time *plus* (b) the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of the Borrowers at such time. The LC Exposure of any Revolving Lender at any time shall be its Applicable Percentage of the aggregate LC Exposure at such time.

“Lenders” means the Persons listed on the Commitment Schedule 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. Unless the context otherwise requires, the term “Lenders” includes the Swingline Lender.

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

“Leverage Ratio” means, on any date, the ratio of (a) Total 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).

“LIBO Rate” means, with respect to any Eurodollar Borrowing for any Interest Period, the rate appearing on Reuters Screen LIBOR01 Page (or on any successor or substitute page of such Service, or any successor to or substitute for such Service, providing rate quotations comparable to those currently provided on such page of such Service, as determined by the Administrative Agent from time to time for purposes of providing quotations of interest rates applicable to Dollar deposits in the London interbank market) at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period, as the rate for Dollar deposits with a maturity comparable to such Interest Period. In the event that such rate is not available at such time for any reason, then the “LIBO Rate” with respect to such Eurodollar Borrowing for such Interest Period shall be the rate at which Dollar deposits of \$5,000,000 and for a maturity comparable to such Interest Period are offered by the principal London office of the Administrative Agent in immediately available funds in the London interbank market at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period.

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust, 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.

“Loan Documents” means this Agreement, any promissory notes issued pursuant to this Agreement, any Letter of Credit applications, the Collateral Documents, the Loan Guaranty and the Fee Letter. 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, CW Parent, the Borrowers and the Borrowers’ Domestic Subsidiaries (other than the Excluded Subsidiary) 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.

“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 Lenders and other holders of the Secured Obligations) on the Collateral or the priority of such Liens, in each case, as to Collateral having an aggregate value in excess of \$1,000,000, 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 \$1,000,000 or less).

“Material Indebtedness” means Indebtedness (other than the Loans and Letters of Credit), or obligations in respect of one or more Swap Agreements, of any one or more of Holdings and its Subsidiaries in an aggregate principal amount exceeding \$2,000,000. 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 April 25, 2017.

“Maximum Liability” has the meaning assigned to such term in Section 10.10.

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

“Mortgages” means any mortgage, deed of trust or other agreement which conveys or grants a Lien in favor of the Administrative Agent, for the benefit of the Administrative Agent and the Lenders and other holders of the Secured Obligations, on real property of a Loan Party, including any amendment, modification or supplement thereto.

“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 Administrative Agent from time to time.

“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 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) and 6.13(c)) 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, (b) the income (or deficit) of any Person (other than a Subsidiary) in which Holdings or any of its Subsidiaries has an ownership interest, except to the extent that any such income is actually received by Holdings or such Subsidiary in the form of dividends or similar distributions and (c) the undistributed earnings of any Subsidiary to the extent that the declaration or payment of dividends or similar distributions by such 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 Subsidiary.

“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 Lender, to Dairyland HP, as borrower, to be entered into on or about the Effective Date, in an aggregate principal amount not to exceed \$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.

“Non-Paying Guarantor” has the meaning assigned to such term in Section 10.11.

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

“Obligations” means all unpaid principal of and all 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, 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.

“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, enforced, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, or 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 any present or future stamp, court, documentary, intangible, recording, filing or similar excise or property Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, or from the registration, 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 under Section 2.19(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).

“Paying Guarantor” has the meaning assigned to such term in Section 10.11.

“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 but excluding, in any event, any Hostile Acquisition) or series of related acquisitions by any Loan Party 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, (a) no Default has occurred and is continuing or would arise after giving effect thereto, (b) such Person or division or line of business is engaged in the same or a similar line of business as the Borrowers and the 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), (c) 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, (d) the Borrowers and the Subsidiaries are in compliance, on a pro forma basis, with the covenants contained in Section 6.13 recomputed as of the last day of the most recently ended Fiscal Quarter for which financial statements are available, 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 each relevant period for testing such compliance and, if the aggregate consideration paid in respect of such acquisition exceeds \$22,000,000, Holdings shall have delivered to the Administrative Agent a certificate of a Financial Officer of Holdings to such effect, together with all related historical financial statements (including consolidated balance sheets, income statements and cash flow statements) and projections reasonably requested by the Administrative Agent, (e) in the case of an acquisition or merger involving a Loan Party (other than Holdings), a Loan Party is the surviving entity of such merger and/or consolidation, (f) in the case of an acquisition or merger involving Holdings, Holdings shall be the surviving entity of such merger and/or consolidation, and (g) the sum of (i) Holdings’ and its Subsidiaries’ unencumbered and unrestricted cash and Permitted Investments plus (ii) the Available Revolving Commitment is at least \$10,000,000.

“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 are not overdue by more than thirty (30) days or are being contested in compliance with Section 5.04;

(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:

(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 to exceed \$1,000,000 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 \$1,500,000 in any period of twelve consecutive months, (y) after giving effect to such dividend, the sum of (A) Holdings’ and its Subsidiaries’ unencumbered and unrestricted cash and Permitted Investments plus (B) the Available Revolving Commitment shall be at least \$10,000,000 and (z) such dividend shall be actually used for a purpose set forth above substantially concurrently with the making of such dividend; and

(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.

“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.

“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.

“Pledge Subsidiary” means (i) each Domestic Subsidiary (other than the 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; 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) so long as the Leverage Ratio on 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, ending with the last Fiscal Quarter included in the financial statements referred to in Section 3.04(a)) is equal to or greater than 2.50:1.00, the issuance by Holdings or any Subsidiaries of any Equity Interests after the Effective Date, or the receipt by Holdings or any Subsidiaries of any capital contribution; or

(d) the incurrence by any Loan Party of any Indebtedness, other than Indebtedness permitted under Section 6.01; or

(e) the receipt of cash by Holdings or any Subsidiary not in the ordinary course of business, in respect of (i) foreign, United States, state or local tax refunds, (ii) pension plan reversions, (iii) judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action (other than payments or proceeds that represent reimbursement for amounts paid by Holdings or any Subsidiary within the six months immediately preceding such judgment, settlement or other cause of action), (iv) indemnity payments (other than indemnity payments that represent reimbursement for amounts paid by Holdings or any Subsidiary within the six months immediately preceding such indemnity payment) and (v) any purchase price adjustment received in connection with any purchase agreement.

“Prime Rate” means the rate of interest per annum publicly announced from time to time by Chase as its prime rate at its principal office in New York City; each change in the Prime Rate shall be effective from and including the date such change is publicly announced as being effective.

“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.

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

“Register” has the meaning assigned to such term in Section 9.04.

“Reinvestment Period” has the meaning assigned to such term in Section 2.11(c).

“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.

“Required Lenders” means, at any time, Lenders (other than Defaulting Lenders) having Credit Exposure and unused Commitments representing more than 50% of the sum of the Aggregate Credit Exposure and unused Commitments; provided that, “Required Lenders” shall consist of at least two (2) Lenders at all times that there exists two (2) or more Lenders.

“Required Revolving Lenders” means, at any time, Lenders (other than Defaulting Lenders) having Revolving Exposure and unused Revolving Commitments representing more than 50% of the sum of the aggregate Revolving Exposure and unused Revolving Commitments; provided that, “Required Revolving Lenders” shall consist of at least two (2) Revolving Lenders at all times that there exists two (2) or more Revolving Lenders.

“Requirement of Law” means, as to any Person, the Certificate of Incorporation and By Laws or other organizational or governing documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, 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.

“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.

“Revolving 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 and Swingline Loans hereunder, expressed as an amount representing the maximum possible aggregate 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 or 2.22 or (b) assignments by or to such Lender pursuant to Section 9.04. The initial amount of each Lender’s Revolving Commitment is set forth on the Commitment Schedule, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Revolving Commitment, as applicable. The initial aggregate amount of the Lenders’ Revolving Commitments is \$100,000,000.

“Revolving Commitment Increase” has the meaning assigned to such term in Section 2.22.

“Revolving Exposure” means, with respect to any Lender at any time, the sum (without duplication) of the outstanding principal amount of such Lender’s Revolving Loans, LC Exposure and Swingline Exposure at such time.

“Revolving Lender” means, as of any date of determination, a Lender with a Revolving Commitment or, if the Revolving Commitments have terminated or expired, a Lender with Revolving Exposure.

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

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

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

“Secured Obligations” means all Obligations, together with all (i) Banking Services Obligations and (ii) Swap Obligations owing to one or more Lenders or their respective Affiliates.

“Secured Parties” means, collectively, the Administrative Agent, each Lender and each other holder of any Secured Obligation from time to time.

“Security Agreement” means that certain Pledge and Security Agreement, dated as of the date hereof, between the Loan Parties and the Administrative Agent, for the benefit of the Administrative Agent and the Lenders and the other holders of the Secured Obligations, and any other pledge or security agreement entered into, after the date of this Agreement by any other Loan Party or any other Person, as the same may be amended, restated or otherwise modified from time to time.

“Statutory Reserve Rate” means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the Administrative Agent is subject with respect to the Adjusted LIBO Rate, for eurocurrency funding (currently referred to as “Eurocurrency Liabilities” in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“Subordinated Indebtedness” of a Person means any Indebtedness of such Person (including seller notes) the payment of which is subordinated to payment of the Secured Obligations to the written satisfaction of the Administrative Agent, which shall not be unreasonably withheld.

“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.

“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 Obligations” of a Loan Party means any and all obligations of such Loan Party, 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, and (b) any and all cancellations, buy backs, reversals, terminations or assignments of any Swap Agreement transaction.

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

“Swingline Lender” means Chase, in its capacity as lender of Swingline Loans hereunder.

“Swingline Loan” means a Loan made pursuant to Section 2.05.

“Taxes” means any present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other similar 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 having a Term Loan Commitment.

“Term Loan Commitment” means (a) as to any Term Lender, the aggregate commitment of such Term Lender to make Term Loans as set forth in the Commitment Schedule or in the most recent Assignment and Assumption executed by such Term Lender, as applicable, and (b) as to all Term Lenders, the aggregate commitment of all Term Lenders to make Term Loans, which aggregate commitment shall be \$40,000,000 on the Effective Date. After advancing the Term Loan, each reference to a Term Lender’s Term Loan Commitment shall refer to such Term Lender’s Applicable Percentage of the Term Loans.

“Term Loans” means the Term Loans extended by the Term Lenders to the Borrowers pursuant to Section 2.01(b).

“Total Indebtedness” means, at any date, the aggregate principal amount of all Indebtedness of Holdings and its Subsidiaries at such date, determined on a consolidated basis in accordance with GAAP. For purposes of determining Total 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.

“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, 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 LIBO Rate 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, Administrative Agent’s or any Lender’s Lien on any Collateral.

“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.

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

“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 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 outstanding Revolving Loans and Swingline Loans and the current portion of any other Indebtedness), all determined on a consolidated basis in accordance with GAAP.

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 “Eurodollar Loan”) or by Class and Type (e.g., a “Eurodollar Revolving Loan”). Borrowings also may be classified and referred to by Class (e.g., a “Revolving Borrowing”) or by Type (e.g., a “Eurodollar Borrowing”) or by Class and Type (e.g., a “Eurodollar 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”. 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, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (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.** (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 date hereof 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, 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 (i) 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 (ii) 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.

(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 (but without giving effect to any synergies or cost savings, other than those in connection with any acquisition that (i) are reasonably acceptable to the Administrative Agent and (ii) the Borrowers reasonably determine in good faith will be actually and fully realized as of the date of consummation of such acquisition) 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).

**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.

## ARTICLE II

### THE CREDITS

SECTION 2.01. Commitments. Subject to the terms and conditions set forth herein, (a) each Revolving Lender 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) the amount of such Lender's Revolving Exposure exceeding such Lender's Revolving Commitment or (ii) the Aggregate Revolving Exposure exceeding the aggregate Revolving Commitments, and (b) each Term Lender agrees to make a Term Loan to Dairyland in Dollars on the Effective Date, in an amount equal to such Lender's Term Loan Commitment by making immediately available funds available to the Administrative Agent's designated account, not later than the time specified by the Administrative Agent. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrowers may borrow, prepay and reborrow Revolving Loans. Amounts repaid or prepaid in respect of Term Loans may not be reborrowed.

SECTION 2.02. Loans and Borrowings. (a) Each Loan (other than a Swingline Loan) shall be made as part of a Borrowing consisting of Loans of the same Class and Type made by the Lenders ratably in accordance with their respective Commitments of the applicable Class. The failure of any Lender to make any 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 Swingline Loan shall be made in accordance with the procedures set forth in Section 2.05. The Term Loans shall amortize as set forth in Section 2.10.

(b) Subject to Section 2.14, each Revolving Borrowing and Term Loan Borrowing shall be comprised entirely of ABR Loans or Eurodollar Loans as the Borrower Representative may request in accordance herewith. Each Swingline Loan shall be an ABR Loan. Each Lender at its option may make any Eurodollar 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 Revolving 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 Revolving Borrowings may be in any amount. Each Swingline Loan shall be in an amount that is an integral multiple of \$250,000 and not less than \$250,000. 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 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 Maturity Date.

SECTION 2.03. 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 not later than (a) in the case of a Eurodollar 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, noon, New York City time, on the date of the proposed Borrowing; provided that any such notice of an ABR 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 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:

- (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 an ABR Borrowing or a Eurodollar Borrowing;
- (v) in the case of a Eurodollar 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 an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Revolving 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 2.04. [Intentionally Omitted].

SECTION 2.05. Swingline Loans. (a) Subject to the terms and conditions set forth herein, the Swingline Lender agrees to make Swingline Loans in Dollars to the Borrowers from time to time during the Availability Period, in an aggregate principal amount at any time outstanding that will not result in (i) the aggregate principal amount of outstanding Swingline Loans exceeding \$3,000,000 or (ii) the Aggregate Revolving Exposure exceeding the aggregate Revolving Commitments; provided that (x) the Swingline Lender shall not be required to make a Swingline Loan to refinance an outstanding Swingline Loan and (y) not more than one Swingline Loan shall be outstanding at any time. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrowers may borrow, prepay and reborrow Swingline Loans.

(b) To request a Swingline Loan, the Borrower Representative on behalf of the applicable Borrower, shall notify the Administrative Agent of such request by telephone (confirmed by telecopy), not later than 2:00 p.m., New York City time, on the day of a proposed Swingline Loan. Each such notice shall be irrevocable and shall specify the requested date (which shall be a Business Day) and amount of the requested Swingline Loan. The Administrative Agent will promptly advise the Swingline Lender of any such notice received from the Borrower Representative. The Swingline Lender shall make each Swingline Loan available to the applicable Borrower by means of a credit to the general deposit account of such Borrower designated by the Borrower Representative (or in the case of a Swingline Loan made to finance the reimbursement of an LC Disbursement as provided in Section 2.06(e), by remittance to such Issuing Bank) by 3:00 p.m., New York City time, on the requested date of such Swingline Loan.

(c) The Swingline Lender may by written notice given to the Administrative Agent not later than 10:00 a.m., New York City time, on any Business Day require the Revolving Lenders to acquire participations on such Business Day in all or a portion of the Swingline Loans outstanding. Such notice shall specify the aggregate amount of Swingline Loans in which Revolving Lenders will participate. Promptly upon receipt of such notice, the Administrative Agent will give notice thereof to each Revolving Lender, specifying in such notice such Lender's Applicable Percentage of such Swingline Loan or Loans. Each Revolving Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Administrative Agent, for the account of the Swingline Lender, such Lender's Applicable Percentage of such Swingline Loan or Loans. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations in Swingline Loans pursuant to this paragraph is absolute and unconditional and shall not be affected by any circumstance whatsoever, including 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. Each Revolving Lender shall comply with its obligation under this paragraph by wire transfer of immediately available funds, 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 Swingline Lender the amounts so received by it from the Revolving Lenders. The Administrative Agent shall notify the Borrower Representative of any participations in any Swingline Loan acquired pursuant to this paragraph, and thereafter payments in respect of such Swingline Loan shall be made to the Administrative Agent and not to the Swingline Lender. Any amounts received by the Swingline Lender from any Borrower (or other party on behalf of any Borrower) in respect of a Swingline Loan after receipt by the Swingline Lender of the proceeds of a sale of participations therein shall be promptly remitted to the Administrative Agent; any such amounts received by the Administrative Agent shall be promptly remitted by the Administrative Agent to the Revolving Lenders that shall have made their payments pursuant to this paragraph and to the Swingline Lender, as their interests may appear; provided that any such payment so remitted shall be repaid to the Swingline Lender or to the Administrative Agent, as applicable, if and to the extent such payment is required to be refunded to any Borrower for any reason. The purchase of participations in a Swingline Loan pursuant to this paragraph shall not relieve any Borrower of any default in the payment thereof.

SECTION 2.06. 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), the Borrower Representative may request the issuance of Letters of Credit for its own account or for the account of another Borrower, 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 the Borrowers to, or entered into by the Borrowers with, the Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control. The letters of credit identified on Schedule 2.06 (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.

(b) 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 by electronic communication, if arrangements for doing so have been approved by the Issuing Bank) to the Issuing Bank and the Administrative Agent (reasonably in advance of 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 LC Exposure shall not exceed \$1,000,000 and (ii) the Aggregate Revolving Exposures shall not exceed the aggregate Revolving Commitments. 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.

(c) Expiration Date. Each Letter of Credit shall expire 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.

(d) 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 Revolving Lenders, the Issuing Bank hereby grants to each Revolving Lender, and each Revolving 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 Revolving 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 Revolving 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.

(e) 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 an ABR 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 ABR Revolving Borrowing or Swingline Loan. If the Borrowers fail to make such payment when due, the Administrative Agent shall notify each Revolving 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 Revolving 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 Revolving Lenders), and the Administrative Agent shall promptly pay to the Issuing Bank the amounts so received by it from the Revolving 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 Revolving 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 Revolving Lender pursuant to this paragraph to reimburse the Issuing Bank for any LC Disbursement (other than the funding of ABR 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.

(f) 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 Revolving 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.

(g) 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 Revolving Lenders with respect to any such LC Disbursement.

(h) 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 ABR Revolving Loans; 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 Revolving 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.

(i) Replacement of the Issuing Bank. 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 Revolving 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 issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(j) Cash Collateralization. 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 Revolving 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 Revolving Lenders (the "LC Collateral Account"), an amount in cash equal to 105% 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 first-priority security interest in the LC Collateral Account and any amounts on deposit therein. 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. 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 Revolving Lenders), be applied to satisfy other Secured Obligations. 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.

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 (i) Term Loans shall be made as provided in Section 2.01(b) and (ii) 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 ABR Revolving Loans made to finance the reimbursement of an LC Disbursement as provided in Section 2.06(e) shall be remitted by the Administrative Agent to the Issuing Bank.

(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 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 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) Except Borrowings on the Effective Date, each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurodollar 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 Eurodollar 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, which may not be converted or continued.

(b) To make an election pursuant to this Section, the Borrower Representative shall notify the Administrative Agent of such election by telephone 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 (i) elect an Interest Period for Eurodollar Loans that does not comply with Section 2.02 or (ii) convert any Borrowing to a Borrowing of a Type not available under the Class of Commitments pursuant to which such Borrowing was made.

(c) Each telephonic and written Interest Election Request 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 an ABR Borrowing or a Eurodollar Borrowing; and

(iv) if the resulting Borrowing is a Eurodollar 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 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 Revolving 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 Borrowing and (ii) unless repaid, each Eurodollar 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. (a) Unless previously terminated, (i) the Term Loan Commitments shall terminate at 5:00 p.m., New York City time, on the Effective Date and (ii) all other Commitments shall terminate on the Maturity Date.

(b) 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 105% 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.

(c) The Borrowers may from time to time reduce the Revolving Commitments; provided that (i) each reduction of the Revolving Commitments shall be in an amount that is an integral multiple of \$2,500,000 and not less than \$2,500,000; (ii) the Borrowers shall not reduce the Revolving Commitments if, after giving effect to any concurrent prepayment of the Revolving Loans in accordance with Section 2.10, the Aggregate Revolving Exposures would exceed the total Revolving Commitments; and (iii) any such reduction shall be permanent.

(d) 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 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 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.

SECTION 2.10. Repayment and Amortization of Loans; Evidence of Debt. (a) The Borrowers hereby unconditionally promise to pay (i) to the Administrative Agent for the account of each Revolving Lender the then unpaid principal amount of each Revolving Loan on the Maturity Date and (ii) to the Swingline Lender the then unpaid principal amount of each Swingline Loan on the earlier of the Maturity Date and the first date after such Swingline Loan is made that is the 15<sup>th</sup> or last day of a calendar month and is at least two (2) Business Days after such Swingline Loan is made; provided that on each date that a Revolving Borrowing is made, the Borrowers shall repay all Swingline Loans then outstanding. Dairyland shall repay the Term Loans on each date set forth below in the aggregate principal amount set forth opposite such date (as adjusted from time to time pursuant to Section 2.11(e) or otherwise under the Loan Documents):

<u>Date</u>	<u>Amount</u>
June 30, 2012	\$1,000,000
September 30, 2012	\$1,000,000
December 31, 2012	\$1,000,000
March 31, 2013	\$1,000,000
June 30, 2013	\$1,500,000
September 30, 2013	\$1,500,000
December 31, 2013	\$1,500,000
March 31, 2014	\$1,500,000
June 30, 2014	\$1,500,000
September 30, 2014	\$1,500,000
December 31, 2014	\$1,500,000
March 31, 2015	\$1,500,000
June 30, 2015	\$1,500,000
September 30, 2015	\$1,500,000
December 31, 2015	\$1,500,000
March 31, 2016	\$1,500,000
June 30, 2016	\$1,500,000
September 30, 2016	\$1,500,000
December 31, 2016	\$1,500,000
March 31, 2017	\$1,500,000

To the extent not previously paid, all the then unpaid balances of all Term Loans shall be paid in full by Dairyland on the Maturity Date.

(b) [Intentionally Omitted].

(c) 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.

(d) 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.

(e) 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.

(f) 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 the order of such Lender (or, if requested by such Lender, 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 payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

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) In the event and on each occasion that any Net Proceeds are received by or on behalf of any Loan Party or any Subsidiary in respect of any Prepayment Event, the Borrowers shall, within one (1) Business Day 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 amount equal to (i) in the case of any event described in clause (a), (b), (d) or (e) of the definition of "Prepayment Event," 100% of such Net Proceeds and (ii) in the case of any event described in clause (c) of the definition of "Prepayment Event," 50% of such Net Proceeds; provided that, (x) in the case of any event described in clause (a), (b), (c) or (e) of the definition of the term "Prepayment Event," no payment shall be due under this Section until the aggregate proceeds received in connection with such Prepayment Events after the Effective Date exceed \$1,000,000 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 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 270 days after receipt of such Net Proceeds or such longer period of time as the Administrative Agent may agree to in its sole discretion (such period of time, the "Reinvestment Period"), to acquire (or replace or rebuild) real property, equipment or other tangible assets to be used in the business of the Loan Parties, and certifying that no 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 ninety (90) 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 (1) Business Day) required in an amount equal to such Net Proceeds that have not been so applied; provided, further that the Borrowers shall not be permitted to make elections to use Net Proceeds to acquire (or replace or rebuild) real property, equipment or other tangible assets (excluding inventory) with respect to Net Proceeds in any Fiscal Year in an aggregate amount in excess of \$3,000,000. 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) Until the Maturity Date, so long as the Leverage Ratio on the last day of the immediately preceding Fiscal Year is greater than 2.00:1.00, 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 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 50% of the Loan Parties' Excess Cash Flow for the immediately preceding Fiscal Year, beginning with the partial Fiscal Year that commences on the first day of the first full Fiscal Month beginning after the Effective Date and ends on the last day of the Fiscal Month ending closest to December 31, 2012 (provided, that the mandatory payment under this paragraph (d) shall be capped at (x) \$2,000,000 for the Fiscal Year ending most closely to December 31, 2012 and (y) \$4,000,000 for each Fiscal Year thereafter). 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 satisfactory to Administrative Agent.

(e) All amounts prepaid pursuant to Section 2.11(c) and (d) shall be applied, first to prepay the Term Loans (to be applied to installments of the Term Loans in inverse order of maturity) and second to prepay the Revolving Loans (including Swingline Loans) without a corresponding reduction in the Revolving Commitments and to cash collateralize outstanding LC Exposure.

(f) 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) of any prepayment hereunder not later than 10:00 a.m., New York City time, (A) in the case of prepayment of a Eurodollar 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. 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.

SECTION 2.12. Fees. (a) The Borrowers agree to pay to the Administrative Agent for the account of each Lender a commitment fee, which shall accrue at a per annum rate equal to 0.40% on the average daily amount of the Available Revolving Commitment of such Lender during the period from and including the Effective Date to but excluding the date on which the Lenders' Revolving 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 date hereof) and on the date on which the Revolving 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) The Borrowers agree to pay (i) to the Administrative Agent for the account of each Revolving 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 Eurodollar Revolving 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 Revolving 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 0.25% 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 Revolving 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 Revolving Commitments terminate and any such fees accruing after the date on which the Revolving 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.

(c) The Borrowers agree to pay to the Administrative Agent, for its own account (as applicable), the fees payable under the Fee Letter 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.

(d) 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 2.13. Interest. (a) The Loans comprising each ABR Borrowing (including each Swingline Loan) shall bear interest at the Alternate Base Rate plus the Applicable Rate.

(b) The Loans comprising each Eurodollar Borrowing shall bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Rate.

(c) [Intentionally Omitted].

(d) Notwithstanding the foregoing, during the occurrence and continuance of a 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 a 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 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 an ABR 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 Eurodollar 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 LIBO Rate or LIBO Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

SECTION 2.14. Alternate Rate of Interest. If prior to the commencement of any Interest Period for a Eurodollar Borrowing:

(a) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period; or

(b) the Administrative Agent is advised by the Required Lenders that the Adjusted LIBO Rate or the LIBO 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;

then the Administrative Agent shall give notice thereof to the Borrower Representative and the Lenders by telephone or facsimile as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower Representative and the Lenders that 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.

SECTION 2.15. Increased Costs. (a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement 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 LIBO Rate) or the Issuing Bank;

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

(iii) subject any Recipient to any Taxes on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto (other than (A) Indemnified Taxes, (B) Excluded Taxes and (C) Other Connection Taxes on gross or net income, profits or receipts (including value-added or similar Taxes));

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making 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.

(b) 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 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.

(c) 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.

(d) 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 2.16. Break Funding Payments. In the event of (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Eurodollar 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 Eurodollar 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 LIBO 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 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. Taxes. (a) Withholding of Taxes; Gross-Up. Each payment by any Loan Party under any Loan Document shall be made without withholding for any Taxes, unless such withholding is required by any law. If any Withholding Agent determines, in its sole discretion exercised in good faith, that it is so required to withhold Taxes, then such Withholding Agent 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 Party shall be increased as necessary so that, net of such withholding (including such withholding applicable to additional amounts payable under this Section), the applicable Recipient receives the amount it would have received had no such withholding been made.

(b) Payment of Other Taxes by the Borrowers. The Borrowers shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes by any Loan Party to a Governmental Authority, 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 for any Indemnified Taxes that are paid or payable by such Recipient in connection with any Loan Document (including amounts paid or payable under this Section 2.17(d)) 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. The indemnity under this Section 2.17(d) shall be paid within ten (10) days after the Recipient delivers to the Borrower

Representative a certificate stating the amount of any Indemnified Taxes so paid or payable by such Recipient and describing the basis for the indemnification claim. Such certificate shall be conclusive of the amount so paid or payable absent manifest error. Such Recipient shall deliver a copy of such certificate to the Administrative Agent.

