
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K

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

Date of Report (Date of earliest event reported): June 30, 2023

Farmer Bros. Co.

(Exact Name of Registrant as Specified in Charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

001-34249
(Commission File Number)

95-0725980
(I.R.S. Employer
Identification No.)

1912 Farmer Brothers Drive, Northlake, Texas
(Address of Principal Executive Offices)

76262
(Zip Code)

682 549-6600
(Registrant's Telephone Number, Including Area Code)

None
(Former Address, if Changed Since Last Report)

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

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

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

Title of Each Class	Trading Symbol(s)	Name of Each Exchange on Which Registered
Common Stock, \$1.00 par value	FARM	Nasdaq Global Select Market