(e) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent for any Taxes (but, in the case of any Indemnified Taxes, 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) attributable to such Lender that are paid or payable 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. The indemnity under this Section 2.17(e) shall be paid within ten (10) days after the Administrative Agent delivers to the applicable Lender a certificate stating the amount of Taxes so paid or payable by the Administrative Agent. Such certificate shall be conclusive of the amount so paid or payable absent manifest error.

(f) Status of Lenders. Any Lender that is entitled to an exemption from, or reduction of, any applicable withholding Tax with respect to any payments 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, or at a reduced rate of, withholding. In addition, any Lender, if requested by the Borrower Representative or the Administrative Agent, shall deliver such other documentation prescribed by law or reasonably requested by the Borrower Representative or the Administrative Agent as will enable the Borrower Representative or the Administrative Agent to determine whether or not such Lender is subject to any withholding (including 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) through (E) below or Section 2.17(f)(iii) below to the extent such documentation is required by law) 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. Upon the reasonable request of the Borrower Representative or the Administrative Agent, any Lender shall update any form or certification previously delivered pursuant to this Section 2.17(f). If any form or certification previously delivered pursuant to this Section expires or becomes obsolete or inaccurate in any respect with respect to a Lender, such Lender shall promptly (and in any event within ten (10) days after such expiration, obsolescence or inaccuracy) notify the Borrower Representative and the Administrative Agent in writing of such expiration, obsolescence or inaccuracy and update the form or certification if it is legally eligible to do so.

(i) Without limiting the generality of the foregoing, if any Borrower is a U.S. Person, any Lender with respect to such Borrower shall, if it is legally eligible to do so, deliver to the Borrower Representative and the Administrative Agent (in such number of copies reasonably requested by the Borrower Representative and the Administrative Agent) on or prior to the date on which such Lender becomes a party hereto, duly completed and executed copies of whichever of the following is applicable:

(A) in the case of a Lender that is a U.S. Person, IRS Form W-9 certifying that such Lender is exempt from U.S. Federal backup withholding tax;

(B) in the case of a Non-U.S. Lender claiming the benefits of an income tax treaty to which the United States is a party (1) with respect to payments of interest under any Loan Document, IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. Federal withholding Tax pursuant to the “interest” article of such tax treaty and (2) with respect to any other applicable payments under this Agreement, IRS Form W-8BEN 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;

(C) in the case of a Non-U.S. Lender for whom payments under this Agreement constitute income that is effectively connected with such Lender’s conduct of a trade or business in the United States, IRS Form W-8ECI;

(D) in the case of a Non-U.S. Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code both (1) IRS Form W-8BEN and (2) a tax certificate substantially in the form of Exhibit G-1 to the effect that such Lender is not (a) a “bank” within the meaning of Section 881(c)(3)(A) of the Code, (b) a “10 percent shareholder” of such Borrower within the meaning of Section 881(c)(3)(B) of the Code, (c) a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code and (d) conducting a trade or business in the United States with which the relevant interest payments are effectively connected;

(E) in the case of a Non-U.S. Lender that is not the beneficial owner of payments made under this Agreement (including a partnership or a participating Lender) (1) an IRS Form W-8IMY on behalf of itself and (2) the relevant forms prescribed in clauses (A), (B), (C), (D) and (E) of this paragraph (f)(ii) that would be required of each such beneficial owner or partner of such partnership if such beneficial owner or partner were a Lender; provided, however, that if the Lender is a partnership and one or more of its partners are claiming the exemption for portfolio interest under Section 881(c) of the Code, such Lender may provide a tax certificate substantially in the form of Exhibit G-2 on behalf of such partners; or

(F) any other form prescribed by law as a basis for claiming exemption from, or a reduction of, U.S. Federal withholding Tax together with such supplementary documentation necessary to enable the Borrower Representative or the Administrative Agent to determine the amount of Tax (if any) required by law to be withheld.

(ii) 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 Withholding Agent, at the time or times prescribed by law and at such time or times reasonably requested by the Withholding 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 Withholding Agent as may be necessary for the Withholding Agent to comply with its obligations under FATCA, to determine that such Lender has or has not complied with such Lender’s obligations under FATCA and, as necessary, to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 2.17(f)(iii), “FATCA” shall include any amendments made to FATCA after the date of this Agreement.

(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 additional amounts paid 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 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including any Taxes) of such indemnifying 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 to such indemnified party pursuant to the previous sentence (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 2.17(g), in no event will any indemnified party be required to pay any amount to any indemnifying party pursuant to this Section 2.17(g) if such payment would place such indemnified party in a less favorable position (on a net after-Tax basis) than such indemnified party would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This Section 2.17(g) shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes which it deems confidential) to the indemnifying party or any other Person.

(h) Issuing Bank. For purposes of Section 2.17(e) and (f), the term “Lender” includes any Issuing Bank.

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, 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 10 South Dearborn Street, Chicago, Illinois, or to the account designated by Administrative Agent, 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.

(b) Any proceeds of Collateral received by the Administrative Agent (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 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 or Swap Obligations), second, to pay any fees or expense reimbursements then due to the Lenders from the Borrowers (other than in connection with Banking Services or Swap Obligations), third, to pay interest then due and payable on the Loans ratably, fourth, to prepay principal on the Loans and unreimbursed LC Disbursements and any other amounts owing with respect to Banking Services Obligations and Swap Obligations ratably (with amounts applied to the Term Loans applied to installments of the Term Loans in inverse order of maturity), fifth, to deposit an amount with the Administrative Agent equal to one hundred

five percent (105%) 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, and sixth, to the payment of any other Secured Obligation due to the Administrative Agent 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 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. 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.

(c) 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 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 that all such Borrowings shall be deemed to have been requested pursuant to Section 2.03 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.

(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 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 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 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; 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 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 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. In such event, if the Borrowers have not in fact made such payment, then each of the Lenders or the Issuing Bank, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Bank 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 additional amount 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 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 and obligations under this Agreement 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 if a Revolving Commitment is being assigned, the Issuing Bank), which consent shall not unreasonably be withheld or delayed, (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 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) fees shall cease to accrue on the unfunded portion of the Revolving Commitment of such Defaulting Lender pursuant to Section 2.12(a);

(b) the Commitments and Revolving Exposure of such Defaulting Lender shall not be included in determining whether the Required Lenders or the Required Revolving Lenders have taken or may take any action hereunder (including any consent to any amendment, waiver or other modification pursuant to Section 9.02); provided, that 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 affected thereby;

(c) if any Swingline Exposure or LC Exposure exists at the time such Lender becomes a Defaulting Lender then:

(i) 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 to the extent the sum of all non-Defaulting Lenders' Revolving Exposures plus such Defaulting Lender's Swingline Exposure and LC Exposure does not exceed the total of all non-Defaulting Lenders' Revolving Commitments;

(ii) 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;

(iii) 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;

(iv) 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

(v) 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 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

(d) 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 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 Revolving 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 with respect to the Parent of any Lender shall occur following the date hereof 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 Revolving 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 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. The Borrower Representative may from time to time elect to increase the Revolving Commitments (each a "Revolving Commitment Increase") or enter into one or more tranches of term loans (each an "Incremental Term Loan" and, together with each Revolving Commitment Increase, the "Incremental Extensions of Credit"), in each case in minimum increments of \$10,000,000 so long as, after giving effect thereto, the aggregate amount of such Incremental Extensions of Credit does not exceed \$40,000,000. The Borrower Representative may arrange for any such Incremental Extensions of Credit to be provided by one or more Lenders (each Lender so agreeing to an increase in its Revolving Commitment, or 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"), to increase their existing Revolving Commitments, or to participate in such Incremental Term Loans, or extend Revolving Commitments, as the case may be; provided that (i) each Augmenting Lender, shall be subject to the approval of the Borrower Representative and the Administrative Agent and (ii) (x) in the case of an Increasing Lender, the Borrower Representative and such Increasing Lender execute 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 execute an agreement substantially in the form of Exhibit C hereto. No consent of any Lender (other than the Lenders participating in the Incremental Extensions of Credit) shall be

required for any Incremental Extension of Credit pursuant to this Section 2.22. Incremental Extensions of Credit created pursuant to this Section 2.22 shall become effective on the date agreed by the Borrower Representative, the Administrative Agent and the relevant Increasing Lenders or Augmenting Lenders, and the Administrative Agent shall notify each Lender thereof. Notwithstanding the foregoing, no Incremental Extensions of Credit shall become effective under this paragraph unless, (i) on the proposed date of the effectiveness of such Incremental Extension of Credit, (A) the conditions set forth in paragraphs (a) and (b) of Section 4.02 shall be satisfied or waived by the Required Lenders and the Administrative Agent shall have received a certificate to that effect dated such date and executed by a Financial Officer of the Borrower Representative and (B) Holdings and its Subsidiaries shall be in compliance (on a pro forma basis) with the covenants contained in Section 6.13 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 Extension of Credit. On the effective date of any Incremental Extension of Credit being made, (i) each relevant Increasing Lender and Augmenting Lender 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 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 Applicable Percentage of such outstanding Revolving Loans, and (ii) except in the case of any Incremental Term Loans, the Borrowers shall be deemed to have repaid and reborrowed all outstanding Revolving Loans as of the date of any increase in the Revolving 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 on behalf of the applicable Borrower 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 Eurocurrency 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. The Incremental Term Loans (a) shall rank pari passu in right of payment with the Revolving Loans, (b) shall not mature earlier than the Maturity Date (but may have amortization prior to such date) and (c) shall be treated substantially the same as (and in any event no more favorably than) the Revolving Loans; provided that (i) the terms and conditions applicable to any tranche of Incremental Term Loans maturing after the Maturity Date may provide for material additional or different financial or other covenants or prepayment requirements applicable only during periods after the Maturity Date and (ii) the Incremental Term Loans may be priced differently than the Revolving Loans. 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 by the Borrowers, each Increasing Lender participating in such tranche, each Augmenting Lender participating in such tranche, 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 increase its Revolving Commitment hereunder or provide Incremental Term Loans at any time.

REPRESENTATIONS AND WARRANTIES

Each Loan Party represents and warrants to the Lenders that:

SECTION 3.01. Organization; Powers. Each Loan Party and its 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 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 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 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 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 Subsidiaries or the assets of any Loan Party or any of its Subsidiaries, or give rise to a right thereunder to require any payment to be made by any Loan Party or any of its 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 Subsidiaries, except Liens created pursuant to the Loan Documents.

SECTION 3.04. Financial Condition; No Material Adverse Change. (a) Holdings has heretofore furnished to the Administrative Agent and the Lenders 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 30, 2011, reported on by BDO USA, LLP, independent public accountants. 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.

(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 2012 through 2017. 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.

(c) No event, change or condition has occurred that has had, or could reasonably be expected to have, a Material Adverse Effect, since December 30, 2011.

SECTION 3.05. Properties. (a) As of the date of this Agreement, 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 Subsidiaries 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 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 date of this Agreement, is set forth on Schedule 3.05, and the use thereof by each Loan Party and its Subsidiaries does not infringe upon the rights of any other Person, except for such infringements which, individually or in the aggregate, could 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 licensing agreement or similar arrangement. Schedule 3.05 sets forth a complete and accurate list of all registered Intellectual Property owned by each Loan Party as of the 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 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, 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 Subsidiaries (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could 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, (i) no Loan Party or any Subsidiary has received notice of any claim with respect to any Environmental Liability that, individually or in the aggregate, could not reasonably be expected to result in liability to the Loan Parties in excess of \$1,000,000 in the aggregate and (ii) except with respect to any other matters that, individually or in the aggregate, could not reasonably be expected to result in liability to the Loan Parties in excess of \$1,000,000 in the aggregate, no Loan Party nor any 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.

(c) Since the date of this Agreement, there has been no change in the status of the matters disclosed on Schedule 3.06 that, individually or in the aggregate, has resulted in, or could reasonably be expected to result in, a Material Adverse Effect.

SECTION 3.07. Compliance with Laws and Agreements. Each Loan Party and its 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 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 "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940. No Loan Party or any 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 Subsidiaries has timely filed or caused to be filed all 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 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 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 not reasonably be expected to result in a Material Adverse Effect, no event or condition exists which could reasonably be expected to jeopardize such qualified status. Except as could 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 Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, could 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 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 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 3.14. Insurance. 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 Subsidiaries. As of the Effective Date, 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 the Holdings and its Subsidiaries is adequate.

SECTION 3.15. Capitalization and Subsidiaries. Schedule 3.15 sets forth (a) a true and complete listing of each class of each Loan Party's 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, 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 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, (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) letter-of-credit rights with respect to letters of credit in an amount, in each case, of less than \$1,000,000 and (g) commercial tort claims having a value, in each case, of less than \$1,000,000.

SECTION 3.17. Employment Matters. As of the Effective Date, there are no strikes, lockouts or slowdowns against any Loan Party or any 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 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 Subsidiary, or for which any claim may be made against any Loan Party or any 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 Subsidiary.

SECTION 3.18. Nature of Business; Permits and Licenses; Tradenames. (a) No Loan Party or Subsidiary is engaged in any business other than those engaged in 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).

(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 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 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 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 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 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 Subsidiary, 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 (i) or (ii), as could 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 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 date of this Agreement, 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 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 2.0% 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 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 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 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 target 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 target 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. The Loan Parties, the 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. 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 and the operation of their 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 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 not reasonably be expected to result in a Material Adverse Effect.

(b) Since December 30, 2011, 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 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 not reasonably be expected to result in a Material Adverse Effect.

(c) Since December 30, 2011, no Loan Party or its 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 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 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 not reasonably be expected to result a Material Adverse Effect.

#### ARTICLE IV

#### CONDITIONS

SECTION 4.01. Effective Date. The obligations of the Lenders to make Loans and of the Issuing Bank to issue 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):

(a) Credit Agreement and 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 facsimile or other 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 Loan Documents and such other certificates, documents, instruments and agreements as the Administrative Agent shall reasonably request in connection with the transactions contemplated by this Agreement and the other Loan Documents, including any promissory notes requested by a Lender pursuant to Section 2.10 payable to the order of each such requesting Lender and a written opinion of the Loan Parties' counsel, addressed to the Administrative Agent, the Issuing Bank and the Lenders, all in form and substance satisfactory to Administrative Agent and its counsel and as further described in the list of closing documents attached as Exhibit D.

(b) Financial Statements and Projections. The Lenders shall have received the financial statements referenced in Section 3.04, together with such information as the Administrative Agent and the Lenders shall reasonably request in connection therewith (including, without limitation, a detailed description of the assumptions used in preparing the financial statement projections referenced in Section 3.04(b)), and such financial statements shall not, in the reasonable judgment of the Administrative Agent, reflect any material adverse change in the consolidated financial condition of Holdings and its Subsidiaries since December 30, 2011.

(c) Closing Certificates; Certified Certificate of Incorporation; Good Standing Certificates. The Administrative Agent shall have received (i) a certificate of each Loan Party, dated the Effective Date and executed by its Secretary or Assistant Secretary, which shall (A) certify the resolutions of its Board of Directors, members or other body authorizing the execution, delivery and performance of the Loan Documents to which it is a party, (B) identify by name and title and bear the signatures of the Financial Officers and any other officers of such Loan Party authorized to sign the Loan Documents to which it is a party, and (C) contain the certificate or articles of incorporation or organization of each Loan

Party certified by the relevant authority of the jurisdiction of organization of such Loan Party and a true and correct copy of its by-laws or operating, management or partnership agreement, and (ii) a long form good standing (or similar) certificate for each Loan Party from its jurisdiction(s) of organization and foreign qualification.

(d) 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 Holdings, confirming compliance with the conditions set forth in paragraphs (a) and (b) of Section 4.02.

(e) Fees. The Lenders and the Administrative Agent shall have received all fees required to be paid, and all expenses for which invoices have been presented (including the reasonable and documented out-of-pocket fees and expenses of legal counsel), on or before the Effective Date. All such amounts will be paid with proceeds of Loans made on the Effective Date and will be reflected in the funding instructions given by the Borrower Representative to the Administrative Agent on or before the Effective Date.

(f) Lien Searches. The Administrative Agent shall have received the results of a recent lien search in each of the jurisdictions where each of the Loan Parties is organized, and such search shall reveal no liens on any of the assets of the Loan Parties except for liens permitted by Section 6.02 or discharged on or prior to the Effective Date pursuant to a pay-off letter or other documentation satisfactory to the Administrative Agent.

(g) Pay-Off Letter. The Administrative Agent shall have received evidence satisfactory to it that the credit facility evidenced by that certain Credit Agreement, dated as of August 2, 2011, by and among the Loan Parties, the financial institutions party thereto as Lenders, and Chase, as Administrative Agent, shall have been terminated and cancelled and all indebtedness thereunder shall have been fully repaid (except to the extent being so repaid with Loans made on the Effective Date) and any and all liens thereunder shall have been terminated.

(h) Solvency. The Administrative Agent shall have received a solvency certificate from a Financial Officer of Holdings in form and substance satisfactory to the Administrative Agent.

The Administrative Agent shall notify the Borrowers 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, and of the Issuing Bank to issue, amend, renew or extend any Letter of Credit, is subject to the satisfaction of the following conditions:

(a) The representations and warranties of the Loan Parties set forth in this Agreement shall be true and correct in all material respects with the same effect as though made 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 (it being understood and agreed that any representation or warranty which by its terms is made as of a specified date shall be required to be true and correct only as of such specified date).

(b) 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, no Default shall have occurred and be continuing.

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) and (b) 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 discretion, and all LC Disbursements have been reimbursed, each Loan Party executing 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) as soon as available, but in any event within ninety (90) days after the end of each Fiscal Year of Holdings and its Subsidiaries, its audited consolidated balance sheet and related statements of operations, stockholders' equity and cash flows 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 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;

(b) within forty-five (45) days after the end of each of the first three Fiscal Quarters of each Fiscal Year, its consolidated and consolidating balance sheet and related statements of operations and stockholders' equity and consolidated statements of cash flows as of the end of and for such Fiscal Quarter and the then elapsed portion of such Fiscal Year, setting forth in each case in comparative form (x) the projected figures for such period and (y) 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;

(c) concurrently with any delivery of financial statements under clause (a) or (b) above, 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 demonstrating compliance with Section 6.13 and (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;

(d) [Intentionally Omitted];

(e) as soon as available but in any event no later than ten (10) days prior to the end of each Fiscal Year of Holdings, a copy of the plan and forecast (including a projected consolidated balance sheet, income statement and funds flow statement) of Holdings and its Subsidiaries for each Fiscal Quarter of the upcoming Fiscal Year (the "Projections") in form reasonably satisfactory to the Administrative Agent (including the Fiscal Month end dates for such Fiscal Year);

(f) [Intentionally Omitted];

(g) 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 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;

(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;

(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; and

(j) promptly following any reasonable request therefor, such other information regarding the operations, business affairs and financial condition of the Loan Parties or any Subsidiary, or compliance with the terms of this Agreement, as the Administrative Agent or any Lender may reasonably request.

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 Compliance 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 (3) Business Days after any Authorized Officer of a Loan Party knows of the occurrence of a Default, the occurrence of any Default;

(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 and that, if adversely determined, could 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;

(d) 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 a Material Adverse Effect;

(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 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 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 not reasonably be expected to result in a Material Adverse Effect; provided that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution 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.

SECTION 5.04. Payment of Obligations. Each Loan Party will, and will cause each 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 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 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 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.

SECTION 5.06. Books and Records; Inspection Rights. Each Loan Party will, and will cause each 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 (including employees of the Administrative Agent, any Lender or any consultants, accountants, lawyers 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; provided that, notwithstanding anything herein to the contrary, unless an Event of Default has occurred and is continuing, the Loan Parties shall not be required to reimburse the Administrative Agent for more than two (2) such visits and inspections per calendar year. 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 Holdings and its Subsidiaries' assets for internal use by the Administrative Agent and the Lenders.

SECTION 5.07. Compliance with Laws. Each Loan Party will, and will cause each 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 not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.08. 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 and Permitted Acquisitions and to fund the working capital needs, and for general corporate purposes, of the Borrowers in the ordinary course of business. 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.

SECTION 5.09. Insurance. Each Loan Party will, and will cause each Subsidiary to, maintain with financially sound and reputable carriers having a financial strength rating of at least A- by A.M. Best Company (a) insurance in such amounts (with no greater risk retention) 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, 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. The Borrowers will furnish to the Lenders, upon request of the Administrative Agent, information in reasonable detail as to the insurance so maintained.

SECTION 5.10. 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 5.11. [Intentionally Omitted].

SECTION 5.12. Depository Banks. The Loan Parties and their Subsidiaries will maintain Administrative Agent as their principal depository bank.

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 formed or acquired after the date of this Agreement to become a Loan Party by executing a Joinder Agreement within thirty (30) days (or such later date as may from time to time be approved by the Administrative Agent in its sole discretion) of such formation, acquisition or qualification, 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. 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, the Lenders 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 date hereof that is not otherwise expressly permitted herein.

(b) Without limiting the generality of the foregoing, each Borrower and each Subsidiary that is a Loan Party will (i) cause the Applicable Pledge Percentage of the issued and outstanding 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 and (ii) deliver Mortgages and Mortgage Instruments with respect to real property owned by such Loan Party (other than with respect to Excluded Assets) to the extent, and within such time period as is, reasonably required by the Administrative Agent. Notwithstanding the foregoing, (i) no Mortgages and Mortgage Instruments are required to be delivered hereunder until the date that occurs sixty (60) days after the Effective Date or such later date as the Administrative Agent may agree in the exercise of its reasonable discretion with respect thereto and (ii) no such pledge agreement in respect of the Equity Interests of a Foreign Subsidiary shall be required hereunder (x) until the date that occurs sixty (60) days after the Effective Date or such later date as the Administrative Agent may agree in the exercise of its reasonable discretion with respect thereto, and (y) 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.

(c) Without limiting the foregoing, each Loan Party will, and will cause each 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, fixture filings, mortgages, deeds of trust and other documents and such other actions or deliveries of the type required by Section 4.01, as applicable), which may be required by 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 at the expense of the Loan Parties.

(d) 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, 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.

## 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 discretion, and all LC Disbursements have been reimbursed, each Loan Party executing 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 Subsidiary to, create, incur, assume or suffer to exist any Indebtedness, except:

(a) the Secured Obligations;

(b) Indebtedness existing on the date hereof 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 (other than Holdings) to any other Loan Party (other than Holdings); provided that if such Indebtedness is evidenced by promissory notes or other instruments, such promissory notes or other instruments shall be pledged to Administrative Agent, for the benefit of the Secured Parties, and have subordination terms satisfactory to Administrative Agent;

(d) Guarantees by any Loan Party of Indebtedness of any other Loan Party (other than Holdings and CW Parent); 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 the Indebtedness so Guaranteed is subordinated to the Secured Obligations;

(e) Indebtedness of any Borrower or any Subsidiary (other than CW Parent) 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 \$2,000,000 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) 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 originally 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 terms of such Refinancing Indebtedness are not less favorable to the obligor thereunder than the original terms of such Refinanced Indebtedness and (vi) 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 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, in each case incurred in the ordinary course of business;

(h) Indebtedness of any Borrower or any Subsidiary (other than CW Parent) 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 Subsidiary (other than CW Parent) in respect of netting services, overdraft protections and otherwise in connection with deposit accounts, so long as (i) such Indebtedness is incurred in the ordinary course of business and is not outstanding for more than three (3) Business Days and (ii) the aggregate amount of such Indebtedness does not exceed \$500,000 at any one time outstanding;

(j) Subordinated Indebtedness of the Borrowers in an aggregate principal amount not exceeding \$30,000,000 at any time outstanding;

(k) the Dairyland HP Indebtedness; and

(l) other Indebtedness of the Borrowers in an aggregate principal amount not exceeding \$5,000,000 at any time outstanding.

SECTION 6.02. Liens. No Loan Party will, nor will it permit any 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 Subsidiary existing on the date hereof 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 Subsidiary and (ii) such Lien shall secure only those obligations which it secures on the date hereof;

(d) Liens on fixed or capital assets acquired, constructed or improved by any Borrower or any 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 Subsidiary or any other Borrower or 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 Subsidiary or existing on any property or asset (other than Accounts and Inventory) of any Person that becomes a Loan Party after the date hereof 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 Subsidiary that is not a Loan Party in favor of any Borrower or another Loan Party in respect of Indebtedness owed by such 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 Subsidiaries;

(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 on property with an aggregate value not exceeding \$1,000,000 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 is securing the Dairyland HP Indebtedness and related obligations under the New Markets Tax Credit Financing; and

(p) other Liens securing Subordinated Indebtedness not exceeding \$250,000 in the aggregate at any time.

SECTION 6.03. Fundamental Changes. (a) No Loan Party will, nor will it permit any 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 and be continuing (i) any Subsidiary of any Borrower may merge into (x) another Subsidiary that is not a Borrower or (y) a Borrower in a transaction in which such Borrower is the surviving entity and (ii) any Subsidiary that is not a Loan Party may liquidate or dissolve if the Borrower which owns such Subsidiary determines in good faith that such liquidation or dissolution is in the best interests of such Borrower and is not materially disadvantageous to the Lenders; provided that any such merger involving a Person that is not a wholly owned Subsidiary immediately prior to such merger shall not be permitted unless also permitted by Section 6.04.

(b) No Loan Party will, nor will it permit any Subsidiary to, engage in any business other than businesses of the type conducted by the Borrowers and their Subsidiaries on the date hereof and businesses reasonably related thereto and logical extensions thereof.

(c) Holdings will not engage in any business or activity other than the ownership of all the outstanding Equity Interests of Dairyland and CW Parent and activities incidental thereto. CW Parent will not engage in any business or activity other than the ownership of all of the outstanding Equity Interests of CW Mid-Atlantic, CW Florida and CW West Coast and activities incidental thereto.

(d) The Loan Parties will not change the method of determining the Fiscal Year of Holdings and its Subsidiaries, unless Borrower Representative shall have given Administrative Agent at least 180 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).

SECTION 6.04. 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 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 date hereof and described in Schedule 6.04;

(c) investments by Holdings in the Borrowers and CW Parent and by CW Parent, the Borrowers and the 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 a Loan Party (other than Holdings) to any other Loan Party (other than Holdings); provided that the parties shall have complied with Section 6.01(c);

(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 \$500,000 in the aggregate at any one time outstanding;

(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 Subsidiary of a Borrower or consolidates or merges with a Borrower or any of the 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 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 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; and

(r) investments by Holdings and its Subsidiaries in Dairyland HP in an aggregate amount not to exceed \$10,000,000 during the term of this Agreement.

SECTION 6.05. Asset Sales. No Loan Party will, nor will it permit any 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 Subsidiary issue any additional Equity Interest (other than to another Borrower or another 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 (iii) intellectual property that is no longer material to the conduct of the business of the Loan Parties;

(b) sales, transfers and dispositions of assets to any Borrower or any other Loan Party (other than Holdings and CW Parent); provided that, any registered intellectual property of any Loan Party or its Subsidiaries may be assigned to Holdings, so long as all actions required to be taken with respect to such intellectual property under Section 5.13 shall have been taken within the time period set out therein;

(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 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; and

(h) sales, transfers and other dispositions of assets (other than Equity Interests in a Subsidiary unless all Equity Interests in such Subsidiary are sold) that are not permitted by any other paragraph of this Section; provided that the aggregate fair market value of all assets sold, transferred or otherwise disposed of in reliance upon this paragraph (h) shall not exceed \$1,000,000 during any twelve month 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 6.06. Sale and Leaseback Transactions. No Loan Party will, nor will it permit any 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, except for any such sale of any fixed or capital assets by the Borrowers or any Subsidiary that is approved by 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.

SECTION 6.07. Swap Agreements. No Loan Party will, nor will it permit any Subsidiary to, enter into any Swap Agreement, except (a) Swap Agreements entered into to hedge or mitigate risks to which any Borrower or any Subsidiary has actual exposure (other than those in respect of Equity Interests of any Borrower or any of its Subsidiaries), and (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 Subsidiary.

SECTION 6.08. Restricted Payments; Certain Payments of Indebtedness. (a) 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, except, (x) any Loan Party may make a Permitted Holdings Dividend under clause (iii) of the definition thereof to Holdings and (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), (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, (iii) any Loan Party may make a Permitted Holdings Dividend to Holdings, and (iv) Holdings and its Subsidiaries may make any other Restricted Payment, so long as the aggregate amount of all such Restricted Payments made pursuant to this clause (iv) during any Fiscal Year does not exceed \$1,000,000.

(b) 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, 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, 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) 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; and

(vii) prepayments with respect to the Dairyland HP Indebtedness, so long as (x) after giving effect to such payment, the Loan Parties shall be in pro forma compliance with the financial covenants set forth in Section 6.13 as 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) no Default or Event of Default has occurred and is continuing or would be caused by such payment.

**SECTION 6.09. Transactions with Affiliates.** No Loan Party will, nor will it permit any 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, 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 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 not involving any other Affiliate, (c) transactions that are otherwise expressly permitted by the terms of this Agreement and the other Loan Documents, (d) transactions set forth on Schedule 3.22; 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 or about the Effective Date, between Dairyland and Dairyland HP, relating to the Dairyland HP Facility, as the same may be amended from time to time.

**SECTION 6.10. Restrictive Agreements.** No Loan Party will, nor will it permit any 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 Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets, or (b) the ability of any 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 Subsidiary or to Guarantee Indebtedness of any other Loan

Party or 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 date hereof 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 Subsidiary pending such sale, provided such restrictions and conditions apply only to the 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 and (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 Subsidiary.

SECTION 6.11. Amendment of Material Documents. No Loan Party will, nor will it permit any Subsidiary to, amend, modify or waive any of its rights under (a) any agreement relating to any Subordinated Indebtedness and (b) its certificate of incorporation, by-laws, operating, management or partnership agreement or other organizational documents, in each case, to the extent any such amendment, modification or waiver would be adverse to the Lenders.

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. Financial Covenants.

(a) Fixed Charge Coverage Ratio. The Loan Parties will not permit the Fixed Charge Coverage Ratio, determined for the twelve month period ending on the last day of each Fiscal Quarter, to be less than 1.25:1.00.

(b) Leverage Ratio. The Loan Parties will not permit the Leverage Ratio, determined for the twelve month period ending on the last day of each Fiscal Quarter during any period set forth below, to be greater than the ratio set forth below opposite such period:

<u>Any Fiscal Quarter Ending In</u>	<u>Ratio</u>
Fiscal Years 2012 and 2013	3.50:1.00
Fiscal Years 2014 and 2015	3.25:1.00
Any Period Thereafter	3.00:1.00

(c) Certain Calculations. Solely for purposes of this Section 6.13, with respect to any period during which a Permitted Acquisition or a disposition outside the ordinary course that is permitted by Section 6.04 is consummated, EBITDA, Total Indebtedness and the components of Fixed Charges shall be calculated for such period giving pro forma effect to such transaction (including pro forma adjustments for fees, expenses and non-recurring charges that are directly attributable to such transaction and are approved by the Administrative Agent in its sole discretion). The consolidated financial statements of Holdings and its Subsidiaries shall be reformulated as if such transaction (and any related incurrence, repayment or assumption of Indebtedness) had occurred on the first day of the applicable period.

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 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;

(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 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, 5.06, 5.07, 5.09 or 5.13 or in Article VI of this Agreement or (ii) Article IV or VII of the Security Agreement;

(e) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained (i) in Section 5.02 (other than clause (a)), 5.08, 5.10 or 5.12 of this Agreement, and such failure, if capable of being remedied, shall continue unremedied for a period of five (5) days or (ii) 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 failure in either case shall continue unremedied for a period of ten (10) days after notice thereof from the Administrative Agent to the Borrower Representative;

(f) any Loan Party or any Subsidiary shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any 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 any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness 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 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;

(h) 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 Subsidiary 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 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;

(i) any Loan Party or any 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 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;

(j) any Loan Party or any 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) one or more judgments for the payment of money in an aggregate amount in excess of \$1,000,000 shall be rendered against any Loan Party, any Subsidiary of any Loan Party or any combination thereof and the same shall remain undischarged for a period of forty-five (45) 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 Subsidiary of any Loan Party to enforce any such judgment; 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 reasonably be expected to result in aggregate liabilities in excess of \$1,000,000;

(m) a Change in Control shall occur;

(n) the occurrence of any "default", as defined in any Loan Document (other than this Agreement), or the breach of any of the terms or provisions of any Loan Document (other than this Agreement), which default or breach continues beyond any period of grace therein provided;

(o) 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;

(p) except as permitted by the terms of any Collateral Document, (i) any Collateral Document shall for any reason fail to create a valid security interest in any Collateral purported to be covered thereby, or (ii) any Lien securing any Secured Obligation shall cease to be a perfected, first priority Lien;

(q) any Collateral Document 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 any Collateral Document;

(r) any material provision of any Loan Document for any reason ceases to be valid, binding and enforceable in accordance with its terms (or 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);

(s) [Intentionally Omitted];

(t) any (i) reduction of the aggregate revenues of the Loan Parties during a twelve-month period in excess of twenty-five percent of the aggregate revenues of the Loan Parties during the immediately preceding twelve-month period or (ii) the Loan Parties' loss of required permits or licenses that could reasonably be expected to result in a reduction of the aggregate revenues of the Loan Parties during the immediately succeeding twelve-month period in excess of twenty-five percent of the aggregate revenues of the Loan Parties during the immediately preceding twelve-month period, which, in either case, could reasonably be expected to have a Material Adverse Effect;

(u) 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 could reasonably be expected to have a Material Adverse Effect; or

(v) any Equity Interest which is included within the Collateral shall at any time constitute a Security (as defined in the UCC) or the issuer of any such Equity Interest shall take any action to have such interests treated as a Security unless (i) all certificates or other documents constituting such Security have been delivered to the Administrative Agent and such Security is properly defined as such under Article 8 of the UCC of the applicable jurisdiction, whether as a result of actions by the issuer thereof or otherwise, or (ii) the Administrative Agent has entered into a control agreement with the issuer of such Security or with a securities intermediary relating to such Security and such Security is defined as such under Article 8 of the UCC of the applicable jurisdiction, whether as a result of actions by the issuer thereof or otherwise, and the failure to comply with this clause (v) shall continue unremedied for a period of fifteen (15) days;

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, 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

Each of the Lenders and the 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.

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 the Loan Parties or any Subsidiary or other Affiliate thereof as if it were not the Administrative Agent hereunder.

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 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), 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 of its Subsidiaries 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. 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.

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.

The Administrative 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 the Administrative Agent. The Administrative Agent 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 s 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 Administrative Agent.

Subject to the appointment and acceptance of a successor Administrative Agent as provided in this Article VIII, 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 commercial bank or an Affiliate of any such commercial bank. 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 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.

Each Lender acknowledges that it 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. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it shall 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.

None of the Lenders, if any, identified in this Agreement as a Co-Syndication Agent shall 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 capacities as Co-Syndication Agents as it makes with respect to the Administrative Agent in the preceding paragraph.

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; 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 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. The Lenders hereby authorize the Administrative Agent, at its option and in its discretion, to release any Lien granted to or held by the Administrative 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 Administrative Agent at any time, the Lenders will confirm in writing the Administrative 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 Administrative Agent, the Administrative Agent shall (and is hereby irrevocably authorized by the Lenders to) execute such documents as may be necessary to evidence the release of the Liens granted to the Administrative 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 Administrative Agent shall not be required to execute any such document on terms which, in the Administrative Agent’s opinion, would expose the Administrative 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, as follows:

- (i) if to any Loan Party, to the Borrower Representative at:

Dairyland USA Corporation  
100 East Ridge Road  
Ridgefield, CT 06877  
Attention: Chris Pappas  
Telephone: 203-894-1345, Ext. 10220  
Facsimile: 203-894-9107

(ii) if to the Administrative Agent, to JPMorgan Chase Bank, N.A., 10 South Dearborn Street, 7th Floor, Chicago, Illinois 60603, Attention of Brian Larson (Telecopy No. 888-303-9732), with a copy to JPMorgan Chase Bank, N.A., 106 Corporate Park Drive, Floor 02, White Plains, New York 10604-3806, Attention of Patricia Stone (Telecopy No. 914-993-2222);

(iii) if to the Issuing Bank, to it at JPMorgan Chase Bank, N.A., 10 South Dearborn Street, 7th Floor, Chicago, Illinois 60603, Attention of Brian Larson (Telecopy No. 888-303-9732);

(iv) if to the Swingline Lender, to it at JPMorgan Chase Bank, N.A., 10 South Dearborn Street, 7th Floor, Chicago, Illinois 60603, Attention of Brian Larson (Telecopy No. 888-303-9732); and

(v) if to any other 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 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 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) 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, 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.

(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 LC Disbursement or reduce the rate of interest thereon, 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 or LC Disbursement, 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, (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 (it being understood that, solely with the consent of the parties prescribed by Section 2.22 to be parties to an Incremental Term Loan Amendment, Incremental Term Loans may be included in the determination of Required Lenders on substantially the same basis as the Commitments and the Revolving Loans are included on the Effective Date), (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; 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.

(c) 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 (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 Revolving 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.

(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, (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, 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 \$250,000 during any calendar year 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" or "each Lender 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 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, 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 Section 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 Borrowers 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 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 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 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.

(b) The Borrowers shall, jointly and severally, indemnify the Administrative Agent, 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 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 (x) the gross negligence or willful misconduct of such Indemnitee or (y) such Indemnitee’s material breach of its express obligations under any of the Loan Documents (pursuant to a claim initiated by the Borrowers). 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 the Administrative Agent, the Issuing Bank or the Swingline Lender 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, 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.

(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 Letter of Credit or the use of the proceeds thereof.

(e) All amounts due under this Section shall be payable immediately upon 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 (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. 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.

(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 Commitment and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld) 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; provided that no consent of the Administrative Agent shall be required for an assignment of all or any portion of a Term Loan; and

(C) the Issuing Bank; provided that no consent of the Issuing Bank shall be required for an assignment of all or any portion of a Term Loan.

(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 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 or, in the case of a Term Loan, \$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 one Class of Commitments or Loans;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500; 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 an 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 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. Notwithstanding anything in this Agreement to the contrary, the Loans and LC Disbursements are intended to be treated as registered obligations for tax purposes and the right, title and interest of the Lenders in and to such Loans and LC Disbursements shall be transferable only in accordance with the terms hereof. This Section 9.04(b)(ix) shall be construed so that the Loans and LC Disbursements 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 Section 2.05, 2.06(d) or (e), 2.07(b), 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 Administrative Agent, the Issuing Bank or the Swingline Lender, 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 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, 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 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 an 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 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 Section 5f.103 1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary.

(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 pledgee 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 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 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 provision hereof.

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. 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 facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

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. 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 construed in accordance with and governed by the law of the State of New York, but giving effect to federal laws applicable to national banks.

(b) Each Loan Party hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, 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.

(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, 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 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 hereunder 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 (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Loan Parties and their obligations, (g) with the consent of the Borrower Representative or (h) to the extent such Information becomes (i) publicly available other than as a result of a breach of this Section or (ii) 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; provided that, in the case of information received from the Borrowers after the date hereof, 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 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 9.14. USA PATRIOT Act. 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") hereby notifies the Borrowers that pursuant to the requirements of the Act, 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.

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 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. Should any Lender (other than the Administrative Agent) obtain possession 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 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.

ARTICLE X

Loan Guaranty.

SECTION 10.01. Guaranty. Each Loan Guarantor (other than those that have delivered a separate Guaranty) hereby agrees that it is jointly and severally liable for, and 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 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"). 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, 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 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, the Issuing Bank, 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 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 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 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 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 Issuing Bank and the Lenders.

SECTION 10.06. Reinstatement; Stay of Acceleration. If at any time any payment of any portion of the Guaranteed Obligations is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy or reorganization of any Borrower or otherwise, 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 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, 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 10.08. 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.

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, Lender or Issuing Bank (as the case may be) receives the amount it would have received had no such withholding been made.

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, the Issuing Bank 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, the Issuing Bank 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, the Issuing Bank 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 "Applicable 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 "Applicable 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 date hereof (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 date hereof (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 Issuing Bank, 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, 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.

## 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 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.

[Signature Page Follows]

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

**BORROWERS:**

**DAIRYLAND USA CORPORATION  
THE CHEFS' WAREHOUSE MID-ATLANTIC, LLC  
BEL CANTO FOODS, LLC  
THE CHEFS' WAREHOUSE WEST COAST, LLC  
THE CHEFS' WAREHOUSE OF FLORIDA, LLC**

By: /s/ Kenneth Clark  
Name: Kenneth Clark  
Title: Chief Financial Officer

**OTHER LOAN PARTIES:**

**THE CHEFS' WAREHOUSE, INC.  
CHEFS' WAREHOUSE PARENT, LLC**

By: /s/ Kenneth Clark  
Name: Kenneth Clark  
Title: Chief Financial Officer

Signature Page to Credit Agreement  
The Chefs' Warehouse, Inc., *et al*

**JPMORGAN CHASE BANK, N.A.**, individually and as  
Administrative Agent, Issuing Bank, Lender and Swingline  
Lender

By: /s/ Patricia T. Stone

Name: Patricia T. Stone

Title: Authorize Officer

Signature Page to Credit Agreement  
The Chefs' Warehouse, Inc., *et al*

By: /s/ Jeffrey Thomas

Name: Jeffrey Thomas

Title: Duly Authorized Signatory

Signature Page to Credit Agreement  
The Chefs' Warehouse, Inc., *et al*

**WELLS FARGO BANK, NATIONAL ASSOCIATION, as  
Lender**

By: /s/ Thomas Pizzo

Name: Thomas Pizzo

Title: Senior Vice President

Signature Page to Credit Agreement  
The Chefs' Warehouse, Inc., *et al*

By: /s/ Philip Langheim

Name: Philip Langheim

Title: Managing Director

Signature Page to Credit Agreement  
The Chefs' Warehouse, Inc., *et al*

By: /s/ Kenneth M. Blackwell

Name: Kenneth M. Blackwell

Title: Senior Vice President

Signature Page to Credit Agreement  
The Chefs' Warehouse, Inc., *et al*

COMMITMENT SCHEDULE

<u>Lender</u>	<u>Revolving Commitment</u>	<u>Term Loan Commitment</u>	<u>Aggregate Commitment</u>
JPMorgan Chase Bank, N.A.	[*CONFIDENTIAL*]	[*CONFIDENTIAL*]	[*CONFIDENTIAL*]
GE Capital Financial Inc.	[*CONFIDENTIAL*]	[*CONFIDENTIAL*]	[*CONFIDENTIAL*]
Wells Fargo Bank, National Association	[*CONFIDENTIAL*]	[*CONFIDENTIAL*]	[*CONFIDENTIAL*]
BMO Harris Financing, Inc.	[*CONFIDENTIAL*]	[*CONFIDENTIAL*]	[*CONFIDENTIAL*]
Branch Banking and Trust Company	[*CONFIDENTIAL*]	[*CONFIDENTIAL*]	[*CONFIDENTIAL*]
<b>Total</b>	<b>\$ 100,000,000</b>	<b>\$ 40,000,000</b>	<b>\$ 140,000,000</b>

Schedule 2.06

Existing Letters of Credit

<u>Applicant</u>	<u>Letter of Credit Number</u>	<u>Expiry</u>	<u>Amount</u>	<u>Beneficiary</u>
Bel Canto Foods, LLC	CTCS-764-535	August 2, 2015	\$ 120,000	Avalon Risk Management, Inc.

**Schedule 3.05****Properties**

<b><u>Loan Party</u></b>	<b><u>Location</u></b>	<b><u>Leased/Owned</u></b>
Dairyland USA Corporation	1300 Viele Avenue and 1301 Ryawa Avenue, Bronx, New York 10474	Leased Property
Dairyland USA Corporation	1320-40 Viele Avenue, Bronx, New York 10474 (license agreement)	Leased Property
Dairyland USA Corporation	7477 Candlewood Road, Hanover, Maryland 21077	Leased Property
Dairyland USA Corporation	240 Food Center Drive, Bronx, New York 10474 (identified as Block 2770, part of Lot 1)	Leased Property
Dairyland USA Corporation	90 East Ridge, Ridgefield, Connecticut 06877	Leased Property
Dairyland USA Corporation	700 Plaza Drive, Secaucus, New Jersey, 07094	Leased Property
The Chefs' Warehouse West Coast, LLC	3595 East Patrick Lane, Suites 400 and 500, Las Vegas, NV 89120 (Assignment and Assumption Agreement)	Leased Property
The Chefs' Warehouse West Coast, LLC	16633 E. Gale Avenue, City of Industry, CA 91748	Leased Property
The Chefs' Warehouse West Coast, LLC	31177 Wiegman Road, Hayward, CA 94544	Leased Property
The Chefs' Warehouse West Coast, LLC	3305 and 3313 NW Guam Street, Portland, Oregon 97210	Leased Property
The Chefs' Warehouse of Florida, LLC	2600 SW 32 <sup>nd</sup> Avenue, Pembroke Park, Florida 33023	Leased Property
Bel Canto Foods, LLC	1300 Viele Avenue and 1301 Ryawa Avenue, Bronx, New York 10474	Leased Property
Bel Canto Foods, LLC	240 Food Center Drive, Bronx, New York 10474 (identified as Block 2770, part of Lot 1)	Leased Property
Bel Canto Foods, LLC	700 Plaza Drive, Secaucus, New Jersey, 07094	Leased Property
The Chefs' Warehouse Mid-Atlantic, LLC	7477 Candlewood Road, Hanover, Maryland 21076	Leased Property

Patents and Patent Applications

None

Copyright Applications and Registrations

None

Trademark Applications and Registrations

<u>MARK</u>	<u>REG. NO./APP NO.</u>	<u>REG./ FILING DATE</u>	<u>COUNTRY</u>	<u>OWNER</u>
BELARIA	1,508,403	October 11, 1988	United States	The Chefs' Warehouse, Inc.
PIER FRANCO	2,016,132	November 12, 1996	United States	The Chefs' Warehouse, Inc.
ST. LUC	3,491,990	August 26, 2008	United States	The Chefs' Warehouse, Inc.
ST. LUC (stylized)	2,438,333	March 27, 2001	United States	The Chefs' Warehouse, Inc.
GRAND RESERVE & Design	1,407,847	September 2, 1986	United States	The Chefs' Warehouse
PATISSE	3,541,721	December 2, 2008	United States	The Chefs' Warehouse
PATISSE FINE PASTRY INGREDIENTS & Design	3,697,104	October 13, 2009	United States	The Chefs' Warehouse
THE CHEFS' WAREHOUSE	3,539,456	December 2, 2008	United States	The Chefs' Warehouse
ZOCOCAO & Design	3,206,633	February 6, 2007	United States	The Chefs' Warehouse
ZOCOCAO	3,002,843	September 27, 2005	United States	The Chefs' Warehouse
SPOLETO	2,452,543	May 22, 2001	United States	The Chefs' Warehouse
ARGONAUT	3,431,682	May 20, 2008	United States	The Chefs' Warehouse, Inc.
PROVVISTA	2,984,712	August 16, 2005	United States	The Chefs' Warehouse, Inc.
PROVVISTA	2,980,621	August 2, 2005	United States	The Chefs' Warehouse, Inc.

PROVVISTA	2,545,651	March 12, 2002	United States	The Chefs' Warehouse, Inc.
PROVVISTA	2,525,630	January 1, 2002	United States	The Chefs' Warehouse, Inc.
PROVVISTA	2,319,436	February 15, 2000	United States	The Chefs' Warehouse, Inc.
PROVVISTA	2,343,089	April 18, 2000	United States	The Chefs' Warehouse, Inc.
PROVVISTA	2,302,301	December 21, 1999	United States	The Chefs' Warehouse, Inc.
Sunflower Design	2,304,369	December 28, 1999	United States	The Chefs' Warehouse, Inc.
Sunflower Design	2,518,025	December 11, 2001	United States	The Chefs' Warehouse, Inc.
Sunflower Design	3,000,019	September 27, 2005	United States	The Chefs' Warehouse, Inc.
Sunflower Design	2,309,409	October 26, 1999	United States	The Chefs' Warehouse, Inc.
Sunflower Design	2,520,685	December 18, 2001	United States	The Chefs' Warehouse, Inc.
Sunflower Design	2,980,620	August 2, 2005	United States	The Chefs' Warehouse, Inc.
Sunflower Design	2,306,288	January 4, 2000	United States	The Chefs' Warehouse, Inc.
THE RIGHT SCALLOPS	3,621,367	May 19, 2009	United States	The Chefs' Warehouse, Inc.
THE RIGHT SHRIMP	3,621,359	May 19, 2009	United States	The Chefs' Warehouse, Inc.
THE RIGHT SQUID	3,621,372	May 19, 2009	United States	The Chefs' Warehouse, Inc.
CW	85376018	July 20, 2011	United States	The Chefs' Warehouse
CW & Design	85375998	July 20, 2011	United States	The Chefs' Warehouse
CWI	85376083	July 20, 2011	United States	The Chefs' Warehouse, Inc.
SIMPLE AUTHENTIC FOOD				

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**Schedule 3.06**

**Litigation and Environmental Matters**

We currently have exposure to pending reimbursement claims brought by the New York State Workers' Compensation Board against former employer members of self-insured workers' compensation trusts. We were members in two of the trusts at issue and are working with the New York State Workers' Compensation Board to resolve this matter. We currently estimate exposure at approximately \$500,000.

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**Schedule 3.12**

**Material Contracts**

- Dairyland USA Corporation 401(k)/Profit Sharing Plan and Trust, Plan No. 001, effective June 1, 1993, as amended. Dairyland has an option to match contributions, but does not currently do so.

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**Schedule 3.14**

**Insurance**

**See Attached**

**ACORD™**

EVIDENCE OF COMMERCIAL PROPERTY INSURANCE

DATE (MM/DD/YYYY)

04/24/2012

THIS EVIDENCE OF COMMERCIAL PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE OF COMMERCIAL PROPERTY INSURANCE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

<b>PRODUCER NAME, CONTACT PERSON AND ADDRESS</b> J. Smith Lanier & Co.-Atlanta 11330 Lakefield Drive Bldg 1, Suite 100 Duluth, GA 30097		<b>PHONE</b> (A/C. No. Ext): 770 476-1770	<b>COMPANY NAME AND ADDRESS</b> [*CONFIDENTIAL*]		<b>NAIC NO:</b> [*CONFIDENTIAL*]
<b>FAX</b> (A/C. No.): 7704763651		<b>E-MAIL ADDRESS:</b>		<b>IF MULTIPLE COMPANIES, COMPLETE SEPARATE FORM FOR EACH</b>	
<b>CODE:</b>		<b>SUB CODE:</b>			
<b>AGENCY CUSTOMER ID #:</b> 100724		<b>POLICY TYPE</b> Property			
<b>NAMED INSURED AND ADDRESS</b> The Chefs' Warehouse, Inc. and subsidiaries (see list of named insureds) 100 East Ridge Road Ridgefield, CT 06877		<b>LOAN NUMBER</b>		<b>POLICY NUMBER</b> [*CONFIDENTIAL*]	
<b>ADDITIONAL NAMED INSURED(S)</b>		<b>EFFECTIVE DATE</b> 05/01/2011		<b>EXPIRATION DATE</b> 05/01/2012	
				<input type="checkbox"/> CONTINUED UNTIL TERMINATED IF CHECKED	
		<b>THIS REPLACES PRIOR EVIDENCE DATED:</b>			

**PROPERTY INFORMATION (Use REMARKS on Page 2, if more space is required)**  BUILDING OR  BUSINESS PERSONAL PROPERTY

**LOCATION/DESCRIPTION**

All locations

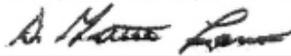
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

<b>COVERAGE INFORMATION</b>	<b>PERILS INSURED</b>	<input type="checkbox"/> BASIC	<input type="checkbox"/> BROAD	<input checked="" type="checkbox"/> SPECIAL	
<b>COMMERCIAL PROPERTY COVERAGE AMOUNT OF INSURANCE:</b> \$[*CONFIDENTIAL*]		<b>Loss Limit</b>		<b>DED:</b> [*CONFIDENTIAL*]	
	<input checked="" type="checkbox"/> BUSINESS INCOME <input type="checkbox"/> RENTAL VALUE	<b>YES</b>	<b>NO</b>	<b>N/A</b>	
<b>BLANKET COVERAGE</b>		<input checked="" type="checkbox"/>			If YES, LIMIT: Included Actual Loss Sustained; # of months 4
<b>TERRORISM COVERAGE</b>			<input checked="" type="checkbox"/>		If YES, indicate value(s) reported on property identified above: \$ Attach Disclosure Notice / DEC
<b>IS THERE A TERRORISM-SPECIFIC EXCLUSION?</b>		<input checked="" type="checkbox"/>			
<b>IS DOMESTIC TERRORISM EXCLUDED?</b>		<input checked="" type="checkbox"/>			
<b>LIMITED FUNGUS COVERAGE</b>			<input checked="" type="checkbox"/>		If YES, LIMIT: DED:
<b>FUNGUS EXCLUSION (IF "YES", specify organization's form used)</b>		<input checked="" type="checkbox"/>			
<b>REPLACEMENT COST</b>		<input checked="" type="checkbox"/>			
<b>AGREED VALUE</b>		<input checked="" type="checkbox"/>			
<b>COINSURANCE</b>			<input checked="" type="checkbox"/>		If Yes, %
<b>EQUIPMENT BREAKDOWN (If Applicable)</b>			<input checked="" type="checkbox"/>		If YES, LIMIT: DED:
<b>ORDINANCE OR LAW - Coverage for loss to undamaged portion of bldg</b>		<input checked="" type="checkbox"/>			
<b>- Demolition Costs</b>		<input checked="" type="checkbox"/>			If YES, LIMIT: [*CONFIDENTIAL*] DED: [*CONFIDENTIAL*]
<b>- Incr. Cost of Construction</b>		<input checked="" type="checkbox"/>			If YES, LIMIT: [*CONFIDENTIAL*] DED: [*CONFIDENTIAL*]
<b>EARTH MOVEMENT (If Applicable)</b>		<input checked="" type="checkbox"/>			If YES, LIMIT: [*CONFIDENTIAL*] DED: [*CONFIDENTIAL*]
<b>FLOOD (If Applicable)</b>		<input checked="" type="checkbox"/>			If YES, LIMIT: [*CONFIDENTIAL*] DED: [*CONFIDENTIAL*]
<b>WIND/HAIL (If Subject to Different Provisions)</b>		<input checked="" type="checkbox"/>			If YES, LIMIT: [*CONFIDENTIAL*] DED: [*CONFIDENTIAL*]
<b>PERMISSION TO WAIVE SUBROGATION IN FAVOR OF MORTGAGE HOLDER PRIOR TO LOSS</b>			<input checked="" type="checkbox"/>		

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE ADDITIONAL INTEREST NAMED BELOW, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

**ADDITIONAL INTEREST**

<input checked="" type="checkbox"/> MORTGAGEE	<input type="checkbox"/> CONTRACT OF SALE	<b>LENDER SERVICING AGENT NAME AND ADDRESS</b>
<input checked="" type="checkbox"/> LENDERS LOSS PAYABLE		
<b>NAME AND ADDRESS</b>  JPMorgan Chase Bank, N.A. as Administrative Agent 106 Corporate Park Drive White Plains, NY 10604-3806		<b>AUTHORIZED REPRESENTATIVE</b> 

**EVIDENCE OF COMMERCIAL PROPERTY INSURANCE REMARKS - Including Special Conditions (Use only if more space is required)**

JPMorgan Chase Bank, N.A. as administrative agent is included as lender loss payee with respect to commercial property insurance as its interests may appear, and as required by written contract subject to the terms and conditions of the policy.

ACORD 28 (2006/07) 2 of 2

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**The Chefs' Warehouse, Inc.**

**List of Named Insureds**

Dairyland USA Corporation

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.

Chefs' Warehouse Parent, LLC



**Producer:** PEACHTREE SPECIAL RISK BROKER  
3525 PIEDMONT RD, BLD5 STE 415  
ATLANTA, GA 30305

**Date** 04/24/2012

IM 8005 01 10

Page 2 of 2

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**ACORD™**

EVIDENCE OF COMMERCIAL PROPERTY INSURANCE

DATE (MM/DD/YYYY)

04/24/2012

**THIS EVIDENCE OF COMMERCIAL PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE OF COMMERCIAL PROPERTY INSURANCE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.**

<b>PRODUCER NAME, CONTACT PERSON AND ADDRESS</b> J. Smith Lanier & Co.-Atlanta 11330 Lakefield Drive Bldg 1, Suite 100 Duluth, GA 30097		<b>PHONE</b> (A/C. No. Ext): 770 476-1770	<b>COMPANY NAME AND ADDRESS</b> [*CONFIDENTIAL*]		<b>NAIC NO:</b> [*CONFIDENTIAL*]
<b>FAX</b> (A/C. No.): 7704763651		<b>E-MAIL ADDRESS:</b>		<b>IF MULTIPLE COMPANIES, COMPLETE SEPARATE FORM FOR EACH</b>	
<b>CODE:</b>	<b>SUB CODE:</b>		<b>POLICY TYPE</b>		
<b>AGENCY CUSTOMER ID #:</b> 100724		Boiler & Machinery			
<b>NAMED INSURED AND ADDRESS</b> The Chefs' Warehouse, Inc. and subsidiaries (see attached list of locations) 100 East Ridge Road Ridgefield, CT 06877		<b>LOAN NUMBER</b>	<b>POLICY NUMBER</b> [*CONFIDENTIAL*]		
<b>ADDITIONAL NAMED INSURED(S)</b>		<b>EFFECTIVE DATE</b> 05/01/2011	<b>EXPIRATION DATE</b> 05/01/2012	<input type="checkbox"/> CONTINUED UNTIL TERMINATED IF CHECKED	
		<b>THIS REPLACES PRIOR EVIDENCE DATED:</b>			

**PROPERTY INFORMATION (Use REMARKS on Page 2, if more space is required)**  BUILDING OR  BUSINESS PERSONAL PROPERTY

**LOCATION/DESCRIPTION**

See attached list of locations

**THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.**

<b>COVERAGE INFORMATION</b>		<b>PERILS INSURED</b>		<input type="checkbox"/> BASIC	<input type="checkbox"/> BROAD	<input checked="" type="checkbox"/> SPECIAL	
<b>COMMERCIAL PROPERTY COVERAGE AMOUNT OF INSURANCE:</b> \$ [*CONFIDENTIAL*]				Boiler & Machinery		<b>DED:</b> [*CONFIDENTIAL*]	
	<b>YES</b>	<b>NO</b>	<b>N/A</b>				
<input checked="" type="checkbox"/> BUSINESS INCOME	<input type="checkbox"/> RENTAL VALUE	X		<b>If YES, LIMIT:</b> Included		Actual Loss Sustained; # of months	
<b>BLANKET COVERAGE</b>				If YES, indicate value(s) reported on property identified above: \$			
<b>TERRORISM COVERAGE</b>				Attach Disclosure Notice / DEC			
IS THERE A TERRORISM-SPECIFIC EXCLUSION?							
IS DOMESTIC TERRORISM EXCLUDED?							
<b>LIMITED FUNGUS COVERAGE</b>				<b>If YES, LIMIT:</b>		<b>DED:</b>	
FUNGUS EXCLUSION ("IF YES", specify organization's form used)							
<b>REPLACEMENT COST</b>							
<b>AGREED VALUE</b>							
<b>COINSURANCE</b>				<b>If Yes,</b>		%	
<b>EQUIPMENT BREAKDOWN (If Applicable)</b>				<b>If YES, LIMIT:</b>		<b>DED:</b>	
ORDINANCE OR LAW - Coverage for loss to undamaged portion of bldg							
- Demolition Costs				<b>If YES, LIMIT:</b>		<b>DED:</b>	
- Incr. Cost of Construction				<b>If YES, LIMIT:</b>		<b>DED:</b>	
<b>EARTH MOVEMENT (If Applicable)</b>				<b>If YES, LIMIT:</b>		<b>DED:</b>	
<b>FLOOD (If Applicable)</b>				<b>If YES, LIMIT:</b>		<b>DED:</b>	
<b>WIND/HAIL (If Subject to Different Provisions)</b>				<b>If YES, LIMIT:</b>		<b>DED:</b>	
<b>PERMISSION TO WAIVE SUBROGATION IN FAVOR OF MORTGAGE HOLDER PRIOR TO LOSS</b>							

**CANCELLATION**

**SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE ADDITIONAL INTEREST NAMED BELOW, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.**

**ADDITIONAL INTEREST**

<input checked="" type="checkbox"/> MORTGAGEE	<input type="checkbox"/> CONTRACT OF SALE	<b>LENDER SERVICING AGENT NAME AND ADDRESS</b>
<input checked="" type="checkbox"/> LENDERS LOSS PAYABLE	<input checked="" type="checkbox"/> Mtg/LP/Add'l Ins	
<b>NAME AND ADDRESS</b> JPMorgan Chase Bank, N.A. as Administrative Agent 106 Corporate Park Drive White Plains, NY 10604-3806		<b>AUTHORIZED REPRESENTATIVE</b> 

**EVIDENCE OF COMMERCIAL PROPERTY INSURANCE REMARKS - Including Special Conditions (Use only if more space is required)**

Spoilage: [\*CONFIDENTIAL\*]

Expediting Expense: [\*CONFIDENTIAL\*].

Ammonia Contamination: [\*CONFIDENTIAL\*]

Water Damage [\*CONFIDENTIAL\*]

Hazardous Substance [\*CONFIDENTIAL\*]

Consequential Loss [\*CONFIDENTIAL\*]

JPMorgan Chase Bank N.A. as Administrative Agent, is included as Lender Loss Payee with respect to commercial property, as its interests may appear and as required by written contract, subject to the terms and conditions of the policy.

**Schedule of Locations**

**Print Date: 04/24/12**

**Client Name and Address**

The Chefs' Warehouse, Inc.  
100 East Ridge Road  
Ridgefield, CT 06877

**Company**

Marketing Application  
  
**Policy Number**  
APPLICATION  
  
**Effective Date**  
05/01/12

**Agency Name and Address**

J. Smith Lanier & Co.-Atlanta  
11330 Lakefield Drive  
Bldg 1, Suite 100  
Duluth, GA 30097

**Expiration Date**  
05/01/13

<u>Loc. #</u>	<u>Location Address</u>	<u>Tax Code</u>	<u>County Code</u>	<u>Bldg. #</u>	<u>Building Description</u>	<u>Date On</u>
1	100 East Ridge Road; Ridgefield, CT 06877			1	Corporate office	05/01/12
2	1300 Viele Avenue Bronx, NY 10474			1	Distribution Center	05/01/12
3	240 Food Center Drive Bronx, NY 10474			1	Distribution Center	05/01/12
4	7477 Candlewood Rd Hanover, MD 21076			1	Distribution Center	05/01/12
5	Preferred Freezer; 536 Fayette St Perth Amboy, NJ 08861			1	Cold storage warehouse	05/01/12
6	16633 E Gale Avenue Los Angeles, CA 90040			1	Distribution Center	05/01/12
7	31177 Wiegman Rd Hayward, CA 94544			1	Distribution Center	05/01/12
8	3595 E Patrick Lane Las Vegas, NV 89120			1	Distribution Center	05/01/12
9	3535 NW 60th St Miami, FL 33142			1	Warehouse	05/01/12
10	2600 SW 32nd Ave Hollywood, FL 33023			1	Warehouse	05/01/12
11	700 Plaza Drive Secaucus, NJ 07094			1	office	05/01/12
12	3305 NW Guam St Portland, OR 97210			1	Office/warehouse	05/01/12



**POLICY NUMBER**  
[\*CONFIDENTIAL\*]

INSURED NAME AND ADDRESS  
THE CHEFS' WAREHOUSE, INC.  
100 EAST RIDGE ROAD  
  
RIDGEFIELD, CT 06877

**POLICY CHANGES**

**Blank Text Equipment Breakdown**

**This Change Endorsement changes the Policy. Please read it carefully. This Change Endorsement is a part of your Policy and takes effect on the effective date of your Policy, unless another effective date is shown.**

Named Insureds:

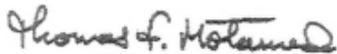
Dairyland USA Corporation  
The Chefs' Warehouse Mid-Atlantic, LLC  
Bel Canto Foods, LLC  
The Chefs' Warehouse West Coast, LLC  
The Chefs' Warehouse of Florida, LLC  
The Chefs' Warehouse, Inc.  
Chefs' Warehouse Parent, LLC

Lender Loss Payee:

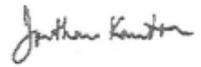
Boiler & Machinery: JPMorgan Chase Bank, N.A., as Administrative Agent, is included as lender loss payee, as its interests may appear.

JPMorgan Chase Bank, N.A.  
106 Corporate Park Drive  
White Plains, NY 10604-3806



  
Chairman of the Board

G-56015-B (ED. 11/91)

  
Secretary



76528

DATE (MM/DD/YYYY)

04/24/2012

## CERTIFICATE OF LIABILITY INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsements).

<b>PRODUCER</b> Commercial Lines - (973) 437-2300 Wells Fargo Insurance Services USA, Inc. 7 Giralda Farms, 2nd Floor Madison, NJ 07940-1027	<b>CONTACT NAME:</b> Christopher Longo		
	<b>PHONE (A/C. No. Ext):</b> 973-437-2356	<b>FAX (A/C. No):</b> 866-907-1395	
<b>E-MAIL ADDRESS:</b> chris.longo@wellsfargo.com			
<b>INSURED</b> The Chefs' Warehouse, Inc. and subsidiaries 100 East Ridge Road Ridgefield, CT 06877	<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
	<b>INSURER A:</b> [*CONFIDENTIAL*]		[*CONFIDENTIAL*]
	<b>INSURER B:</b> [*CONFIDENTIAL*]		[*CONFIDENTIAL*]
	<b>INSURER C:</b> [*CONFIDENTIAL*]		[*CONFIDENTIAL*]
	<b>INSURER D:</b> [*CONFIDENTIAL*]		[*CONFIDENTIAL*]
	<b>INSURER E:</b>		
<b>INSURER F:</b>			

**COVERAGES**      **CERTIFICATE NUMBER:**      **REVISION NUMBER:** See Below

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR  <input type="checkbox"/> _____ <input type="checkbox"/> _____ GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC	X		[*CONFIDENTIAL*]	05/01/2011	08/01/2012	EACH OCCURRENCE \$ [*CONFIDENTIAL*] DAMAGE TO RENTED PREMISES (Ea occurrence) \$ [*CONFIDENTIAL*] MED EXP (Any one person) \$ [*CONFIDENTIAL*] PERSONAL & ADV INJURY \$ [*CONFIDENTIAL*] GENERAL AGGREGATE \$ [*CONFIDENTIAL*] PRODUCTS -COMP/OP AGG \$ [*CONFIDENTIAL*] \$
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> _____	X		[*CONFIDENTIAL*]	05/01/2011	08/01/2012	COMBINED SINGLE LIMIT (Ea accident) \$ [*CONFIDENTIAL*] BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR	X		[*CONFIDENTIAL*]	05/01/2011	08/01/2012	EACH OCCURRENCE \$ [*CONFIDENTIAL*]
C	<input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$	X		05/01/2011	08/01/2012	AGGREGATE \$ [*CONFIDENTIAL*] \$	
D	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below <div style="float: right; border: 1px solid black; padding: 2px;">             Y/N              N           </div>	N/A		08/01/2011	08/01/2011	08/01/2012	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ [*CONFIDENTIAL*] E.L. DISEASE - EA EMPLOYEE \$ [*CONFIDENTIAL*] E.L. DISEASE - POLICY LIMIT \$ [*CONFIDENTIAL*]

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)**  
 RE: All Locations Per Written Agreement with Dairyland USA Corporation; 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.; and Chefs' Warehouse Parent, LLC. JPMorgan Chase Bank, N.A., as Administrative Agent is included as Additional Insured, in accordance with the Blanket Additional Insured provisions of the General Liability, Excess Liability and Automobile Liability.

<b>CERTIFICATE HOLDER</b>  JPMorgan Chase Bank, N.A. as Administrative Agent 106 Corporate Park Drive White Plains, NY 10604-3806	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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**ENDORSEMENT**

This endorsement, effective 12:01 A.M. 05/01/2011 forms a part of  
policy No, [\*CONFIDENTIAL\*] issued to **THE CHEFS' WAREHOUSE, INC.**  
by [\*CONFIDENTIAL\*]

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED - WHERE REQUIRED UNDER CONTRACT OR AGREEMENT**

*This endorsement modifies Insurance provided under the following:*

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

**SECTION II - WHO IS AN INSURED**, is amended to include as an additional insured:

Any person or organization to whom you become obligated to include as an additional insured under this policy, as a result of any contract or agreement you enter into which requires you to furnish insurance to that person or organization of the type provided by this policy, but only with respect to liability arising out of your operations or premises owned by or rented to you.

However, the insurance provided will not exceed the lesser of:

- The coverage and/or limits of this policy, or
- The coverage and/or limits required by said contract or agreement.



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**Authorized Representative or  
Countersignature (in States Where Applicable)**

**ENDORSEMENT**

This endorsement, effective 12:01 A.M. 05/01/2011 forms a part of  
policy No. [\*CONFIDENTIAL\*] issued to **THE CHEFS' WAREHOUSE, INC.**  
by [\*CONFIDENTIAL\*]

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED - WHERE REQUIRED UNDER CONTRACT OR AGREEMENT - NEW YORK**

*This endorsement modifies insurance provided under the following:*

BUSINESS AUTO COVERAGE FORM

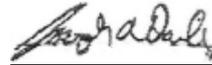
**SCHEDULE**

**ADDITIONAL INSURED:**

**ANY PERSON ORGANIZATION FOR WHOM YOU ARE CONTRACTUALLY BOUND TO PROVIDE ADDITIONAL INSURED STATUS BUT ONLY TO THE EXTENT OF SUCH A PERSON OR ORGANIZATION LIABILITY ARISING OUT OF THE USE OF A COVERED AUTO.**

**I. SECTION II - LIABILITY COVERAGE, A. Coverage, 1. - Who Is Insured,** is amended to add:

- d. Any person or organization, shown in the schedule above, to whom you become obligated to include as an additional insured under this policy, as a result of any contract or agreement you enter into which requires you to furnish insurance to that person or organization of the type provided by this policy, but only with respect to liability arising out of use of a covered "auto". However, the insurance provided through this endorsement will not exceed the lesser of;
- (1) The coverage and/or limits of this policy, or
  - (2) The coverage and/or limits required by said contract or agreement.



**Authorized Representative or Countersignature (in States  
Where Applicable)**



CERTIFICATE OF LIABILITY INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> J. Smith Lanier & Co.-Atlanta 11330 Lakefield Drive Bldg 1, Suite 100 Duluth, GA 30097	<b>CONTACT NAME:</b>	
	<b>PHONE (A/C, No, Ext):</b> 770 476-1770	<b>FAX (A/C, No):</b> 7704763651
	<b>E-MAIL ADDRESS:</b>	
	<b>INSURER(S) AFFORDING COVERAGE</b>	
	<b>INSURER A :</b> [*CONFIDENTIAL*]	<b>NAIC #</b> [*CONFIDENTIAL*]
	<b>INSURER B :</b>	
<b>INSURED</b> The Chefs' Warehouse, Inc. and subsidiaries (see named insured list) 100 East Ridge Road Ridgefield, CT 06877	<b>INSURER C :</b>	
	<b>INSURER D :</b>	
	<b>INSURER E :</b>	
	<b>INSURER F :</b>	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR <input type="checkbox"/> _____ <input type="checkbox"/> _____ GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/>						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N <input type="checkbox"/> N / A (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						<input type="checkbox"/> WC STATUTORY <input type="checkbox"/> OTHER LIMITS E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	<b>Employee Theft</b> ERISA Theft-client prop			[*CONFIDENTIAL*]	05/01/2011	05/01/2011	[*CONFIDENTIAL*] [*CONFIDENTIAL*] [*CONFIDENTIAL*]

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Forgery or Alteration [\*CONFIDENTIAL\*]  
 On Premises [\*CONFIDENTIAL\*]  
 In Transit [\*CONFIDENTIAL\*]  
 Computer Crime [\*CONFIDENTIAL\*]  
 Computer Program & EDP Restoration [\*CONFIDENTIAL\*]  
 (See Attached Descriptions)

CERTIFICATE HOLDER

CANCELLATION

JPMorgan Chase Bank, N.A. as Administrative Agent 106 Corporate Park Drive White Plains, NY 10604-3806	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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DESCRIPTIONS (Continued from Page 1)

**Funds Transfer Fraud** [\*CONFIDENTIAL\*]

**Personal Accounts Forgery or Alteration** [\*CONFIDENTIAL\*]

**Identity Fraud Expense Reimbursement** [\*CONFIDENTIAL\*]

**Claim Expense** [\*CONFIDENTIAL\*]

**Money Orders & Counterfeit Money** [\*CONFIDENTIAL\*]

**JPMorgan Chase Bank, N.A., as Administrative Agent is included as Lender Loss Payee as its interest may appear and as required by written contract, subject to the terms and conditions of the policy.**

SAGITTA 25.3 (2010/05) 2 of 2

#S1526115/M1273018

SPECIAL NOTICE OF CANCELLATION OR TERMINATION REQUIREMENTS ENDORSEMENT

This endorsement modifies the following coverage:

Crime

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It is agreed that:

Should this Crime Policy be canceled, reduced, non-renewed or restrictively modified in any way by the Company, the Company will endeavor to give 30 days advance notice to the organization(s) scheduled below, but failure to do so will not impair or delay the effectiveness of any such cancellation, reduction, non-renewal or restrictive modification, nor will the Company be held liable in any way.

Should this Crime policy be canceled or reduced at the request of the Insured, the Company will endeavor to notify the organization(s) named below of such cancellation or reduction within 30 business days after receipt of such a request, but failure to do so shall not impair or delay the effectiveness of such cancellation or reduction, nor shall the Company be held liable in any way.

ENTITY NOTICE SCHEDULE

Name of Entity	Mailing Address
JPMorgan Chase Bank, N.A. as Administrative Agent (Lender/Loss Payee)	106 Corporate Drive White Plains, NY 10604-3806

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Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, exclusions or limitations of the above-mentioned policy, except as expressly stated herein. This endorsement is part of such policy and incorporated therein.

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Issuing Company: [\*CONFIDENTIAL\*]

Policy Number: [\*CONFIDENTIAL\*]

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**Schedule 3.15**

**Capitalization and Subsidiaries**

<u>Issuer</u>	<u>Authorized Equity Interests</u>	<u>Issued Equity Interest</u>	<u>Ownership</u>
The Chefs' Warehouse, Inc.	100,000,000 shares of common stock 5,000,000 shares of preferred stock	20,917,309 shares of common stock	Christopher Pappas - 20.22% (subject to underwriters' over - allotment option) John Pappas - 19.36% (subject to underwriters' over - allotment option) Employees and General Public - 60.42% (subject to underwriters' over - allotment option)
Dairyland USA Corporation	200 shares of common stock	100 shares of common stock represented by certificate no. 26	The Chefs' Warehouse, Inc. - 100%
Chefs' Warehouse Parent, LLC	N/A	N/A	The Chefs' Warehouse, Inc. - 100%
Bel Canto Foods, LLC	N/A	N/A	Dairyland USA Corporation - 100%
The Chefs' Warehouse West Coast, LLC	N/A	N/A	Chefs' Warehouse Parent, LLC - 100%
The Chefs' Warehouse of Florida, LLC	N/A	N/A	Chefs' Warehouse Parent, LLC - 100%
The Chefs' Warehouse Mid-Atlantic, LLC	N/A	N/A	Chefs' Warehouse Parent, LLC - 100%
Dairyland HP LLC	N/A	N/A	Dairyland USA Corporation - 100%

<u>Entity Name</u>	<u>Jurisdiction of Organization</u>	<u>Organizational Form</u>
Dairyland USA Corporation	New York	Corporation
Bel Canto Foods, LLC	New York	Limited Liability Company
The Chefs' Warehouse, Inc.	Delaware	Corporation
The Chefs' Warehouse West Coast, LLC	Delaware	Limited Liability Company
Chefs' Warehouse Parent. LLC	Delaware	Limited Liability Company
The Chefs' Warehouse of Florida, LLC	Delaware	Limited Liability Company
The Chefs' Warehouse Mid-Atlantic, LLC	Delaware	Limited Liability Company
Dairyland HP LLC	Delaware	Limited Liability Company

**Schedule 3.18**

**Tradenames**

**Loan Party**

Dairyland USA Corporation

The Chefs Warehouse Mid-Atlantic, LI A'

The Chefs' Warehouse, Inc.

Bel Canto Foods, LLC

**Trade Names/Business Names**

- The Chefs' Warehouse
- Winters Seafoods
- Dairyland
- Dairyland USA
- The Chefs' Warehouse, LLC
- Chefs' Warehouse Holdings, LLC
- Bel Canto Food
- Bel Canto Foods
- Bel Canto

**Schedule 3.19**

**Bank Accounts**

<u>GRANTOR</u>	<u>BANK</u>	<u>ACCOUNT NUMBER</u>	<u>TYPE</u>	<u>PURPOSE</u>
Dairyland USA Corporation	JPMorgan Chase Bank Corporate Park Drive, 2 <sup>nd</sup> Floor White Plains, NY 10604 Attn: Lisa Crowley, Vice President	[*CONFIDENTIAL*]	Credit Card	Collections/ Disbursements
Dairyland USA Corporation	JPMorgan Chase Bank Corporate Park Drive, 2 <sup>nd</sup> Floor White Plains, NY 10604 Attn: Lisa Crowley, Vice President	[*CONFIDENTIAL*]	Operating	Collections/ Disbursements
Bel Canto Foods, LLC	JPMorgan Chase Bank Corporate Park Drive, 2 <sup>nd</sup> Floor White Plains, NY 10604 Attn: Lisa Crowley, Vice President	[*CONFIDENTIAL*]	Operating	Collections/ Disbursements
The Chefs' Warehouse Mid-Atlantic, LLC	JPMorgan Chase Bank Corporate Park Drive, 2 <sup>nd</sup> Floor White Plains, NY 10604 Attn: Lisa Crowley, Vice President	[*CONFIDENTIAL*]	Operating	Collections/ Disbursements
The Chefs' Warehouse West Coast, LLC	JPMorgan Chase Bank Corporate Park Drive, 2 <sup>nd</sup> Floor White Plains, NY 10604 Attn: Lisa Crowley, Vice President	[*CONFIDENTIAL*]	Operating	Disbursements
Dairyland USA Corporation	JPMorgan Chase Bank Corporate Park Drive, 2 <sup>nd</sup> Floor White Plains, NY 10604 Attn: Lisa Crowley, Vice President	[*CONFIDENTIAL*]	Controlled Disbursement Account	Disbursements

<u>GRANTOR</u>	<u>BANK</u>	<u>ACCOUNT NUMBER</u>	<u>TYPE</u>	<u>PURPOSE</u>
Bel Canto Foods, LLC	JPMorgan Chase Bank Corporate Park Drive, 2 <sup>nd</sup> Floor White Plains, NY 10604 Attn: Lisa Crowley, Vice President	[*CONFIDENTIAL*]	Controlled Disbursement Account	Disbursements
The Chefs' Warehouse Mid-Atlantic, LLC	JPMorgan Chase Bank Corporate Park Drive, 2 <sup>nd</sup> Floor White Plains, NY 10604 Attn: Lisa Crowley, Vice President	[*CONFIDENTIAL*]	Controlled Disbursement Account	Disbursements
The Chefs' Warehouse West Coast, LLC	JPMorgan Chase Bank Corporate Park Drive, 2 <sup>nd</sup> Floor White Plains, NY 10604 Attn: Lisa Crowley, Vice President	[*CONFIDENTIAL*]	Controlled Disbursement Account	Disbursements
The Chefs' Warehouse West Coast, LLC	Bank of America Puente Hills 1605 S. Azusa Ave Hacienda Heights CA 91745	[*CONFIDENTIAL*]	DDA	Driver Cash Collections/ Petty Cash Disbursements
The Chefs' Warehouse, Inc.	JPMorgan Chase Bank Corporate Park Drive, 2 <sup>nd</sup> Floor White Plains, NY 1060 4 Attn: Lisa Crowley, Vice President	[*CONFIDENTIAL*]	Collections/ Disbursements	Account not used and is to be closed.
Dairyland USA Corporation	JPMorgan Chase Bank Corporate Park Drive, 2 <sup>nd</sup> Floor White Plains, NY 10604 Attn: Lisa Crowley, Vice President	[*CONFIDENTIAL*]	Lockbox	For New York and Tri-State Area Collections
Bel Canto Foods, LLC	JPMorgan Chase Bank Corporate Park Drive, 2 <sup>nd</sup> Floor White Plains, NY 10604 Attn: Lisa Crowley, Vice President	[*CONFIDENTIAL*]	Lockbox	For New York and Tri-State Area Collections

<u>GRANTOR</u>	<u>BANK</u>	<u>ACCOUNT NUMBER</u>	<u>TYPE</u>	<u>PURPOSE</u>
The Chefs' Warehouse Mid-Atlantic, LLC	JPMorgan Chase Bank Corporate Park Drive, 2 <sup>nd</sup> Floor White Plains, NY 10604 Attn: Lisa Crowley, Vice President	[*CONFIDENTIAL*]		Lockbox For Maryland and Surrounding Area Collections
The Chefs' Warehouse West Coast, LLC	JPMorgan Chase Bank Corporate Park Drive, 2 <sup>nd</sup> Floor White Plains, NY 10604 Attn: Lisa Crowley, Vice President	[*CONFIDENTIAL*]	Lockbox	For West Coast Collections
The Chefs' Warehouse of Florida, LLC	JPMorgan Chase Bank Corporate Park Drive, 2 <sup>nd</sup> Floor White Plains, NY 10604 Attn: Lisa Crowley, Vice President	[*CONFIDENTIAL*]	Lockbox	For Florida Area Collections
The Chefs' Warehouse of Florida, LLC	JPMorgan Chase Bank Corporate Park Drive, 2 <sup>nd</sup> Floor White Plains, NY 10604 Attn: Lisa Crowley, Vice President	[*CONFIDENTIAL*]	Operating	Collections/Disbursements
The Chefs' Warehouse of Florida, LLC	JPMorgan Chase Bank Corporate Park Drive, 2 <sup>nd</sup> Floor White Plains, NY 10604 Attn: Lisa Crowley, Vice President	[*CONFIDENTIAL*]	Control Disbursement	Disbursements

**Schedule 3.22**

**Affiliate Transactions**

**Warehouse and Office Leases**

We lease two warehouse and office facilities from two entities that are wholly-owned by three of our directors pursuant to long-term operating lease agreements.

Dairyland subleases a warehouse and office facility in the Bronx, New York from The Chefs' Warehouse Leasing Co., LLC, a New York limited liability company that is wholly-owned by Christopher Pappas, John Pappas and Dean Facatselis.

Dairyland also leases a warehouse and office facility in Hanover, Maryland from Candlewood Road Property, LLC, a Maryland limited liability company that is wholly-owned by Christopher Pappas, John Pappas and Dean Facatselis.

Dairyland has provided a conditional guarantee for the Indebtedness of The Chefs' Warehouse Leasing Co, LLC, a New York limited liability company that is wholly-owned by Christopher Pappas, John Pappas and Dean Facatselis, in connection with a mortgage note for the warehouse and office facility located at 1300 Viele Avenue, Bronx, NewYork.

**Employment of Family Members**

John Pappas's brother-in-law, Constantine Papatarios, is an employee of Dairyland USA Corporation.

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**Schedule 6.01**

**Existing Indebtedness**

Dairyland has provided a conditional guarantee for the Indebtedness of The Chefs' Warehouse Leasing Co, LLC, a New York limited liability company that is wholly-owned by Christopher Pappas, John Pappas and Dean Facatsclis, in connection with a mortgage note for the warehouse and office facility located at 1300 Viele Avenue, Bronx, New York.

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**Schedule 6.02**

**Existing Liens**

None.

**Schedule 6.04**

**Existing Investments**

None.

**Schedule 6.10**

**Existing Restrictions**

None.

EXHIBIT A

TO CREDIT AGREEMENT

FORM OF ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (the “Assignment and Assumption”) is dated as of the Effective Date set forth below and is entered into by and between [*Insert name of Assignor*] (the “Assignor”) and [*Insert name of Assignee*] (the “Assignee”). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, supplemented or otherwise modified from time to time, the “Credit Agreement”), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below, (i) all of the Assignor’s rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including any Letters of Credit, Guarantees and Swingline Loans included in such facilities) and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and other rights of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as the “Assigned Interest”). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor: \_\_\_\_\_
2. Assignee: \_\_\_\_\_  
[an Affiliate/Approved Fund of [*identify Lender*]]
3. Borrowers: DAIRYLAND USA CORPORATION, a New York corporation, THE CHEFS’ WAREHOUSE MID-ATLANTIC, LLC, a Delaware limited liability company, BEL CANTO FOODS, LLC, a New York limited liability company, THE CHEFS’ WAREHOUSE WEST COAST, LLC, a Delaware limited liability company, and THE CHEFS’ WAREHOUSE OF FLORIDA, LLC, a Delaware limited liability company
4. Administrative Agent: JPMORGAN CHASE BANK, N.A.
5. Credit Agreement: The Credit Agreement dated as of [ \_\_\_\_\_ ], 2012 among Borrowers, the other Loan Parties party thereto from time to time, the Lenders parties thereto from time to time, and JPMorgan Chase Bank, N.A., as Administrative Agent

6. Assigned Interest:

<u>Facility Assigned</u>	<u>Aggregate Amount of Commitment/Loans for all Lenders</u>	<u>Amount of Commitment/Loans Assigned</u>	<u>Percentage Assigned of Commitment/Loans</u>
	\$	\$	%
	\$	\$	%
	\$	\$	%

Effective Date: \_\_\_\_\_, 201 [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The Assignee agrees to deliver to the Administrative Agent a completed Administrative Questionnaire in which the Assignee designates one or more Credit Contacts to whom all syndicate-level information (which may contain material non-public information about the Borrowers, the other 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.

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR

[NAME OF ASSIGNOR]

By: \_\_\_\_\_

Name:

Title:

ASSIGNEE

[NAME OF ASSIGNEE]

By: \_\_\_\_\_

Name:

Title:

[Consented to and] Accepted:

JPMORGAN CHASE BANK, N.A., as  
Administrative Agent [and Issuing Bank]

By: \_\_\_\_\_

Name:

Title:

[Consented to:]

THE CHEFS' WAREHOUSE, INC.,  
as Borrower Representative

By: \_\_\_\_\_

Name:

Title:

STANDARD TERMS AND CONDITIONS FOR  
ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of any Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by any Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it satisfies the requirements, if any, specified in the Credit Agreement that are required to be satisfied by it in order to acquire the Assigned Interest and become a Lender, (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section 5.01 thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent or any other Lender, and (v) if it is a Non-U.S. Lender, attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by facsimile shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York.

EXHIBIT B

TO CREDIT AGREEMENT

FORM OF INCREASING LENDER SUPPLEMENT

INCREASING LENDER SUPPLEMENT, dated \_\_\_\_\_, 20\_\_\_\_ (this "Supplement"), by and among each of the signatories hereto, to the Credit Agreement, dated as of [\_\_\_\_\_] , 2012 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), 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 Chefs' Warehouse, Inc. ("Borrower Representative"), the other Loan Parties party thereto, the Lenders party thereto, and JPMorgan Chase Bank, N.A., as Administrative Agent.

W I T N E S S E T H

WHEREAS, pursuant to Section 2.22 of the Credit Agreement, the Borrower Representative has the right, subject to the terms and conditions thereof, to effectuate from time to time an increase in the Revolving Commitments and/or one or more tranches of Incremental Term Loans under the Credit Agreement by requesting (i) one or more Lenders to increase the amount of its Revolving Commitment and/or to participate in such Incremental Term Loans or (ii) one or more new banks, financial institutions or other entities to extend Revolving Commitments and/or participate in such Incremental Term Loans;

WHEREAS, the Borrower Representative has given notice to the Administrative Agent of its intention to [increase the Revolving Commitments] [and] [enter into a tranche of Incremental Term Loans] pursuant to such Section 2.22; and

WHEREAS, pursuant to Section 2.22 of the Credit Agreement, the undersigned Increasing Lender desires to [increase the amount of its Revolving Commitment] [and] [participate in a tranche of Incremental Term Loans] under the Credit Agreement by executing and delivering to the Borrower Representative and the Administrative Agent this Supplement;

NOW, THEREFORE, each of the parties hereto hereby agrees as follows:

1. The undersigned Increasing Lender agrees, subject to the terms and conditions of the Credit Agreement, that on the date of this Supplement it shall [have its Revolving Commitment increased by \$[\_\_\_\_\_] ], thereby making the aggregate amount of its total Revolving Commitments equal to \$[\_\_\_\_\_] ] [and] [participate in a tranche of Incremental Term Loans with a commitment amount equal to \$[\_\_\_\_\_] ] with respect thereto].

2. The Borrower Representative hereby represents and warrants that (i) the representations and warranties of the Loan Parties set forth in the Credit Agreement are true and correct in all material respects with the same effect as though made on and as of the date hereof (it being understood and agreed that any representation or warranty which by its terms is made as of a specified date shall be required to be true and correct only as of such specified date) and (ii) no Default or Event of Default has occurred and is continuing on and as of the date hereof.

3. Terms defined in the Credit Agreement shall have their defined meanings when used herein.

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4. This Supplement shall be governed by, and construed in accordance with, the laws of the State of New York.

5. This Supplement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same document.

IN WITNESS WHEREOF, each of the undersigned has caused this Supplement to be executed and delivered by a duly authorized officer on the date first above written.

[INSERT NAME OF INCREASING LENDER]

By: \_\_\_\_\_  
Name:  
Title:

Accepted and agreed to as of the date first written above:

THE CHEFS' WAREHOUSE, INC.,  
as Borrower Representative

By: \_\_\_\_\_  
Name:  
Title:

Acknowledged as of the date first written above:

JPMORGAN CHASE BANK, N.A.,  
as Administrative Agent

By: \_\_\_\_\_  
Name:  
Title:

EXHIBIT C

TO CREDIT AGREEMENT

FORM OF AUGMENTING LENDER SUPPLEMENT

AUGMENTING LENDER SUPPLEMENT, dated \_\_\_\_\_, 20\_\_\_\_ (this "Supplement"), to the Credit Agreement, dated as of [\_\_\_\_\_] , 2012 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), 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 Chefs' Warehouse, Inc. ("Borrower Representative"), the other Loan Parties party thereto, the Lenders party thereto, and JPMorgan Chase Bank, N.A., as Administrative Agent.

WITNESSETH

WHEREAS, pursuant to Section 2.22 of the Credit Agreement, the Borrower Representative has the right, subject to the terms and conditions thereof, to effectuate from time to time an increase in the Revolving Commitments and/or one or more tranches of Incremental Term Loans under the Credit Agreement by requesting (i) one or more Lenders to increase the amount of its Revolving Commitment and/or to participate in such Incremental Term Loans or (ii) one or more new banks, financial institutions or other entities to extend Revolving Commitments and/or participate in such Incremental Term Loans;

WHEREAS, the Borrower Representative has given notice to the Administrative Agent of its intention to [increase the Revolving Commitments] [and] [enter into a tranche of Incremental Term Loans] pursuant to such Section 2.22; and

WHEREAS, the undersigned Augmenting Lender was not an original party to the Credit Agreement but now desires to become a party thereto, and desires to [extend Revolving Commitments] [and] [participate in tranches of Incremental Term Loans] under the Credit Agreement;

NOW, THEREFORE, each of the parties hereto hereby agrees as follows:

1. The undersigned Augmenting Lender agrees to be bound by the provisions of the Credit Agreement and agrees that it shall, on the date of this Supplement, become a Lender for all purposes of the Credit Agreement to the same extent as if originally a party thereto, with a [Revolving Commitment of \$[\_\_\_\_\_] ] [and] [a commitment with respect to Incremental Term Loans of \$[\_\_\_\_\_] ].

2. The undersigned Augmenting Lender (a) represents and warrants that it is legally authorized to enter into this Supplement; (b) confirms that it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section 5.01 thereof, as applicable, and has reviewed such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Supplement; (c) agrees that it will, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Agreement or any other instrument or document furnished pursuant hereto or thereto; (d) appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers and discretion under the Credit Agreement or any other instrument or document furnished pursuant hereto or thereto as are delegated to the Administrative Agent

by the terms thereof, together with such powers as are incidental thereto; and (e) agrees that it will be bound by the provisions of the Credit Agreement and will perform in accordance with its terms all the obligations which by the terms of the Credit Agreement are required to be performed by it as a Lender.

3. The undersigned's address for notices for the purposes of the Credit Agreement is as follows:

[            ]

4. The Borrower Representative hereby represents and warrants that (i) the representations and warranties of the Loan Parties set forth in the Credit Agreement are true and correct in all material respects with the same effect as though made on and as of the date hereof (it being understood and agreed that any representation or warranty which by its terms is made as of a specified date shall be required to be true and correct only as of such specified date) and (ii) no Default or Event of Default has occurred and is continuing on and as of the date hereof.

5. Terms defined in the Credit Agreement shall have their defined meanings when used herein.

6. This Supplement shall be governed by, and construed in accordance with, the laws of the State of New York.

7. This Supplement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same document.

[remainder of this page intentionally left blank]

IN WITNESS WHEREOF, each of the undersigned has caused this Supplement to be executed and delivered by a duly authorized officer on the date first above written.

[INSERT NAME OF AUGMENTING LENDER]

By: \_\_\_\_\_  
Name:  
Title:

Accepted and agreed to as of the date first written above:

THE CHEFS' WAREHOUSE, INC.,  
as Borrower Representative

By: \_\_\_\_\_  
Name:  
Title:

Acknowledged as of the date first written above:

JPMORGAN CHASE BANK, N.A.,  
as Administrative Agent

By: \_\_\_\_\_  
Name:  
Title:

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EXHIBIT D  
TO CREDIT AGREEMENT  
LIST OF CLOSING DOCUMENTS

[Attached]

**DAIRYLAND USA CORPORATION**  
**THE CHEFS' WAREHOUSE MID-ATLANTIC, LLC**  
**BEL CANTO FOODS, LLC**  
**THE CHEFS' WAREHOUSE WEST COAST, LLC**  
**THE CHEFS' WAREHOUSE OF FLORIDA, LLC**

**CREDIT FACILITIES**

April 25, 2012

**LIST OF CLOSING DOCUMENTS**

**A. LOAN DOCUMENTS**

1. Credit Agreement (the "Credit Agreement") by and among Dairyland USA Corporation, a New York corporation ("Dairyland"), The Chefs' Warehouse Mid-Atlantic, LLC, a Delaware limited liability company ("CW Mid-Atlantic"), Bel Canto Foods, LLC, a Delaware limited liability company ("Bel Canto"), The Chefs' Warehouse West Coast, LLC, a Delaware limited liability company ("CWWC"), The Chefs' Warehouse of Florida, LLC, a Delaware limited liability company ("CWF" and, together with Dairyland, CW Mid-Atlantic, Bel Canto and CWWC, the "Borrowers"), the other Loan Parties from time to time party thereto, the Lenders from time to time party thereto and JPMorgan Chase Bank, N.A., in its capacity as Administrative Agent for itself and the other Secured Parties (the "Administrative Agent"), evidencing a revolving credit facility to the Borrowers from the Lenders in an initial aggregate principal amount of \$100,000,000 and a term loan facility to Dairyland from the Lenders in an initial aggregate principal amount of \$40,000,000.

**SCHEDULES**

Commitment Schedule

<i>Schedule 2.06</i>	–	<i>Existing Letters of Credit</i>
<i>Schedule 3.05</i>	–	<i>Properties; Collateral Locations</i>
<i>Schedule 3.06</i>	–	<i>Litigation and Environmental Matters</i>
<i>Schedule 3.12</i>	–	<i>Material Agreements</i>
<i>Schedule 3.14</i>	–	<i>Insurance</i>
<i>Schedule 3.15</i>	–	<i>Capitalization and Subsidiaries</i>
<i>Schedule 3.18</i>	–	<i>Tradenames</i>
<i>Schedule 3.19</i>	–	<i>Bank Accounts</i>
<i>Schedule 3.22</i>	–	<i>Affiliate Transactions</i>
<i>Schedule 6.01</i>	–	<i>Existing Indebtedness</i>
<i>Schedule 6.02</i>	–	<i>Existing Liens</i>
<i>Schedule 6.04</i>	–	<i>Existing Investments</i>
<i>Schedule 6.10</i>	–	<i>Existing Restrictions</i>

**EXHIBITS**

Exhibit A	–	Form of Assignment and Assumption
Exhibit B	–	Form of Increasing Lender Supplement
Exhibit C	–	Form of Augmenting Lender Supplement
Exhibit D	–	List of Closing Documents
Exhibit E	–	Form of Compliance Certificate

- Exhibit F – Joinder Agreement
- Exhibit G-1 – Form of U.S. Tax Certificate (for Non-U.S. Lenders That Are Not Partnerships)
- Exhibit G-2 – Form of U.S. Tax Certificate (for Non-U.S. Lenders That are Partnerships)

2. Notes executed by the Borrowers in favor of each of the Lenders, if any, which has requested a note pursuant to Section 2.10(f) of the Credit Agreement.

#### B. COLLATERAL DOCUMENTS

3. Pledge and Security Agreement, executed by the Loan Parties, **together with pledged instruments and allonges, stock certificates, stock powers executed in blank, pledge instructions and acknowledgments, as appropriate.**

- Exhibit A – Type of Entity; Legal Name; Principal Place of Business and Chief Executive Office; FEIN; State Organization Number and Jurisdiction of Incorporation; Properties Leased by the Grantors; Properties Owned by the Grantors; Public Warehouses or Other Locations**
- Exhibit B – Deposit Accounts**
- Exhibit C – Letter of Credit Rights and Chattel Paper**
- Exhibit D – Patents, Trademarks and Copyrights**
- Exhibit E – Filing Requirements**
- Exhibit F – List of Pledged Collateral, Securities and other Investment Property**
- Exhibit G – Filing Offices**
- Exhibit H – Amendment
- Exhibit I – Commercial Tort Claims**
- Annex I – Form of Joinder Agreement

4. Confirmatory Grant of Security Interest in United States Trademarks made by certain of the Loan Parties in favor of the Administrative Agent for the benefit of the Secured Parties.

- Exhibit A – Registered Trademarks; Trademark and Service Mark Applications; Other Trademarks**

5. **Certificates of Insurance listing the Administrative Agent as (x) lender loss payee for the property casualty insurance policies of the initial 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.**

#### C. UCC/INTELLECTUAL PROPERTY DOCUMENTS

6. UCC, tax lien and name variation search reports naming each Loan Party from the appropriate offices in relevant jurisdictions.
7. Intellectual property search reports under the name of each Loan Party in each of the U.S. Copyright Office and the U.S. Patent and Trademark Office.
8. UCC financing statements naming each Loan Party as debtor and the Administrative Agent as secured party as filed with the appropriate offices in applicable jurisdictions.

9. UCC-3 termination statements with respect to UCC financing statements filed in connection with that certain Credit Agreement, dated as of August 2, 2011 (the “Existing Credit Agreement”), by and among the Loan Parties, the financial institutions party thereto as Lenders, and JPMorgan Chase Bank, N.A., as Administrative Agent (the “Existing Administrative Agent”).
10. Release of Security Interest in United States Trademarks, executed by the Existing Administrative Agent.

#### D. CORPORATE DOCUMENTS

11. *Certificate of the Secretary or an Assistant Secretary of each Loan Party certifying (i) that there have been no changes in the Certificate of Incorporation or other charter document of such Loan Party, as attached thereto and as certified as of a recent date by the Secretary of State of the jurisdiction of its organization, since the date of the certification thereof by such governmental entity, (ii) the By-Laws or other applicable organizational document, as attached thereto, of such Loan Party as in effect on the date of such certification, (iii) resolutions of the Board of Directors or other governing body of such Loan Party authorizing the execution, delivery and performance of each Loan Document to which it is a party, and (iv) the names and true signatures of the incumbent officers of each Loan Party authorized to sign the Loan Documents to which it is a party, and (in the case of the Borrowers) authorized to request a Borrowing or the issuance of a Letter of Credit under the Credit Agreement.*
12. *Good Standing Certificate for each Loan Party from the Secretary of State of the jurisdiction of its organization, to the extent generally available in such jurisdiction.*

#### E. OPINION

13. *Opinion of Reed Smith LLP, counsel for the Loan Parties.*

#### F. CLOSING CERTIFICATE AND MISCELLANEOUS

14. *A Certificate signed by the President, a Vice President or a Financial Officer of the Borrowers certifying the following: (i) all of the representations and warranties of the Borrowers set forth in the Credit Agreement are true and correct, (ii) no Default has occurred and is then continuing and (iii) after giving effect to the Transactions, the Loan Parties, taken as a whole, are solvent and will be solvent subsequent to incurring the Indebtedness in connection with the Transactions.*
15. Payoff documentation providing evidence to the Administrative Agent that the credit facility evidenced by the Existing Credit Agreement shall have been terminated and cancelled and all indebtedness thereunder shall have been fully repaid (except to the extent being so repaid with Loans made on the Effective Date) and any and all liens thereunder shall have been terminated.

#### G. POST-CLOSING DOCUMENT

16. Post-filing UCC search reports confirming that each of the UCC financing statements naming each Loan Party as debtor and the Administrative Agent as secured party is filed with the appropriate offices in applicable jurisdictions.

EXHIBIT E

TO CREDIT AGREEMENT

FORM OF COMPLIANCE CERTIFICATE

To: The Lenders party to the Credit Agreement described below

This Compliance Certificate (this "Certificate") is furnished pursuant to that certain Credit Agreement dated as of [ ], 2012 (as amended, supplemented or otherwise modified from time to time, the "Agreement") among Dairyland USA Corporation, a New York corporation ("Dairyland"), The Chefs' Warehouse Mid-Atlantic, LLC, a Delaware limited liability company ("CW Mid-Atlantic"), Bel Canto Foods, LLC, a Delaware limited liability company ("Bel Canto"), The Chefs' Warehouse West Coast, LLC, a Delaware limited liability company ("CWWC"), The Chefs' Warehouse of Florida, LLC, a Delaware limited liability company ("CWF" and together with Dairyland, CW Mid-Atlantic, Bel Canto and CWWC, the "Borrowers"), The Chefs' Warehouse, Inc., a Delaware corporation (a "Guarantor" and the "Borrower Representative"), the other Loan Parties party thereto from time to time, the Lenders party thereto from time to time and JPMorgan Chase Bank, N.A., as Administrative Agent for the Lenders and as the Issuing Bank. Unless otherwise defined herein, capitalized terms used in this Certificate have the meanings ascribed thereto in the Agreement.

THE UNDERSIGNED HEREBY CERTIFIES, SOLELY IN THE UNDERSIGNED'S CAPACITY AS AN AUTHORIZED OFFICER OF THE BORROWER REPRESENTATIVE AND NOT IN THE UNDERSIGNED'S INDIVIDUAL CAPACITY, ON BEHALF OF THE BORROWERS, THAT:

1. I am the duly elected of the Borrower Representative.

2. I have reviewed the terms of the Agreement and I have made, or have caused to be made under my supervision, a detailed review of the transactions and conditions of the Borrower Representative and its Subsidiaries during the accounting period covered by the attached financial statements, and such financial statements present fairly in all material respects the financial condition and results of operations of the Borrower Representative 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.

3. [No Default has occurred as of the date of this Certificate.]/[A Default has occurred as of the date of this Certificate, and set forth below are the details thereof and any action taken or proposed to be taken with respect thereto.]

4. [No change in GAAP or in the application thereof has occurred since the date of the audited financial statements referred to in Section 3.04 of the Agreement.]/[There has been a change in GAAP or in the application thereof since the date of the audited financial statements referred to in Section 3.04 of the Agreement, and set forth below is the effect of such change on the financial statements accompanying this Certificate.]

5. Schedule I attached hereto sets forth reasonably detailed calculations demonstrating compliance with Section 6.13 of the Agreement.

[Signature Page Follows]

The foregoing certifications, together with the computations set forth on Schedule I and the financial statements delivered with this Certificate in support hereof, are made and delivered this day of \_\_\_\_\_, \_\_\_\_\_.

THE CHEFS' WAREHOUSE, INC., as  
Borrower Representative

By: \_\_\_\_\_  
Name:  
Title:

SCHEDULE I

Compliance as of the fiscal quarter ending \_\_\_\_\_, 201\_\_ .

1. <b>EBITDA</b> (for the 12-month period then ended): <b>(i) + (ii) – (iii) =</b>	\$ [ _____, _____, _____ ]
(i) Net Income:	\$ [ _____, _____, _____ ]
<b>(ii) Without duplication and to the extent deducted in determining Net Income:</b>	
(a) Interest Expense:	\$ [ _____, _____, _____ ]
(b) income tax expense net of tax refunds:	\$ [ _____, _____, _____ ]
(c) depreciation and amortization expense:	\$ [ _____, _____, _____ ]
(d) extraordinary non-cash charges:	\$ [ _____, _____, _____ ]
(e) other non-cash charges[ ]:	\$ [ _____, _____, _____ ]
(f) non-recurring fees, cash charges and other cash expenses made or incurred in connection with a completed Permitted Acquisition, in an aggregate amount not to exceed \$2,500,000 for any such Permitted Acquisition:	\$ [ _____, _____, _____ ]
(g) non-recurring cash charges related to workers' compensation claims in an amount not to exceed \$250,000 per Fiscal Year:	\$ [ _____, _____, _____ ]
(h) non-recurring fees, cash charges and other cash expenses, in an aggregate amount not to exceed \$1,000,000 for any period of four (4) consecutive fiscal quarters	\$ [ _____, _____, _____ ]
Total of (ii)(a) through (h):	\$ [ _____, _____, _____ ]
(iii) without duplication, and to the extent included in Net Income, any extraordinary gains and any non-cash items of income:	\$ [ _____, _____, _____ ]
2. <b>Fixed Charges</b> (for the 12-month period then ended): <b>(i) + (ii) + (iii) + (iv) + (v) + (vi) + (vii) =</b>	\$ [ _____, _____, _____ ]
(i) cash Interest Expense:	\$ [ _____, _____, _____ ]
(ii) prepayments (other than mandatory Excess Cash Flow prepayments) and scheduled principal payments on Indebtedness actually paid:	\$ [ _____, _____, _____ ]
(iii) expense for taxes paid in cash:	\$ [ _____, _____, _____ ]
(iv) dividends or distributions paid in cash:	\$ [ _____, _____, _____ ]

(v) Capital Lease Obligation payments:	\$[ , , ]
(vi) cash payments (excluding cash payments financed solely with the proceeds of issuances of equity 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 Subsidiaries:	\$[ , , ]
(vii) any payments made in respect of the sinking fund requirement under the New Markets Tax Credit Financing	\$[ , , ]
3. <u>Fixed Charge Coverage Ratio</u> (for the 12-month period then ended): <b>((i) - (ii)) / (iii) =</b>	
(i) EBITDA:	\$[ , , ]
(ii) the unfinanced portion of Capital Expenditures:	\$[ , , ]
(iii) Fixed Charges:	\$[ , , ]
	Actual: . :1.00
	Required Minimum Fixed Charge Cover Ratio: 1.25:1.00
4. <u>Leverage Ratio</u> (for the 12-month period then ended): <b>(i)/(ii) =</b>	
(i) Total Indebtedness:	\$[ , , ]
(ii) EBITDA:	\$[ , , ]
	Actual: . :1.00
	Permitted Maximum Leverage Ratio: . :1.00

EXHIBIT F

TO CREDIT AGREEMENT

JOINDER AGREEMENT

THIS JOINDER AGREEMENT (this "Agreement"), dated as of \_\_\_\_\_, 201\_\_\_\_, is entered into between \_\_\_\_\_, a (the "New Subsidiary") and JPMORGAN CHASE BANK, N.A., in its capacity as administrative agent (the "Administrative Agent") under that certain Credit Agreement dated as of [\_\_\_\_\_] , 2012 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement") among Dairyland USA Corporation, a New York corporation ("Dairyland"), The Chefs' Warehouse Mid-Atlantic, LLC, a Delaware limited liability company ("CW Mid-Atlantic"), Bel Canto Foods, LLC, a Delaware limited liability company ("Bel Canto"), The Chefs' Warehouse West Coast, LLC, a Delaware limited liability company ("CWWC"), The Chefs' Warehouse of Florida, LLC, a Delaware limited liability company ("CWF") and together with Dairyland, CW Mid-Atlantic, Bel Canto and CWWC, the "Borrowers"), the other Loan Parties party thereto from time to time, the Lenders party thereto from time to time and the Administrative Agent. All capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Credit Agreement.

The New Subsidiary and the Administrative Agent, for the benefit of the Lenders and other holders of Secured Obligations, hereby agree as follows:

1. The New Subsidiary hereby acknowledges, agrees and confirms that, by its execution of this Agreement, the New Subsidiary will be deemed to be a Loan Party under the Credit Agreement and a "Loan Guarantor" for all purposes of the Credit Agreement and shall have all of the obligations of a Loan Party and a Loan Guarantor thereunder as if it had executed the Credit Agreement. The New Subsidiary hereby ratifies, as of the date hereof, and agrees to be bound by, all of the terms, provisions and conditions contained in the Credit Agreement, including without limitation (a) all of the representations and warranties of the Loan Parties set forth in Article III of the Credit Agreement, (b) all of the covenants set forth in Articles V and VI of the Credit Agreement and (c) all of the guaranty obligations set forth in Article X of the Credit Agreement. Without limiting the generality of the foregoing terms of this paragraph 1, the New Subsidiary, subject to the limitations set forth in Section 10.10 of the Credit Agreement, hereby guarantees, jointly and severally with the other Loan Guarantors, to the Administrative Agent and the Lenders, as provided in Article X of the Credit Agreement, the prompt payment and performance of the Guaranteed Obligations in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration or otherwise) strictly in accordance with the terms thereof and agrees that if any of the Guaranteed Obligations are not paid or performed in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration or otherwise), the New Subsidiary will, jointly and severally together with the other Loan Guarantors, promptly pay and perform the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, as a mandatory prepayment, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

2. The New Subsidiary hereby (i) agrees that this Agreement may be attached to the Pledge and Security Agreement, (ii) agrees that the undersigned will comply with all the terms and conditions of the Pledge and Security Agreement as if it were an original signatory thereto, (iii) grants to Administrative Agent, on behalf of and for the ratable benefit of the Lenders, a security interest in all of the undersigned's right, title and interest in and to all "Collateral" (as such term is defined in the Pledge and Security Agreement) of the undersigned, in each case whether now or hereafter existing or in which

the undersigned now has or hereafter acquires an interest and wherever the same may be located and (iv) delivers to Administrative Agent supplements to all schedules attached to the Pledge and Security Agreement; provided, that with respect to such supplements, any applicable schedule that relates solely to the Effective Date shall be deemed to be as of the date of this Agreement. All such Collateral shall be deemed to be part of the "Collateral" and hereafter subject to each of the terms and conditions of the Pledge and Security Agreement.

3. If required, the New Subsidiary is, simultaneously with the execution of this Agreement, delivering such additional Collateral Documents (and such other documents and instruments) as requested by the Administrative Agent in accordance with the Credit Agreement.

4. The address of the New Subsidiary for purposes of Section 9.01 of the Credit Agreement is as follows:

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5. The New Subsidiary hereby waives acceptance by the Administrative Agent and the Lenders of the guaranty by the New Subsidiary upon the execution of this Agreement by the New Subsidiary.

6. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall constitute one and the same instrument.

7. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

[Signature Page Follows]

IN WITNESS WHEREOF, the New Subsidiary has caused this Agreement to be duly executed by its authorized officer, and the Administrative Agent, for the benefit of the Lenders, has caused the same to be accepted by its authorized officer, as of the day and year first above written.

**[NEW SUBSIDIARY]**

By: \_\_\_\_\_  
Name:  
Title:

Acknowledged and accepted:

JPMORGAN CHASE BANK, N.A., as Administrative Agent

By: \_\_\_\_\_  
Name:  
Title:

EXHIBIT G-1

TO CREDIT AGREEMENT  
FORM OF U.S. TAX CERTIFICATE

(For Non-U.S. [Lenders] [Participants] That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement dated as of [ ], 2012 (as it may be amended, supplemented or otherwise modified from time to time, the "Credit Agreement") among The Chefs' Warehouse, Inc., a Delaware corporation ("Borrower Representative"), Dairyland USA Corporation, a New York corporation ("Dairyland"), The Chefs' Warehouse Mid-Atlantic, LLC, a Delaware limited liability company ("CW Mid-Atlantic"), Bel Canto Foods, LLC, a Delaware limited liability company ("Bel Canto"), The Chefs' Warehouse West Coast, LLC, a Delaware limited liability company ("CWWC"), The Chefs' Warehouse of Florida, LLC, a Delaware limited liability company ("CWF" and together with Dairyland, CW Mid-Atlantic, Bel Canto and CWWC, the "Borrowers"), the other Loan Parties party thereto from time to time, each lender from time to time party thereto and JPMorgan Chase Bank, N.A., as Administrative Agent.

Pursuant to the provisions of Section 2.17 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the [Loan(s) (as well as any Note(s) evidencing such Loan(s))] [participation] in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of any Borrower within the meaning of Section 871(h)(3)(B) of the Code, (iv) it is not a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code and (v) the interest payments in question are not effectively connected with the undersigned's conduct of a U.S. trade or business.

The undersigned has furnished [the Administrative Agent and the Borrower Representative] [its participating Lender] with a certificate of its non-U.S. person status on IRS Form W-8BEN. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform [the Borrower Representative and the Administrative Agent] [such Lender] and (2) the undersigned shall have at all times furnished [the Borrower Representative and the Administrative Agent] [such Lender] with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER OR PARTICIPANT]

By: \_\_\_\_\_  
Name:  
Title:

Date: \_\_\_\_\_, 201

EXHIBIT G-2

TO CREDIT AGREEMENT  
FORM OF U.S. TAX CERTIFICATE

(For Non-U.S. [Lenders] [Participants] That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement dated as of [ ], 2012 (as it may be amended, supplemented or otherwise modified from time to time, the "Credit Agreement") among The Chefs' Warehouse, Inc., a Delaware corporation ("Borrower Representative"), Dairyland USA Corporation, a New York corporation ("Dairyland"), The Chefs' Warehouse Mid-Atlantic, LLC, a Delaware limited liability company ("CW Mid-Atlantic"), Bel Canto Foods, LLC, a Delaware limited liability company ("Bel Canto"), The Chefs' Warehouse West Coast, LLC, a Delaware limited liability company ("CWWC"), The Chefs' Warehouse of Florida, LLC, a Delaware limited liability company ("CWF" and together with Dairyland, CW Mid-Atlantic, Bel Canto and CWWC, the "Borrowers"), the other Loan Parties party thereto from time to time, each lender from time to time party thereto and JPMorgan Chase Bank, N.A., as Administrative Agent.

Pursuant to the provisions of Section 2.17 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the [Loan(s) (as well as any Note(s) evidencing such Loan(s))] [participation] in respect of which it is providing this certificate, (ii) its partners/members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to this Credit Agreement, neither the undersigned nor any of its partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its partners/members is a ten percent shareholder of any Borrower within the meaning of Section 871(h)(3)(B) of the Code, (v) none of its partners/members is a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code, and (vi) the interest payments in question are not effectively connected with the undersigned's or its partners/members' conduct of a U.S. trade or business.

The undersigned has furnished [the Administrative Agent and the Borrower Representative] [its participating Lender] with IRS Form W-8IMY accompanied by an IRS Form W-8BEN from each of its partners/members claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform [the Borrower Representative and the Administrative Agent] [such Lender] and (2) the undersigned shall have at all times furnished [the Borrower Representative and the Administrative Agent] [such Lender] with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER OR PARTICIPANT]

By: \_\_\_\_\_  
Name:  
Title:

Date: \_\_\_\_\_, 201

A request for confidential treatment has been made with respect to portions of the following document that are marked [\*CONFIDENTIAL\*]. The redacted portions have been filed separately with the SEC.

## PLEDGE AND SECURITY AGREEMENT

THIS PLEDGE AND SECURITY AGREEMENT (as it may be amended or modified from time to time, this “Security Agreement”) is entered into as of April 25, 2012 by and among DAIRYLAND USA CORPORATION, a New York corporation, THE CHEFS’ WAREHOUSE MID-ATLANTIC, LLC, a Delaware limited liability company, BEL CANTO FOODS, LLC, a New York limited liability company, THE CHEFS’ WAREHOUSE WEST COAST, LLC, a Delaware limited liability company, THE CHEFS’ WAREHOUSE OF FLORIDA, LLC, a Delaware limited liability company, THE CHEFS’ WAREHOUSE, INC., a Delaware corporation (“Holdings”), CHEFS’ WAREHOUSE PARENT, LLC, a Delaware limited liability company, and the other Subsidiaries of Holdings that become party hereto after the date hereof (each a “Grantor”, and collectively, the “Grantors”), and JPMorgan Chase Bank, N.A., in its capacity as administrative agent (the “Administrative Agent”) for the Lenders party to the Credit Agreement referred to below and each other Secured Party.

### PRELIMINARY STATEMENT

The parties hereto have entered into that certain Credit Agreement, dated as of the date hereof (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “Credit Agreement”), by and among the Grantors, the other Loan Parties from time to time party thereto, the Lenders from time to time party thereto and the Administrative Agent, which Credit Agreement provides, subject to the terms and conditions of the Credit Agreement, for extensions of credit and other financial accommodations by the Lenders to the Borrowers thereunder.

Each Grantor is entering into this Security Agreement in order to induce the Lenders to enter into and extend credit to the Borrowers under the Credit Agreement and to secure the Secured Obligations, including the obligations that it has agreed to guarantee pursuant to Article X of the Credit Agreement.

ACCORDINGLY, the Grantors and the Administrative Agent, on behalf of the Lenders and the other Secured Parties, hereby agree as follows:

### ARTICLE I DEFINITIONS

1.1. Terms Defined in Credit Agreement. All capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Credit Agreement.

1.2. Terms Defined in UCC. Terms defined in the UCC which are not otherwise defined in this Security Agreement are used herein as defined in the UCC.

1.3. Definitions of Certain Terms Used Herein. As used in this Security Agreement, in addition to the terms defined in the first paragraph hereof and in the Preliminary Statement, the following terms shall have the following meanings:

“Accounts” shall have the meaning set forth in Article 9 of the UCC.

“Article” means a numbered article of this Security Agreement, unless another document is specifically referenced.

“Chattel Paper” shall have the meaning set forth in Article 9 of the UCC.

“Collateral” shall have the meaning set forth in Article II.

“Collateral Access Agreement” means any landlord waiver or other agreement, in form and substance reasonably satisfactory to the Administrative Agent, between the Administrative Agent and any third party (including any bailee, consignee, customs broker, or other similar Person) in possession of any Collateral or any landlord of any real property where any Collateral is located, as such landlord waiver or other agreement may be amended, restated, or otherwise modified from time to time.

“Commercial Tort Claims” means all existing commercial tort claims (as defined in Article 9 the UCC) of the Grantors, including those listed on Exhibit I.

“Control” shall have the meaning set forth in Article 8 or, if applicable, in Section 9-104, 9-105, 9-106 or 9-107 of Article 9 of the UCC.

“Copyrights” means, with respect to any Person, all of such Person’s right, title, and interest in and to the following: (a) all copyrights, rights and interests in copyrights, works protectable by copyright, copyright registrations, and copyright applications; (b) all renewals of any of the foregoing; (c) all income, royalties, damages, and payments now or hereafter due and/or payable under any of the foregoing, including, without limitation, damages or payments for past or future infringements for any of the foregoing; (d) the right to sue for past, present, and future infringements of any of the foregoing; and (e) all rights corresponding to any of the foregoing throughout the world.

“Deposit Account Control Agreement” means an agreement, in form and substance reasonably satisfactory to the Administrative Agent, among any Loan Party, a banking institution holding such Loan Party’s funds, and the Administrative Agent with respect to collection and Control of all deposits and balances held in a deposit account maintained by any Loan Party with such banking institution.

“Deposit Accounts” shall have the meaning set forth in Article 9 of the UCC.

“Documents” shall have the meaning set forth in Article 9 of the UCC.

“Equipment” shall have the meaning set forth in Article 9 of the UCC.

“Excluded Accounts” means (a) petty cash accounts holding less than \$25,000 individually and \$150,000 in the aggregate, (b) payroll, tax or insurance trust accounts holding only funds necessary to fund the accrued payroll, employee benefit, tax or insurance obligations of the Borrowers and Subsidiaries, (c) accounts of Dairyland HP and (d) account number 3030466337, maintained in the name of The Chefs’ Warehouse Mid-Atlantic, LLC at JPMorgan Chase Bank, N.A., for purposes of making payments in respect of the sinking fund requirement under the New Markets Tax Credit Financing.

“Excluded Assets” shall have the meaning set forth in the Credit Agreement.

“Exhibit” refers to a specific exhibit to this Security Agreement, unless another document is specifically referenced.

“Farm Products” shall have the meaning set forth in Article 9 of the UCC.

“Fixtures” shall have the meaning set forth in Article 9 of the UCC.

“General Intangibles” shall have the meaning set forth in Article 9 of the UCC.

“Goods” shall have the meaning set forth in Article 9 of the UCC.

“Instruments” shall have the meaning set forth in Article 9 of the UCC.

“Inventory” shall have the meaning set forth in Article 9 of the UCC.

“Investment Property” shall have the meaning set forth in Article 9 of the UCC.

“Letter-of-Credit Rights” shall have the meaning set forth in Article 9 of the UCC.

“Licenses” means, with respect to any Person, all of such Person’s right, title, and interest in and to (a) any and all licensing agreements or similar arrangements in and to its Patents, Copyrights, or Trademarks, (b) all income, royalties, damages, claims, and payments now or hereafter due or payable under and with respect thereto, including, without limitation, damages and payments for past and future breaches thereof, and (c) all rights to sue for past, present, and future breaches thereof.

“Patents” means, with respect to any Person, all of such Person’s right, title, and interest in and to: (a) any and all patents and patent applications; (b) all inventions and improvements described and claimed therein; (c) all reissues, divisionals, continuations, renewals, extensions, and continuations-in-part thereof; (d) all income, royalties, damages, claims, and payments now or hereafter due or payable under and with respect thereto, including, without limitation, damages and payments for past and future infringements thereof; (e) all rights to sue for past, present, and future infringements thereof; and (f) all rights corresponding to any of the foregoing throughout the world.

“Pledged Collateral” means all Instruments, Securities and other Investment Property of the Grantors, whether or not physically delivered to the Administrative Agent pursuant to this Security Agreement; provided that, “Pledged Collateral” shall not include any Equity Interests in Dairyland HP.

“Receivables” means the Accounts, Chattel Paper, Documents, Investment Property, Instruments and any other rights or claims to receive money which are General Intangibles or which are otherwise included as Collateral.

“Required Secured Parties” means (a) prior to the date upon which the Credit Agreement has been terminated in writing and all of the Obligations have been paid in full, the Required Lenders, and (b) after the Credit Agreement has been terminated in writing and all of the Obligations have been paid in full (whether or not the Obligations under the Credit Agreement were ever accelerated), Lenders holding (directly or through Affiliates) in the aggregate greater than 50% of the aggregate net early termination payments and all other amounts then due and unpaid from any Grantor to the Lenders under any Swap Agreement, as determined by the Administrative Agent in its reasonable discretion.

“Section” means a numbered section of this Security Agreement, unless another document is specifically referenced.

“Security” shall have the meaning set forth in Article 8 of the UCC.

“Stock Rights” means all dividends, instruments or other distributions and any other right or property which the Grantors shall receive or shall become entitled to receive for any reason whatsoever with respect to, in substitution for or in exchange for any Equity Interest constituting Collateral, any right to receive an Equity Interest and any right to receive earnings, in which the Grantors now have or hereafter acquire any right, issued by an issuer of such Equity Interest.

“Supporting Obligations” shall have the meaning set forth in Article 9 of the UCC.

“Trademarks” means, with respect to any Person, all of such Person’s right, title, and interest in and to the following: (a) all trademarks (including service marks), trade names, trade dress, and trade styles and the registrations and applications for registration thereof and the goodwill of the business symbolized by the foregoing; (b) all renewals of the foregoing; (c) all income, royalties, damages, and payments now or hereafter due or payable with respect thereto, including, without limitation, damages, claims, and payments for past and future infringements thereof; (d) all rights to sue for past, present, and future infringements of the foregoing, including the right to settle suits involving claims and demands for royalties owing; and (e) all rights corresponding to any of the foregoing throughout the world.

The foregoing definitions shall be equally applicable to both the singular and plural forms of the defined terms.

## **ARTICLE II GRANT OF SECURITY INTEREST**

Each Grantor hereby pledges, assigns and grants to the Administrative Agent, on behalf of and for the benefit of the Secured Parties, a security interest in all of its right, title and interest in, to and under all personal property and other assets, whether now owned by or owing to, or hereafter acquired by or arising in favor of such Grantor (including under any trade name or derivations thereof), and whether owned or consigned by or to, or leased from or to, such Grantor, and regardless of where located (all of which will be collectively referred to as the “Collateral”), including:

- (i) all Accounts;
- (ii) all Chattel Paper;
- (iii) all Copyrights, Patents and Trademarks;
- (iv) all Documents;
- (v) all Equipment;
- (vi) all Fixtures;
- (vii) all General Intangibles;
- (viii) all Goods;
- (ix) all Instruments;
- (x) all Inventory;
- (xi) all Investment Property;
- (xii) all cash or cash equivalents;
- (xiii) all letters of credit, Letter-of-Credit Rights and Supporting Obligations;
- (xiv) all Deposit Accounts with any bank or other financial institution;

- (xv) all Commercial Tort Claims;
- (xvi) all Farm Products; and
- (xvii) all accessions to, substitutions for and replacements, proceeds (including Stock Rights), insurance proceeds and products of the foregoing, together with all books and records, customer lists, credit files, computer files, programs, printouts and other computer materials and records related thereto and any General Intangibles at any time evidencing or relating to any of the foregoing;

to secure the prompt and complete payment and performance of the Secured Obligations. Notwithstanding anything contained in this Security Agreement to the contrary, in no event shall the Collateral include, and no Grantor shall be deemed or required to have granted a security interest in, any Excluded Asset or, for the avoidance of doubt, any of the Equity Interests in, or property or assets of, the Excluded Subsidiary. The foregoing exclusion shall not include, and shall in no way be construed so as to limit, impair or otherwise affect the Administrative Agent's unconditional continuing Lien on, any proceeds, products, substitutions or replacements of any Excluded Asset unless such proceeds, products, substitutions or replacements otherwise constitute an Excluded Asset.

### **ARTICLE III REPRESENTATIONS AND WARRANTIES**

Each Grantor represents and warrants to the Administrative Agent and the Lenders that:

3.1. Title, Perfection and Priority. Such Grantor has good and valid rights in or the power to transfer the Collateral and title to the Collateral with respect to which it has purported to grant a security interest hereunder, free and clear of all Liens except for Permitted Encumbrances, and has full power and authority to grant to the Administrative Agent the security interest in the Collateral pursuant hereto. When financing statements have been filed in the appropriate offices against such Grantor in the locations listed on Exhibit G, the Administrative Agent will have a fully perfected first priority security interest in that Collateral of the Grantor in which a security interest may be perfected by filing such financing statements, subject only to Permitted Encumbrances.

3.2. Type and Jurisdiction of Organization, Organizational and Identification Numbers. The type of entity of such Grantor, its state of organization, the organizational number issued to it by its state of organization and its federal employer identification number are set forth on Exhibit A.

3.3. Principal Location. Such Grantor's mailing address and the location of its place of business (if it has only one) or its chief executive office (if it has more than one place of business), are disclosed in Exhibit A.

3.4. Collateral Locations. As of the date hereof, all of such Grantor's locations where Inventory, Equipment or Fixtures, to the extent constituting Collateral, with a value in excess of \$250,000 individually or \$1,000,000 in the aggregate (other than such Collateral in transit or out for repair or laptop computers, cellular telephones and/or other electronic devices held by employees) is located are listed on Exhibit A. All of said locations are owned by such Grantor except for locations (i) which are leased by the Grantor as lessee and designated in Part VII(b) of Exhibit A and (ii) at which Inventory is held in a public warehouse or is otherwise held by a bailee or on consignment as designated in Part VII(c) of Exhibit A.

3.5. Deposit Accounts. All of such Grantor's Deposit Accounts are listed on Exhibit B.

3.6. Exact Names. Such Grantor's name in which it has executed this Security Agreement is the exact name as it appears in such Grantor's organizational documents, as amended, as filed with such Grantor's jurisdiction of organization. Except as set forth on Exhibit A, such Grantor has not, during the past five years, been known by or used any other corporate name or trade name, or been a party to any merger or consolidation, or been a party to any acquisition.

3.7. Letter-of-Credit Rights and Chattel Paper. Exhibit C lists all Letter-of-Credit Rights and Chattel Paper of such Grantor with a value \$1,000,000 or more individually. All action by such Grantor necessary or desirable to protect and perfect the Administrative Agent's Lien on each item listed on Exhibit C (including the delivery of all originals and the placement of a legend on all Chattel Paper as required hereunder) has been duly taken. The Administrative Agent will have a fully perfected first priority security interest in the Collateral listed on Exhibit C, subject only to Permitted Encumbrances.

3.8. [Intentionally Omitted].

3.9. [Intentionally Omitted].

3.10. Intellectual Property. Such Grantor does not have any interest in, or title to, any Patent, Trademark or Copyright, or Licenses with respect thereto, except as set forth in Exhibit D. This Security Agreement is effective to create a valid and continuing Lien and, upon filing of appropriate financing statements in the offices listed on Exhibit G and confirmatory grants of security interest with respect to such Grantor's Patents, Trademarks and Copyrights with the United States Copyright Office or the United States Patent and Trademark Office, as applicable, fully perfected first priority security interests in favor of the Administrative Agent on such Grantor's U.S. Patents, U.S. Trademarks and U.S. Copyrights; provided however that additional filings may be necessary to perfect the Administrative Agent's security interest in any Patents, Trademarks or Copyrights acquired after the date hereof, and such perfected security interests are enforceable as such as against any and all creditors of and purchasers from such Grantor.

3.11. Filing Requirements. None of its Equipment is covered by any certificate of title, except for its trucks and other motor vehicles. Except as set forth on Exhibit E, none of the Collateral owned by it is of a type for which security interests or liens may be perfected by filing under any federal statute except for (a) assets subject to certificates of title and (b) Patents, Trademarks and Copyrights held by such Grantor and described in Exhibit D.

3.12. No Financing Statements, Security Agreements. No financing statement or security agreement describing all or any portion of the Collateral which has not lapsed or been terminated (except as authorized by the Administrative Agent) naming such Grantor as debtor has been filed or is of record in any jurisdiction except for financing statements or security agreements (a) naming the Administrative Agent as the secured party or (b) in respect to those expressly permitted pursuant to Section 6.02 of the Credit Agreement.

3.13. Pledged Collateral.

(a) Exhibit F sets forth a complete and accurate list of all Pledged Collateral owned by such Grantor. Such Grantor is the direct, sole beneficial owner and sole holder of record of the Pledged Collateral listed on Exhibit F as being owned by it. Such Grantor further represents and warrants that (i) all Pledged Collateral owned by it constituting an Equity Interest has been (to the extent such concepts are relevant with respect to such Pledged Collateral) duly authorized, validly

issued, is fully paid and non-assessable, (ii) with respect to any certificates delivered to the Administrative Agent representing an Equity Interest, such certificates are Securities as defined in Article 8 of the UCC as a result of actions by the issuer or otherwise, or, if such certificates are not Securities, such Grantor has so informed the Administrative Agent so that the Administrative Agent may take steps to perfect its security interest therein as a General Intangible, (iii) all such Pledged Collateral held by a securities intermediary is covered by a control agreement among such Grantor, the securities intermediary and the Administrative Agent pursuant to which the Administrative Agent has Control and (iv) all Pledged Collateral which represents Indebtedness owed to such Grantor has, to such Grantor's knowledge, been duly authorized, authenticated or issued and delivered by the issuer of such Indebtedness and is the legal, valid and binding obligation of such issuer.

(b) In addition, (i) none of the Pledged Collateral owned by it has been issued or transferred in violation of the securities registration, securities disclosure or similar laws of any jurisdiction to which such issuance or transfer may be subject, (ii) no options, warrants, calls or commitments of any character whatsoever (A) exist relating to such Pledged Collateral or (B) obligate the issuer of any Equity Interest included in the Pledged Collateral to issue additional Equity Interests, and (iii) no consent, approval, authorization, or other action by, and no giving of notice, filing with, any governmental authority or any other Person is required for the pledge by such Grantor of such Pledged Collateral pursuant to this Security Agreement or for the execution, delivery and performance of this Security Agreement by such Grantor, or for the exercise by the Administrative Agent of the voting or other rights provided for in this Security Agreement or for the remedies in respect of the Pledged Collateral pursuant to this Security Agreement, except as may be required in connection with such disposition by laws affecting the offering and sale of securities generally.

(c) Except as set forth in Exhibit F, such Grantor owns 100% of the issued and outstanding Equity Interests of the issuer of such Pledged Collateral and none of the Pledged Collateral which represents Indebtedness owed to such Grantor is subordinated in right of payment to other Indebtedness or subject to the terms of an indenture.

#### **ARTICLE IV COVENANTS**

From the date of this Security Agreement, and thereafter until this Security Agreement is terminated, each Grantor agrees that:

##### **4.1. General.**

(a) Collateral Records. Such Grantor will maintain complete and accurate books and records with respect to the Collateral owned by it.

(b) Authorization to File Financing Statements; Ratification. Such Grantor hereby authorizes the Administrative Agent to file, and if requested will deliver to the Administrative Agent, all financing statements and other documents and take such other actions as may from time to time be reasonably requested by the Administrative Agent in order to maintain a first-priority perfected security interest in and, if applicable, Control of, the Collateral owned by such Grantor. Any financing statement filed by the Administrative Agent may be filed in any filing office in any UCC jurisdiction and may (i) indicate such Grantor's Collateral (1) as all assets of the Grantor or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the UCC or such jurisdiction, or (2) by any other description which reasonably approximates the description contained in this Security Agreement, and (ii) contain any other information required by part 5 of Article 9 of the UCC for the sufficiency or filing office acceptance of any financing statement

or amendment, including (A) whether such Grantor is an organization, the type of organization and any organization identification number issued to such Grantor, and (B) in the case of a financing statement filed as a fixture filing or indicating such Grantor's Collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates. Such Grantor also agrees to furnish any such information described in the foregoing sentence to the Administrative Agent promptly upon request. Such Grantor also ratifies its authorization for the Administrative Agent to have filed in any UCC jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof.

(c) Further Assurances. Such Grantor will, if so requested by the Administrative Agent, promptly furnish to the Administrative Agent, as often as the Administrative Agent requests, statements and schedules further identifying and describing the Collateral owned by it and such other reports and information in connection with its Collateral as the Administrative Agent may reasonably request, all in such reasonable detail, in each case, as the Administrative Agent may specify. Such Grantor also agrees to take any and all actions necessary, or as may be reasonably requested by the Administrative Agent, to defend title to the Collateral against all Persons and to defend the security interest of the Administrative Agent in the Collateral and the priority thereof against any Lien not expressly permitted hereunder.

(d) [Intentionally Omitted].

(e) [Intentionally Omitted].

(f) Other Financing Statements. Such Grantor will not authorize the filing of any financing statement naming it as debtor covering all or any portion of the Collateral owned by it, except for financing statements (i) naming the Administrative Agent as the secured party, and (ii) in respect of Liens that are expressly permitted pursuant to Section 6.02 of the Credit Agreement. Such Grantor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement related to the Secured Obligations without the prior written consent of the Administrative Agent, subject to such Grantor's rights under Section 9-509(d)(2) of the UCC; provided, that filing of precautionary financing statements in accordance with Section 6.02(i) of the Credit Agreement shall not be deemed a violation of this clause (f).

(g) Locations. Such Grantor will not maintain any Inventory, Equipment or Fixtures owned by it, to the extent constituting Collateral, with a value in excess of \$250,000 individually or \$1,000,000 in the aggregate (other than such Collateral in transit or out for repair or laptop computers, cellular telephones or other electronic devices held by employees) at any location other than those locations listed on Exhibit A or those locations for which a Collateral Access Agreement has been delivered, except as otherwise consented to by the Administrative Agent.

(h) Compliance with Terms. Such Grantor will perform and comply in all material respects with all obligations in respect of the Collateral owned by it and all agreements to which it is a party or by which it is bound relating to such Collateral; provided, that each Grantor shall strictly comply with its obligations with respect to the Collateral set forth in this Security Agreement and the other Loan Documents.

#### 4.2. Receivables; Electronic Chattel Paper.

(a) Receivables. Following the occurrence and during the continuance of an Event of Default, such Grantor will not make or agree to make any discount, credit, rebate or other reduction in the original amount owing on a Receivable or accept in satisfaction of a Receivable less than the original amount thereof, other than reductions in the amount of Accounts arising from the sale of Inventory in accordance with its present policies and in the ordinary course of business.

(b) Electronic Chattel Paper. Such Grantor shall take all steps necessary to grant the Administrative Agent Control of all electronic chattel paper in excess of \$500,000 (individually or in the aggregate) in accordance with the UCC and all “transferable records” as defined in each of the Uniform Electronic Transactions Act and the Electronic Signatures in Global and National Commerce Act.

4.3. Maintenance of Goods. Such Grantor will do all things necessary to maintain, preserve, protect and keep its Inventory and the Equipment in good repair and working and saleable condition, except for damaged or defective goods arising in the ordinary course of such Grantor’s business and except for ordinary wear and tear and casualty in respect of the Equipment.

4.4. Delivery of Instruments, Securities, Chattel Paper and Documents. Such Grantor will (a) deliver to the Administrative Agent immediately upon execution of this Security Agreement the originals of all (x) Chattel Paper and Instruments with a value in excess of \$500,000 individually or in the aggregate, or (y) any certificated Securities, in each case, constituting Collateral owned by it (if any then exist), (b) hold in trust for the Administrative Agent upon receipt and promptly thereafter (but in no event later than three (3) Business Days after receipt) deliver to the Administrative Agent (x) Chattel Paper and Instruments with a value in excess of \$500,000 individually or in the aggregate, or (y) any certificated Securities, in each case, constituting Collateral obtained after the Effective Date, (c) upon the Administrative Agent’s reasonable request, deliver to the Administrative Agent (and thereafter hold in trust for the Administrative Agent upon receipt and promptly thereafter (but in no event later than three (3) Business Days after such request) deliver to the Administrative Agent) any Document evidencing or constituting Collateral and (d) promptly upon the Administrative Agent’s reasonable request, deliver to the Administrative Agent a duly executed amendment to this Security Agreement, in the form of Exhibit H hereto (the “Amendment”), pursuant to which such Grantor will pledge such additional Collateral. Such Grantor hereby authorizes the Administrative Agent to attach each Amendment to this Security Agreement and agrees that all additional Collateral owned by it set forth in such Amendments shall be considered to be part of the Collateral; provided, that the Lien granted hereunder shall attach and such property shall be considered part of the Collateral despite any Grantor’s failure to deliver an Amendment.

4.5. Uncertificated Pledged Collateral. Such Grantor will permit the Administrative Agent from time to time to cause the appropriate issuers (and, if held with a securities intermediary, such securities intermediary) of uncertificated securities or other types of Pledged Collateral owned by it not represented by certificates to mark their books and records with the numbers and face amounts of all such uncertificated securities or other types of Pledged Collateral not represented by certificates and all rollovers and replacements therefor to reflect the Lien of the Administrative Agent granted pursuant to this Security Agreement. With respect to any Pledged Collateral owned by it, such Grantor will take any actions necessary to cause (a) the issuers of uncertificated securities which are Pledged Collateral and (b) any securities intermediary which is the holder of any such Pledged Collateral, to cause the Administrative Agent to have and retain Control over such Pledged Collateral. Without limiting the foregoing, such Grantor will, with respect to any such Pledged Collateral held with a securities intermediary, cause such securities intermediary, within fifteen (15) days of acquiring such Collateral to enter into a control agreement with the Administrative Agent, in form and substance reasonably satisfactory to the Administrative Agent, giving the Administrative Agent Control.

#### 4.6. Pledged Collateral.

(a) Registration of Pledged Collateral. Following the occurrence and during the continuance of an Event of Default, such Grantor will permit any registerable Pledged Collateral owned by it to be registered in the name of the Administrative Agent or its nominee at any time at the option of the Required Secured Parties.

(b) Exercise of Rights in Pledged Collateral. Such Grantor will permit the Administrative Agent or its nominee at any time after the occurrence and during the continuance of an Event of Default, without notice, to exercise all voting rights or other rights relating to the Pledged Collateral owned by it, including, without limitation, exchange, subscription or any other rights, privileges, or options pertaining to any Equity Interest or Investment Property constituting such Pledged Collateral as if it were the absolute owner thereof.

#### 4.7. Intellectual Property.

(a) Upon the Administrative Agent's request, such Grantor will use its commercially reasonable efforts to secure all consents and approvals necessary for the Administrative Agent to attach the Lien hereunder in any License held by such Grantor and to enforce the security interests granted hereunder.

(b) Such Grantor shall notify the Administrative Agent immediately if it knows that any application or registration relating to any Patent, Trademark or Copyright (now or hereafter existing) may become abandoned or dedicated to the public, except where the abandonment or dedication to the public of such Patent, Trademark, or Copyright could not reasonably be expected to have a Material Adverse Effect, or of any adverse determination or development (including the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, the United States Copyright Office or any court) regarding such Grantor's ownership of any Patent, Trademark or Copyright, its right to register the same, or to keep and maintain the same, except as could not reasonably be expected to have a Material Adverse Effect.

(c) Such Grantor agrees that should it file, either directly or through any agent, employee, licensee or designee, an application for the registration of any Patent, Trademark or Copyright with the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency without giving ("After-Acquired Intellectual Property"), concurrently with delivery of the financial statements under Section 5.01(b) of the Credit Agreement for the month in which such application was filed, such Grantor shall give written notice to the Administrative Agent identifying such After-Acquired Intellectual Property, and, upon request of the Administrative Agent, such Grantor shall execute and deliver any and all security agreements as the Administrative Agent may reasonably request to evidence the Administrative Agent's first priority security interest on such Patent, Trademark or Copyright (subject to the limitations set forth in Section 3.10), and the General Intangibles of such Grantor relating thereto or represented thereby.

(d) Such Grantor shall take all actions necessary or reasonably requested by the Administrative Agent to maintain and pursue each application, to obtain the relevant registration and to maintain the registration of each Patent, Trademark and Copyright owned by such Grantor (now or hereafter existing), including the filing of applications for renewal, affidavits of use, affidavits of noncontestability and opposition and interference and cancellation proceedings, unless such Grantor shall reasonably determine that such Patent, Trademark or Copyright is not material to the conduct of such Grantor's business.

(e) Such Grantor shall, unless it shall reasonably determine that such Patent, Trademark or Copyright owned by such Grantor is in no way material to the conduct of its business or

operations, promptly sue for infringement, misappropriation or dilution and to recover any and all damages for such infringement, misappropriation or dilution, and shall take such other actions as the Grantor shall deem appropriate under the circumstances to protect such Patent, Trademark or Copyright.

4.8. Commercial Tort Claims. Such Grantor shall promptly, and in any event within three (3) Business Days after the same is acquired by it, notify the Administrative Agent of any Commercial Tort Claim with a value of \$1,000,000 or more and, unless the Administrative Agent otherwise consents, such Grantor shall enter into an amendment to this Security Agreement, in the form of Exhibit H hereto, granting to Administrative Agent a first priority security interest in such Commercial Tort Claim.

4.9. Letter-of-Credit Rights. If such Grantor is or becomes the beneficiary of a letter of credit, that has a face amount of \$1,000,000 or more, it shall promptly, and in any event within five (5) Business Days after becoming a beneficiary, notify the Administrative Agent thereof and cause the issuer and/or confirmation bank to (i) consent to the assignment of any Letter-of-Credit Rights to the Administrative Agent and (ii) agree to direct all payments thereunder to a Deposit Account at the Administrative Agent or subject to a Deposit Account Control Agreement for application to the Secured Obligations, in accordance with Section 2.18 of the Credit Agreement, all in form and substance reasonably satisfactory to the Administrative Agent.

4.10. Federal, State or Municipal Claims. Such Grantor will promptly notify the Administrative Agent of any Collateral with a value of \$5,000,000 or more which constitutes a claim against the U.S. government or any state or local government or any instrumentality or agency thereof, the assignment of which claim is restricted by federal, state or municipal law.

4.11. No Interference. Such Grantor agrees that it will not interfere with any right, power and remedy of the Administrative Agent provided for in this Security Agreement or any other Loan Document or now or hereafter existing at law or in equity or by statute or otherwise, or the exercise or beginning of the exercise by the Administrative Agent of any one or more of such rights, powers or remedies.

4.12. [Intentionally Omitted].

4.13. Collateral Access Agreements. Upon the request of the Administrative Agent, such Grantor 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 with a value in excess of \$1,000,000 is stored or located, which Collateral Access Agreement shall be reasonably satisfactory in form and substance to the Administrative Agent. Such Grantor shall timely and fully pay and perform its obligations under all leases and other agreements with respect to each leased location or third party warehouse or other location where any Collateral is or may be located subject, however, to such Grantor's right to contest the validity or amount of such obligations in accordance with Section 5.04 of the Credit Agreement.

4.14. Deposit Account Control Agreements. Each Grantor will, upon the Administrative Agent's reasonable request, cause each bank or other financial institution in which it maintains (a) a Deposit Account (other than an Excluded Account) to enter into a Deposit Account Control Agreement with respect to such Deposit Account or (b) other deposits (general or special, time or demand, provisional or final) to be notified of the security interest granted to the Administrative Agent hereunder and cause each such bank or other financial institution to acknowledge such notification in writing. In the case of deposits maintained with Lenders, the terms of such letter shall be subject to the provisions of the Credit Agreement regarding setoffs.

4.15. Change of Name or Location. Except as expressly permitted by the Credit Agreement, such Grantor shall not (a) change its name as it appears in official filings in the state of its incorporation or organization, (b) change its chief executive office, principal place of business, mailing address, corporate offices or the location of its records concerning the Collateral, (c) change the type of entity that it is, (d) change its organization identification number, if any, issued by its state of incorporation or other organization, or (e) change its state of incorporation or organization, in each case, unless the Administrative Agent shall have received at least fifteen (15) days prior written notice of such change and any reasonable action requested by the Administrative Agent in connection therewith has been completed or taken (including any action to continue the perfection of any Liens in favor of the Administrative Agent, on behalf of Secured Parties, in any Collateral); provided that any new location shall be in the continental United States of America.

4.16. Updating of Exhibits to the Security Agreement. Holdings will provide to the Administrative Agent, concurrently with the delivery of the Compliance Certificate as required by Section 5.01(c) of the Credit Agreement, updated versions of the Exhibits to this Security Agreement (provided that if there have been no changes to any such Exhibits since the previous updating thereof required hereby, Holdings shall indicate that there has been “no change” to the applicable Exhibit(s)).

## **ARTICLE V REMEDIES**

5.1. [Intentionally Omitted].

5.2. Remedies.

(a) Upon the occurrence and during the continuation of an Event of Default, the Administrative Agent may exercise any or all of the following rights and remedies:

(i) those rights and remedies provided in this Security Agreement, the Credit Agreement, or any other Loan Document; provided that, this Section 5.2(a) shall not be understood to limit any rights or remedies available to the Administrative Agent and the Lenders prior to an Event of Default;

(ii) those rights and remedies available to a secured party under the UCC (whether or not the UCC applies to the affected Collateral) or under any other applicable law (including, without limitation, any law governing the exercise of a bank’s right of setoff or bankers’ lien) when a debtor is in default under a security agreement;

(iii) give notice of sole control or any other instruction under any Deposit Account Control Agreement or and other control agreement with any securities intermediary and take any action therein with respect to such Collateral;

(iv) without notice (except as specifically provided in Section 8.1 or elsewhere herein), demand or advertisement of any kind to any Grantor or any other Person, enter the premises of any Grantor where any Collateral is located (through self-help and without judicial process) to collect, receive, assemble, process, appropriate, sell, lease, assign, grant an option or options to purchase or otherwise dispose of, deliver, or realize upon, the Collateral or any part thereof in one or more parcels at public or private sale or sales (which sales may be adjourned or continued from time to time with or without notice and may take place at any Grantor’s premises or elsewhere), for cash, on credit or for future delivery without assumption of any credit risk, and upon such other terms as the Administrative Agent may deem commercially reasonable; and

(v) concurrently with written notice to the applicable Grantor, transfer and register in its name or in the name of its nominee the whole or any part of the Pledged Collateral, to exchange certificates or instruments representing or evidencing Pledged Collateral for certificates or instruments of smaller or larger denominations, exercise the voting and all other rights as a holder with respect thereto, to collect and receive all cash dividends, interest, principal and other distributions made thereon and to otherwise act with respect to the Pledged Collateral as though the Administrative Agent was the outright owner thereof.

(b) The Administrative Agent, on behalf of the Secured Parties, may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral and compliance will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

(c) The Administrative Agent shall have the right upon any such public sale or sales and, to the extent permitted by law, upon any such private sale or sales, to purchase for the benefit of the Administrative Agent and the Secured Parties, the whole or any part of the Collateral so sold, free of any right of equity redemption, which equity redemption the Grantor hereby expressly releases.

(d) Until the Administrative Agent is able to effect a sale, lease, or other disposition of Collateral, the Administrative Agent shall have the right to hold or use Collateral, or any part thereof, to the extent that it deems appropriate for the purpose of preserving Collateral or its value or for any other purpose deemed appropriate by the Administrative Agent. The Administrative Agent may, if it so elects, seek the appointment of a receiver or keeper to take possession of Collateral and to enforce any of the Administrative Agent's remedies (for the benefit of the Administrative Agent and Secured Parties), with respect to such appointment without prior notice or hearing as to such appointment.

(e) If, after the Credit Agreement has terminated by its terms and all of the Obligations have been paid in full (other than contingent indemnification obligations in which no claim has been made), there remain Swap Obligations outstanding, the Required Secured Parties may exercise the remedies provided in this [Section 5.2](#) upon the occurrence of any event which would allow or require the termination or acceleration of any Swap Obligations pursuant to the terms of the Swap Agreement.

(f) Notwithstanding the foregoing, neither the Administrative Agent nor the Secured Parties shall be required to (i) make any demand upon, or pursue or exhaust any of their rights or remedies against, any Grantor, any other obligor, guarantor, pledgor or any other Person with respect to the payment of the Secured Obligations or to pursue or exhaust any of its rights or remedies with respect to any Collateral therefor or any direct or indirect guarantee thereof, (ii) marshal the Collateral or any guarantee of the Secured Obligations or to resort to the Collateral or any such guarantee in any particular order, or (iii) effect a public sale of any Collateral.

(g) Each Grantor recognizes that the Administrative Agent may be unable to effect a public sale of any or all the Pledged Collateral and may be compelled to resort to one or more private sales thereof in accordance with [clause \(a\)](#) above. Each Grantor also acknowledges that any private sale may result in prices and other terms less favorable to the seller than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall not be deemed to have been made in a commercially unreasonable manner solely by virtue of such sale being private. The

Administrative Agent shall be under no obligation to delay a sale of any of the Pledged Collateral for the period of time necessary to permit any Grantor or the issuer of the Pledged Collateral to register such securities for public sale under the Securities Act of 1933, as amended, or under applicable state securities laws, even if the applicable Grantor and the issuer would agree to do so.

5.3. Grantor's Obligations Upon Default. Upon the request of the Administrative Agent after the occurrence and during the continuation of an Event of Default, each Grantor will:

(a) assemble and make available to the Administrative Agent the Collateral and all books and records relating thereto at any place or places specified by the Administrative Agent, whether at a Grantor's premises or elsewhere;

(b) permit the Administrative Agent, by the Administrative Agent's representatives and agents, to enter, occupy and use any premises where all or any part of the Collateral, or the books and records relating thereto, or both, are located, to take possession of all or any part of the Collateral or the books and records relating thereto, or both, to remove all or any part of the Collateral or the books and records relating thereto, or both, and to conduct sales of the Collateral, without any obligation to pay the Grantor for such use and occupancy;

(c) prepare and file, or cause an issuer of Pledged Collateral to prepare and file, with the Securities and Exchange Commission or any other applicable government agency, registration statements, a prospectus and such other documentation in connection with the Pledged Collateral as the Administrative Agent may request, all in form and substance satisfactory to the Administrative Agent, and furnish to the Administrative Agent, or cause an issuer of Pledged Collateral to furnish to the Administrative Agent, any information regarding the Pledged Collateral in such detail as the Administrative Agent may specify; and

(d) take, or cause an issuer of Pledged Collateral to take, any and all actions necessary to register or qualify the Pledged Collateral to enable the Administrative Agent to consummate a public sale or other disposition of the Pledged Collateral.

5.4. Grant of Intellectual Property License. The Administrative Agent is hereby granted a license or other right to use for non-competitive purposes, following the occurrence and during the continuance of an Event of Default, without charge, each Grantor's labels, Patents, Copyrights, rights of use of any name, trade secrets, Trademarks, customer lists and advertising matter, or any property of a similar nature, as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral, and, following the occurrence and during the continuance of an Event of Default, such Grantor's rights under all licenses and all franchise agreements shall inure to the Administrative Agent's benefit. In addition, each Grantor hereby irrevocably agrees that the Administrative Agent may, following the occurrence and during the continuance of an Event of Default, sell any of such Grantor's Inventory directly to any person, including without limitation persons who have previously purchased such Grantor's Inventory from such Grantor and in connection with any such sale or other enforcement of the Administrative Agent's rights under this Security Agreement, may sell Inventory which bears any Trademark owned by or licensed to such Grantor and any Inventory that is covered by any Copyright owned by or licensed to such Grantor and the Administrative Agent may (but shall have no obligation to) finish any work in process and affix any trademark owned by or licensed to such Grantor and sell such Inventory as provided herein.

**ARTICLE VI**  
**AUTHORIZATION FOR ADMINISTRATIVE AGENT TO TAKE CERTAIN ACTION**

Each Grantor irrevocably authorizes the Administrative Agent at any time and from time to time in the sole discretion of the Administrative Agent and appoints the Administrative Agent as its attorney in fact (i) to execute on behalf of such Grantor as debtor and to file financing statements necessary or desirable in the Administrative Agent's sole discretion to perfect and to maintain the perfection and priority of the Administrative Agent's security interest in the Collateral, (ii) upon the occurrence and during the continuance of an Event of Default, to indorse and collect any cash proceeds of the Collateral, (iii) to file a carbon, photographic or other reproduction of this Security Agreement or any financing statement with respect to the Collateral as a financing statement and to file any other financing statement or amendment of a financing statement (which does not add new collateral or add a debtor) in such offices as the Administrative Agent in its sole discretion deems necessary or desirable to perfect and to maintain the perfection and priority of the Administrative Agent's security interest in the Collateral, (iv) upon the occurrence and during the continuance of an Event of Default, to contact and enter into one or more agreements with the issuers of uncertificated securities which are Pledged Collateral or with securities intermediaries holding Pledged Collateral as may be necessary or advisable to give the Administrative Agent Control over such Pledged Collateral in accordance with the terms hereof, (v) upon the occurrence and during the continuance of an Event of Default, to enforce payment of the Instruments, Accounts and Receivables in the name of the Administrative Agent or such Grantor, (vi) upon the occurrence and during the continuance of an Event of Default, to apply the proceeds of any Collateral received by the Administrative Agent to the Secured Obligations as provided in Article VII and (vii) upon the occurrence and during the continuance of an Event of Default, to discharge past due taxes, assessments, charges, fees or Liens on the Collateral (except for such Liens as are specifically permitted hereunder or under any other Loan Document), and each Grantor agrees to reimburse the Administrative Agent on demand for any payment made or any documented expense incurred by the Administrative Agent in connection with any of the foregoing, provided that, this authorization shall not relieve any Grantor of any of its obligations under this Security Agreement or under the Credit Agreement.

**ARTICLE VII**  
**PROCEEDS; COLLECTION OF RECEIVABLES**

7.1. Lockboxes. Upon request of the Administrative Agent after the occurrence and during the continuance of an Event of Default, each Grantor shall execute and deliver to the Administrative Agent irrevocable lockbox agreements in the form provided by or otherwise acceptable to the Administrative Agent, which agreements shall be accompanied by an acknowledgment by the bank where the lockbox is located of the Lien of the Administrative Agent granted hereunder and of irrevocable instructions to wire all amounts collected therein to a special collateral account at the Administrative Agent.

7.2. Collection of Receivables. The Administrative Agent may at any time after the occurrence and during the continuance of an Event of Default, by giving each Grantor written notice, elect to require that the Receivables be paid directly to the Administrative Agent for the benefit of the Secured Parties. In such event, each Grantor shall, and shall permit the Administrative Agent to, promptly notify the Account Debtors or obligors under the Receivables owned by such Grantor of the Administrative Agent's interest therein and direct such Account Debtors or obligors to make payment of all amounts then or thereafter due under such Receivables directly to the Administrative Agent. Upon receipt of any such notice from the Administrative Agent, each Grantor shall thereafter hold in trust for the Administrative Agent, on behalf of the Secured Parties, all amounts and proceeds received by it with respect to the Receivables and immediately and at all times thereafter deliver to the Administrative Agent all such amounts and proceeds in the same form as so received, whether by cash, check, draft or otherwise, with any necessary endorsements. The Administrative Agent shall hold and apply funds so received as provided by the terms of Sections 7.3 and 7.4 hereof.

7.3. Special Collateral Account. After the occurrence and during the continuance of an Event of Default, the Administrative Agent may require all cash proceeds of the Collateral to be deposited in a special non-interest bearing cash collateral account with the Administrative Agent and held there as security for the Secured Obligations. No Grantor shall have any control whatsoever over such cash collateral account. After the occurrence and during the continuance of an Event of Default, the Administrative Agent may (and shall, at the direction of the Required Secured Parties), from time to time, apply the collected balances in such cash collateral account to the payment of the Secured Obligations whether or not the Secured Obligations shall then be due. If all Events of Default have been cured or waived (as confirmed in writing by the Administrative Agent), all unapplied remaining amounts in such cash collateral account shall be returned to the Grantors within three (3) Business Days.

7.4. Application of Proceeds. The proceeds of the Collateral shall be applied by the Administrative Agent to payment of the Secured Obligations as provided under Section 2.18 of the Credit Agreement.

## **ARTICLE VIII GENERAL PROVISIONS**

8.1. Waivers. Each Grantor hereby waives notice of the time and place of any public sale or the time after which any private sale or other disposition of all or any part of the Collateral may be made. To the extent such notice may not be waived under applicable law, any notice made shall be deemed reasonable if sent to the Grantors, addressed as set forth in Article IX, at least ten (10) days prior to (i) the date of any such public sale or (ii) the time after which any such private sale or other disposition may be made. To the maximum extent permitted by applicable law, each Grantor waives all claims, damages, and demands against the Administrative Agent or any Secured Party arising out of the repossession, retention or sale of the Collateral, except such as arise solely out of the gross negligence or willful misconduct of the Administrative Agent or such Secured Party as finally determined by a court of competent jurisdiction. To the extent it may lawfully do so, each Grantor absolutely and irrevocably waives and relinquishes the benefit and advantage of, and covenants not to assert against the Administrative Agent or any Lender, any valuation, stay, appraisal, extension, moratorium, redemption or similar laws and any and all rights or defenses it may have as a surety now or hereafter existing which, but for this provision, might be applicable to the sale of any Collateral made under the judgment, order or decree of any court, or privately under the power of sale conferred by this Security Agreement, or otherwise. Except as otherwise specifically provided herein, each Grantor hereby waives presentment, demand, protest or any notice (to the maximum extent permitted by applicable law) of any kind in connection with this Security Agreement or any Collateral.

8.2. Limitation on Administrative Agent's and Lenders' Duty with Respect to the Collateral. The Administrative Agent shall have no obligation to clean-up or otherwise prepare the Collateral for sale. The Administrative Agent and each Lender shall use reasonable care with respect to the Collateral in its possession or under its control. Neither the Administrative Agent nor any Lender shall have any other duty as to any Collateral in its possession or control or in the possession or control of any agent or nominee of the Administrative Agent or such Lender, or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto. To the extent that applicable law imposes duties on the Administrative Agent to exercise remedies in a commercially reasonable manner, each Grantor acknowledges and agrees that it is commercially reasonable for the Administrative Agent (i) to fail to incur expenses deemed significant by the Administrative Agent to prepare Collateral for disposition or otherwise to transform raw material or work in process into finished goods or other finished products for disposition, (ii) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of, (iii) to fail to exercise collection

remedies against Account Debtors or other Persons obligated on Collateral or to remove Liens on or any adverse claims against Collateral, (iv) to exercise collection remedies against Account Debtors and other Persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (v) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (vi) to contact other Persons, whether or not in the same business as such Grantor, for expressions of interest in acquiring all or any portion of the Collateral, (vii) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the Collateral is of a specialized nature, (viii) to dispose of Collateral by utilizing internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capacity of doing so, or that match buyers and sellers of assets, (ix) to dispose of assets in wholesale rather than retail markets, (x) to disclaim disposition warranties, such as title, possession or quiet enjoyment, (xi) to purchase insurance or credit enhancements to insure the Administrative Agent against risks of loss, collection or disposition of Collateral or to provide to the Administrative Agent a guaranteed return from the collection or disposition of Collateral, or (xii) to the extent deemed appropriate by the Administrative Agent, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist the Administrative Agent in the collection or disposition of any of the Collateral. Each Grantor acknowledges that the purpose of this Section 8.2 is to provide non-exhaustive indications of what actions or omissions by the Administrative Agent would be commercially reasonable in the Administrative Agent's exercise of remedies against the Collateral and that other actions or omissions by the Administrative Agent shall not be deemed commercially unreasonable solely on account of not being indicated in this Section 8.2. Without limitation upon the foregoing, nothing contained in this Section 8.2 shall be construed to grant any rights to any Grantor or to impose any duties on the Administrative Agent that would not have been granted or imposed by this Security Agreement or by applicable law in the absence of this Section 8.2.

8.3. Compromises and Collection of Collateral. The Grantors and the Administrative Agent recognize that setoffs, counterclaims, defenses and other claims may be asserted by obligors with respect to certain of the Receivables, that certain of the Receivables may be or become uncollectible in whole or in part and that the expense and probability of success in litigating a disputed Receivable may exceed the amount that reasonably may be expected to be recovered with respect to a Receivable. In view of the foregoing, each Grantor agrees that the Administrative Agent may at any time and from time to time, if an Event of Default has occurred and is continuing, compromise with the obligor on any Receivable, accept in full payment of any Receivable such amount as the Administrative Agent in its sole discretion shall determine or abandon any Receivable, and any such action by the Administrative Agent shall be commercially reasonable so long as the Administrative Agent acts in good faith based on information known to it at the time it takes any such action.

8.4. Administrative Agent Performance of Debtor Obligations. Without having any obligation to do so, the Administrative Agent may perform or pay any obligation which any Grantor has agreed to perform or pay in this Security Agreement and the Grantors shall reimburse the Administrative Agent for any amounts paid by the Administrative Agent pursuant to this Section 8.4. The Grantors' obligation to reimburse the Administrative Agent pursuant to the preceding sentence shall be a Secured Obligation payable on demand.

8.5. Specific Performance of Certain Covenants. Each Grantor acknowledges and agrees that a breach of any of the covenants contained in Sections 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.13, 4.14, 4.15, 5.3, or 8.7 or in Article VII will cause irreparable injury to the Administrative Agent and the Lenders, that the Administrative Agent and Lenders have no adequate remedy at law in respect of such breaches and therefore agrees, without limiting the right of the Administrative Agent or the Lenders to seek and obtain specific performance of other obligations of the Grantors contained in this Security Agreement, that the covenants of the Grantors contained in the Sections referred to in this Section 8.5 shall be specifically enforceable against the Grantors.

8.6. [Intentionally Omitted].

8.7. No Waiver; Amendments; Cumulative Remedies. No delay or omission of the Administrative Agent or any Lender to exercise any right or remedy granted under this Security Agreement shall impair such right or remedy or be construed to be a waiver of any Default or an acquiescence therein, and any single or partial exercise of any such right or remedy shall not preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver, amendment or other variation of the terms, conditions or provisions of this Security Agreement whatsoever shall be valid unless in writing signed by the Administrative Agent and then only to the extent in such writing specifically set forth. All rights and remedies contained in this Security Agreement or by law afforded shall be cumulative and all shall be available to the Administrative Agent and the Lenders until the Secured Obligations have been paid in full (other than contingent indemnification obligations for which no claim has been made and Letters of Credit which have been terminated, cash-collateralized or back-stopped in a manner acceptable to the Administrative Agent and the Issuing Bank in their reasonable discretion).

8.8. Limitation by Law; Severability of Provisions. All rights, remedies and powers provided in this Security Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions of this Security Agreement are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited to the extent necessary so that they shall not render this Security Agreement invalid, unenforceable or not entitled to be recorded or registered, in whole or in part. Any provision in any this Security Agreement that is held to be inoperative, unenforceable, or invalid in any jurisdiction shall, as to that jurisdiction, be inoperative, unenforceable, or invalid without affecting the remaining provisions in that jurisdiction or the operation, enforceability, or validity of that provision in any other jurisdiction, and to this end the provisions of this Security Agreement are declared to be severable.

8.9. Reinstatement. This Security Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against any Grantor for liquidation or reorganization, should any Grantor become insolvent or make an assignment for the benefit of any creditor or creditors or should a receiver or trustee be appointed for all or any significant part of any Grantor's assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Secured Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Secured Obligations, whether as a "voidable preference," "fraudulent conveyance," or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Secured Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

8.10. Benefit of Agreement. The terms and provisions of this Security Agreement shall be binding upon and inure to the benefit of the Grantors, the Administrative Agent and the Lenders and their respective successors and assigns (including all persons who become bound as a debtor to this Security Agreement), except that no Grantor shall have the right to assign its rights or delegate its obligations under this Security Agreement or any interest herein, without the prior written consent of the Administrative Agent. No sales of participations, assignments, transfers, or other dispositions of any agreement governing the Secured Obligations or any portion thereof or interest therein shall in any manner impair the Lien granted to the Administrative Agent hereunder.

8.11. Survival of Representations. All representations and warranties of the Grantors contained in this Security Agreement shall survive the execution and delivery of this Security Agreement.

8.12. Taxes and Expenses. Any taxes (including income taxes) payable or ruled payable by federal or state authority in respect of this Security Agreement shall be paid by the Grantors, together with interest and penalties, if any. Any and all costs and expenses incurred by the Grantors in the performance of actions required pursuant to the terms hereof shall be borne solely by the Grantors.

8.13. Headings. The title of and section headings in this Security Agreement are for convenience of reference only, and shall not govern the interpretation of any of the terms and provisions of this Security Agreement.

8.14. Termination. This Security Agreement shall continue in effect (notwithstanding the fact that from time to time there may be no Secured Obligations outstanding) until (i) the Credit Agreement has terminated pursuant to its express terms and (ii) all of the Secured Obligations have been indefeasibly paid and performed in full (other than contingent indemnification obligations for which no claim has been made and Letters of Credit which have been terminated, cash-collateralized or back-stopped in a manner acceptable to the Administrative Agent and the Issuing Bank in their reasonable discretion) and no commitments of the Administrative Agent or the Lenders which would give rise to any Secured Obligations are outstanding.

8.15. Entire Agreement. This Security Agreement embodies the entire agreement and understanding between the Grantors and the Administrative Agent relating to the Collateral and supersedes all prior agreements and understandings between the Grantors and the Administrative Agent relating to the Collateral.

**8.16. CHOICE OF LAW. THIS SECURITY AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS (AND NOT THE LAW OF CONFLICTS) OF THE STATE OF NEW YORK, BUT GIVING EFFECT TO FEDERAL LAWS APPLICABLE TO NATIONAL BANKS.**

**8.17. CONSENT TO JURISDICTION. EACH GRANTOR HEREBY IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY U.S. FEDERAL OR NEW YORK STATE COURT SITTING IN NEW YORK, NEW YORK IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT AND EACH GRANTOR HEREBY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH COURT AND IRREVOCABLY WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH A COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM. NOTHING HEREIN SHALL LIMIT THE RIGHT OF THE ADMINISTRATIVE AGENT OR ANY LENDER TO BRING PROCEEDINGS AGAINST ANY GRANTOR IN THE COURTS OF ANY OTHER JURISDICTION. ANY JUDICIAL PROCEEDING BY ANY GRANTOR AGAINST THE ADMINISTRATIVE AGENT OR ANY LENDER OR ANY AFFILIATE OF THE AGENT OR ANY LENDER INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT ONLY IN A COURT IN NEW YORK, NEW YORK.**

**8.18. WAIVER OF JURY TRIAL. EACH GRANTOR, THE ADMINISTRATIVE AGENT AND EACH LENDER HEREBY WAIVE TRIAL BY JURY IN ANY JUDICIAL**

**PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE RELATIONSHIP ESTABLISHED THEREUNDER.**

8.19. Indemnity. Each Grantor hereby agrees to indemnify the Administrative Agent and the Lenders, and their respective successors, assigns, agents and employees, from and against any and all liabilities, damages, penalties, suits, costs, and expenses of any kind and nature (including all 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 any litigation or preparation therefor whether or not the Administrative Agent or any Lender is a party thereto) imposed on, incurred by or asserted against the Administrative Agent or the Lenders, or their respective successors, assigns, agents and employees, in any way relating to or arising out of this Security Agreement, or the manufacture, purchase, acceptance, rejection, ownership, delivery, lease, possession, use, operation, condition, sale, return or other disposition of any Collateral (including, without limitation, latent and other defects, whether or not discoverable by the Administrative Agent or the Lenders or any Grantor, and any claim for Patent, Trademark or Copyright infringement); provided that such indemnity shall not, as to any indemnified party, 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 or willful misconduct of such indemnified party.

8.20. Counterparts. This Security Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute this Security Agreement by signing any such counterpart. Delivery of an executed counterpart of a signature page of this Security Agreement by facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Security Agreement.

8.21. Joinder of Additional Guarantors. Each Grantor shall cause each Domestic Subsidiary which, from time to time, after the date hereof shall be required to pledge any assets to the Administrative Agent for the benefit of the Secured Parties pursuant to the provisions of the Credit Agreement, to execute and deliver to the Administrative Agent a Joinder Agreement substantially in the form of Annex I attached hereto, and upon such execution and delivery, such Subsidiary shall constitute a "Grantor" for all purposes hereunder with the same force and effect as if originally named as a Grantor herein. The execution and delivery of such Joinder Agreement shall not require the consent of any Grantor hereunder. The rights and obligations of each Grantor hereunder shall remain in full force and effect notwithstanding the addition of any new Grantor as a party to this Security Agreement.

**ARTICLE IX  
NOTICES**

9.1. Sending Notices. Any notice required or permitted to be given under this Security Agreement shall be sent, and deemed received, in accordance with Section 9.01 of the Credit Agreement.

9.2. Change in Address for Notices. Each of the Grantors, the Administrative Agent and the Lenders may change the address for service of notice upon it by a notice in writing to the other parties in accordance with Section 9.01 of the Credit Agreement.

**ARTICLE X**  
**THE ADMINISTRATIVE AGENT**

JPMorgan Chase Bank, N.A. has been appointed Administrative Agent for the Lenders hereunder pursuant to Article VIII of the Credit Agreement. It is expressly understood and agreed by the parties to this Security Agreement that any authority conferred upon the Administrative Agent hereunder is subject to the terms of the delegation of authority made by the Lenders to the Administrative Agent pursuant to the Credit Agreement, and that the Administrative Agent has agreed to act (and any successor Administrative Agent shall act) as such hereunder only on the express conditions contained in such Article VIII. Any successor Administrative Agent appointed pursuant to Article VIII of the Credit Agreement shall be entitled to all the rights, interests and benefits of the Administrative Agent hereunder.

[Signature Page Follows]

IN WITNESS WHEREOF, the Grantors and the Administrative Agent have executed this Security Agreement as of the date first above written.

**GRANTORS:**

**DAIRYLAND USA CORPORATION  
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.  
CHEFS' WAREHOUSE PARENT, LLC**

By: /s/ Kenneth Clark

Name: Kenneth Clark

Title: Chief Financial Officer

Signature Page to Pledge and Security Agreement

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**ADMINISTRATIVE AGENT:**

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

By: /s/ Patricia T. Stone

Name: Patricia T. Stone

Title: Authorized Officer

Signature Page to Pledge and Security Agreement

**Exhibit A**

**Grantor Information**

<u>I. Name of Grantor</u>	<u>II. Jurisdiction of Organization</u>	<u>III. Type of Entity</u>	<u>IV. Organizational Identification No.</u>	<u>V. FEIN</u>	<u>VI. Mailing Address and Chief Executive Office</u>
Dairyland USA Corporation	New York	Corporation	N/A	13-3286147	100 East Ridge Road, Ridgefield, CT 06877
Bel Canto Foods, LLC	New York	Limited Liability Company	N/A	11-3568623	100 East Ridge Road, Ridgefield, CT 06877
The Chefs' Warehouse Mid-Atlantic, LLC	Delaware	Limited Liability Company	3307428	13-4166347	100 East Ridge Road, Ridgefield, CT 06877
The Chefs' Warehouse West Coast, LLC	Delaware	Limited Liability Company	3943578	20-2591398	100 East Ridge Road, Ridgefield, CT 06877
The Chefs' Warehouse, Inc.	Delaware	Corporation	3987325	20-3031526	100 East Ridge Road, Ridgefield, CT 06877
The Chefs' Warehouse of Florida, LLC	Delaware	Limited Liability Company	4830008	27-2714849	100 East Ridge Road, Ridgefield, CT 06877
Chefs' Warehouse Parent, LLC	Delaware	Limited Liability Company	4884114	27-3682938	100 East Ridge Road, Ridgefield, CT 06877

**VII. Locations of Collateral**

- (a) Properties Owned by the Grantors: None.
- (b) Properties Leased by the Grantors:

<u>Grantor</u>	<u>Locations of Collateral</u>	<u>Landlord</u>
Dairyland USA Corporation	1300 Viele Avenue and 1301 Ryawa Avenue, Bronx, New York 10474	The Chefs' Warehouse Leasing Co, LLC
	240 Food Center Drive, Bronx, New York 10474	The City of New York leases to A.L. Bazzini Co., Inc.; A.L. Bazzini Co., Inc. subleases to Dairyland USA Corporation
	700 Plaza Drive, Secaucus, New Jersey 07094	Harmon Meadow Plaza, Inc. (lease agreement)

<u>Grantor</u>	<u>Locations of Collateral</u>	<u>Landlord</u>
Bel Canto Foods	1300 Viele Avenue and 1301 Ryawa Avenue, Bronx, New York 10474	The Chefs' Warehouse Leasing Co., LLC (sublease agreement)
	240 Food Center Drive, Bronx, New York 10474	The City of New York leases to A.L. Bazzini Co., Inc.; A.L. Bazzini Co., Inc. subleases to Dairyland USA Corporation
	700 Plaza Drive, Secaucus, New Jersey 07094	Harmon Meadow Plaza, Inc. (lease agreement)
The Chefs' Warehouse Mid-Atlantic, LLC	7477 Candlewood Road, Hanover, Maryland 21076	Candlewood Road Property, LLC (lease agreement)
The Chefs' Warehouse West Coast, LLC	1633 E. Gale Avenue, City of Industry, CA 91748	LBA Realty, LLC (lease agreement)
	3595 E. Patrick Land, Las Vegas, NV 89120	KTR LV IV LLC (assignment of a lease agreement)
	3117 Wiegman Road, Hayward, CA 94544	EastGroup Properties L.P. (lease agreement)
	3305 and 3313 NW Guam Street, Portland, Oregon 97210	CSHV NWCP Portland, LLC (assignment of a lease agreement)
The Chefs' Warehouse Florida, LLC	2600 SW 32 <sup>nd</sup> Avenue, Pembroke Park, Florida 33023	Seneca Industrial Holdings, LLC (industrial lease agreement)

(c) Public Warehouses or other Locations pursuant to Bailment or Consignment Arrangements: None.

IX. Information Required by Section 3.6:

Grantor

Dairyland USA Corporation

The Chefs' Warehouse Mid-Atlantic, LLC

The Chefs' Warehouse, Inc.

Bel Canto Foods, LLC

Trade Names/Names Used in Past Five Years

- The Chefs' Warehouse
- Winters Seafoods
- Dairyland
- Dairyland USA
- The Chefs' Warehouse, LLC
- Chefs' Warehouse Holdings, LLC
- Bel Canto Food
- Bel Canto Foods
- Bel Canto

**Exhibit B**

**Deposit Accounts**

<u>GRANTOR</u>	<u>BANK</u>	<u>ACCOUNT NUMBER</u>	<u>TYPE</u>	<u>PURPOSE</u>
Dairyland USA Corporation	JPMorgan Chase Bank Corporate Park Drive, 2 <sup>nd</sup> Floor White Plains, NY 10604 Attn: Lisa Crowley, Vice President	[*CONFIDENTIAL*]	Credit Card	Collections/ Disbursements
Dairyland USA Corporation	JPMorgan Chase Bank Corporate Park Drive, 2 <sup>nd</sup> Floor White Plains, NY 10604 Attn: Lisa Crowley, Vice President	[*CONFIDENTIAL*]	Operating	Collections/ Disbursements
Bel Canto Foods, LLC	JPMorgan Chase Bank Corporate Park Drive, 2 <sup>nd</sup> Floor White Plains, NY 10604 Attn: Lisa Crowley, Vice President	[*CONFIDENTIAL*]	Operating	Collections/ Disbursements
The Chefs' Warehouse Mid-Atlantic, LLC	JPMorgan Chase Bank Corporate Park Drive, 2 <sup>nd</sup> Floor White Plains, NY 10604 Attn: Lisa Crowley, Vice President	[*CONFIDENTIAL*]	Operating	Collections/ Disbursements
The Chefs' Warehouse West Coast, LLC	JPMorgan Chase Bank Corporate Park Drive, 2 <sup>nd</sup> Floor White Plains, NY 10604 Attn: Lisa Crowley, Vice President	[*CONFIDENTIAL*]	Operating	Disbursements
Dairyland USA Corporation	JPMorgan Chase Bank Corporate Park Drive, 2 <sup>nd</sup> Floor White Plains, NY 10604 Attn: Lisa Crowley, Vice President	[*CONFIDENTIAL*]	Controlled Disbursement Account	Disbursements

<u>GRANTOR</u>	<u>BANK</u>	<u>ACCOUNT NUMBER</u>	<u>TYPE</u>	<u>PURPOSE</u>
Bel Canto Foods, LLC	JPMorgan Chase Bank Corporate Park Drive, 2 <sup>nd</sup> Floor White Plains, NY 10604 Attn: Lisa Crowley, Vice President	[*CONFIDENTIAL*]	Controlled Disbursement Account	Disbursements
The Chefs' Warehouse Mid-Atlantic, LLC	JPMorgan Chase Bank Corporate Park Drive, 2 <sup>nd</sup> Floor White Plains, NY 10604 Attn: Lisa Crowley, Vice President	[*CONFIDENTIAL*]	Controlled Disbursement Account	Disbursements
The Chefs' Warehouse West Coast, LLC	JPMorgan Chase Bank Corporate Park Drive, 2 <sup>nd</sup> Floor White Plains, NY 10604 Attn: Lisa Crowley, Vice President	[*CONFIDENTIAL*]	Controlled Disbursement Account	Disbursements
The Chefs' Warehouse West Coast, LLC	Bank of America Puente Hills 1605 S. Azusa Ave Hacienda Heights CA 91745	[*CONFIDENTIAL*]	DDA	Driver Cash Collections/Petty Cash Disbursements
The Chefs' Warehouse, Inc.	JPMorgan Chase Bank Corporate Park Drive, 2 <sup>nd</sup> Floor White Plains, NY 1060 4 Attn: Lisa Crowley, Vice President	[*CONFIDENTIAL*]	Collections/ Disbursements	Account not used and is to be closed.
Dairyland USA Corporation	JPMorgan Chase Bank Corporate Park Drive, 2 <sup>nd</sup> Floor White Plains, NY 10604 Attn: Lisa Crowley, Vice President	[*CONFIDENTIAL*]	Lockbox	For New York and Tri-State Area Collections
Bel Canto Foods, LLC	JPMorgan Chase Bank Corporate Park Drive, 2 <sup>nd</sup> Floor White Plains, NY 10604 Attn: Lisa Crowley, Vice President	[*CONFIDENTIAL*]	Lockbox	For New York and Tri-State Area Collections

<u>GRANTOR</u>	<u>BANK</u>	<u>ACCOUNT NUMBER</u>	<u>TYPE</u>	<u>PURPOSE</u>
The Chefs' Warehouse Mid-Atlantic, LLC	JPMorgan Chase Bank Corporate Park Drive, 2 <sup>nd</sup> Floor White Plains, NY 10604 Attn: Lisa Crowley, Vice President	[*CONFIDENTIAL*]		Lockbox For Maryland and Surrounding Area Collections
The Chefs' Warehouse West Coast, LLC	JPMorgan Chase Bank Corporate Park Drive, 2 <sup>nd</sup> Floor White Plains, NY 10604 Attn: Lisa Crowley, Vice President	[*CONFIDENTIAL*]	Lockbox	For West Coast Collections
The Chefs' Warehouse of Florida, LLC	JPMorgan Chase Bank Corporate Park Drive, 2 <sup>nd</sup> Floor White Plains, NY 10604 Attn: Lisa Crowley, Vice President	[*CONFIDENTIAL*]	Lockbox	For Florida Area Collections
The Chefs' Warehouse of Florida, LLC	JPMorgan Chase Bank Corporate Park Drive, 2 <sup>nd</sup> Floor White Plains, NY 10604 Attn: Lisa Crowley, Vice President	[*CONFIDENTIAL*]	Operating	Collections/ Disbursements
The Chefs' Warehouse of Florida, LLC	JPMorgan Chase Bank Corporate Park Drive, 2 <sup>nd</sup> Floor White Plains, NY 10604 Attn: Lisa Crowley, Vice President	[*CONFIDENTIAL*]	Control Disbursement	Disbursements

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**Exhibit C**

**Letter of Credit Rights and Chattel Paper**

None.

**Exhibit D**

**Patents, Trademarks, Copyrights**

Patents and Patent Applications

None

Copyright Applications and Registrations

None

Trademark Applications and Registrations

<u>MARK</u>	<u>REG. NO./APP NO.</u>	<u>REG./ FILING DATE</u>	<u>COUNTRY</u>	<u>OWNER</u>
BELARIA	1,508,403	October 11, 1988	United States	The Chefs' Warehouse, Inc.
PIER FRANCO	2,016,132	November 12, 1996	United States	The Chefs' Warehouse, Inc.
ST. LUC	3,491,990	August 26, 2008	United States	The Chefs' Warehouse, Inc.
ST. LUC (stylized)	2,438,333	March 27, 2001	United States	The Chefs' Warehouse, Inc.
GRAND RESERVE & Design	1,407,847	September 2, 1986	United States	The Chefs' Warehouse
PATISSE	3,541,721	December 2, 2008	United States	The Chefs' Warehouse
PATISSE FINE PASTRY INGREDIENTS & Design	3,697,104	October 13, 2009	United States	The Chefs' Warehouse
THE CHEFS' WAREHOUSE	3,539,456	December 2, 2008	United States	The Chefs' Warehouse
ZOCOCAO & Design	3,206,633	February 6, 2007	United States	The Chefs' Warehouse
ZOCOCAO	3,002,843	September 27, 2005	United States	The Chefs' Warehouse
SPOLETO	2,452,543	May 22, 2001	United States	The Chefs' Warehouse
ARGONAUT	3,431,682	May 20, 2008	United States	The Chefs' Warehouse, Inc.
PROVVISTA	2,984,712	August 16, 2005	United States	The Chefs' Warehouse, Inc.
PROVVISTA	2,980,621	August 2, 2005	United States	The Chefs' Warehouse, Inc.

PROVVISTA	2,545,651	March 12, 2002	United States	The Chefs' Warehouse, Inc.
PROVVISTA	2,525,630	January 1, 2002	United States	The Chefs' Warehouse, Inc.
PROVVISTA	2,319,436	February 15, 2000	United States	The Chefs' Warehouse, Inc.
PROVVISTA	2,343,089	April 18, 2000	United States	The Chefs' Warehouse, Inc.
PROVVISTA	2,302,301	December 21, 1999	United States	The Chefs' Warehouse, Inc.
Sunflower Design	2,304,369	December 28, 1999	United States	The Chefs' Warehouse, Inc.
Sunflower Design	2,518,025	December 11, 2001	United States	The Chefs' Warehouse, Inc.
Sunflower Design	3,000,019	September 27, 2005	United States	The Chefs' Warehouse, Inc.
Sunflower Design	2,309,409	October 26, 1999	United States	The Chefs' Warehouse, Inc.
Sunflower Design	2,520,685	December 18, 2001	United States	The Chefs' Warehouse, Inc.
Sunflower Design	2,980,620	August 2, 2005	United States	The Chefs' Warehouse, Inc.
Sunflower Design	2,306,288	January 4, 2000	United States	The Chefs' Warehouse, Inc.
THE RIGHT SCALLOPS	3,621,367	May 19, 2009	United States	The Chefs' Warehouse, Inc.
THE RIGHT SHRIMP	3,621,359	May 19, 2009	United States	The Chefs' Warehouse, Inc.
THE RIGHT SQUID	3,621,372	May 19, 2009	United States	The Chefs' Warehouse, Inc.
CW	85376018	July 20, 2011	United States	The Chefs' Warehouse
CW & Design	85375998	July 20, 2011	United States	The Chefs' Warehouse
CWI	85376083	July 20, 2011	United States	The Chefs' Warehouse, Inc.
SIMPLE AUTHENTIC FOOD				

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**Exhibit E**

**Filing Requirements**

None.

**Exhibit F**

**List of Pledged Collateral, Securities and Other Investment Property.**

STOCKS

<u>Name of Grantor</u>	<u>Issuer</u>	<u>Certificate Number(s)</u>	<u>Number of Shares</u>	<u>Class of Stock</u>	<u>Percentage of Outstanding Shares</u>
The Chefs' Warehouse, Inc.	Dairyland USA Corporation	26	100	Common	100%

OTHER SECURITIES OR OTHER INVESTMENT PROPERTY (CERTIFICATED AND UNCERTIFICATED)

<u>Name of Grantor</u>	<u>Issuer</u>	<u>Description of Collateral</u>	<u>Percentage Ownership Interest</u>
The Chefs' Warehouse, Inc.	Chefs' Warehouse Parent, LLC	LLC Interests	100%
Dairyland USA Corporation	Bel Canto Foods, LLC	LLC Interests	100%
Chefs' Warehouse Parent, LLC	The Chefs' Warehouse West Coast, LLC	LLC Interests	100%
Chefs' Warehouse Parent, LLC	The Chefs' Warehouse of Florida, LLC	LLC Interests	100%
Chefs' Warehouse Parent, LLC	The Chefs' Warehouse Mid-Atlantic, LLC	LLC Interests	100%

**Exhibit G**

**Filing Offices**

<u>Grantor</u>	<u>Filing Office</u>
Dairyland USA Corporation	New York Department of State
Bel Canto Foods, LLC	New York Department of State
The Chefs' Warehouse Mid-Atlantic, LLC	Delaware Secretary of State
The Chefs' Warehouse West Coast, LLC	Delaware Secretary of State
The Chefs' Warehouse, Inc.	Delaware Secretary of State
The Chefs' Warehouse of Florida, LLC	Delaware Secretary of State
Chefs' Warehouse Parent, LLC	Delaware Secretary of State

**EXHIBIT H**  
(See Section 4.4 and 4.8 of Security Agreement)

AMENDMENT

This Amendment, dated \_\_\_\_\_, is delivered pursuant to Section 4.4 of the Security Agreement referred to below. All defined terms herein shall have the meanings ascribed thereto or incorporated by reference in the Security Agreement. The undersigned hereby certifies that the representations and warranties in Article III of the Security Agreement are true and correct in all material respects. The undersigned further agrees that this Amendment may be attached to that certain Pledge and Security Agreement, dated as of April 25, 2012, among the undersigned, as the Grantors, and JPMorgan Chase Bank, N.A., as the Administrative Agent (as amended or modified from time to time, the "Security Agreement") and that the Collateral listed on Schedule I to this Amendment shall be and become a part of the Collateral referred to in said Security Agreement and shall secure all Secured Obligations referred to in the Security Agreement.

By: \_\_\_\_\_  
Name:  
Title:

SCHEDULE I TO AMENDMENT

STOCKS

Name of Grantor	Issuer	Certificate Number(s)	Number of Shares	Class of Stock	Percentage of Outstanding Shares
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BONDS

Name of Grantor	Issuer	Number	Face Amount	Coupon Rate	Maturity
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GOVERNMENT SECURITIES

Name of Grantor	Issuer	Number	Type	Face Amount	Coupon Rate	Maturity
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OTHER SECURITIES OR OTHER INVESTMENT PROPERTY  
(CERTIFICATED AND UNCERTIFICATED)

Name of Grantor	Issuer	Description of Collateral	Percentage of Ownership Interest
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[Add description of custody accounts or arrangements with securities intermediary, if applicable]

COMMERCIAL TORT CLAIMS

Name of Grantor	Description of Claim	Parties	Case Number; Name of Court where Case was Filed
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**Exhibit I**

**Commercial Tort Claims**

None.

ANNEX I

[Form of]

JOINDER AGREEMENT

[Name of New Grantor]  
[Address of New Grantor]

[Date]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Ladies and Gentlemen:

Reference is made to the Pledge and Security Agreement (as amended, restated, supplemented or otherwise modified from time to time, the “Security Agreement”; capitalized terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Security Agreement), dated as of April 25, 2012, made by The Chefs’ Warehouse, Inc., a Delaware corporation, the other Grantors party thereto and JPMorgan Chase Bank, N.A., as administrative agent (in such capacity and together with any successors in such capacity, the “Administrative Agent”).

This Joinder Agreement supplements the Security Agreement and is delivered by the undersigned, [ ] (the “New Grantor”), pursuant to Section 8.21 of the Security Agreement. The New Grantor hereby agrees to be bound as a Grantor to the Security Agreement by all of the terms, covenants and conditions set forth in the Security Agreement to the same extent that it would have been bound if it had been a signatory to the Security Agreement on the date of the Security Agreement. Without limiting the generality of the foregoing, the New Grantor hereby grants and pledges to the Administrative Agent, as collateral security for the full, prompt and complete payment and performance when due (whether at stated maturity, by acceleration or otherwise) of the Secured Obligations, a Lien on and security interest in, all of its right, title and interest in, to and under the Collateral and expressly assumes all obligations and liabilities of a Grantor thereunder. The New Grantor hereby makes each of the representations and warranties and agrees to each of the covenants applicable to the Grantors contained in the Security Agreement.

Annexed hereto are supplements to each of the exhibits to the Security Agreement and schedules to the Credit Agreement, as applicable, with respect to the New Grantor. Such supplements shall be deemed to be part of the Security Agreement or the Credit Agreement, as applicable.

This Joinder Agreement and any amendments, waivers, consents or supplements hereto may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original, but all such counterparts together shall constitute one and the same agreement.

THIS JOINDER AGREEMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

IN WITNESS WHEREOF, the New Grantor has caused this Joinder Agreement to be executed and delivered by its duly authorized officer as of the date first above written.

[NEW GRANTOR]

By: \_\_\_\_\_  
Name:  
Title:

AGREED TO AND ACCEPTED:

JPMORGAN CHASE BANK, N.A.,  
as Administrative Agent

By: \_\_\_\_\_  
Name:  
Title:

[Schedules to be attached]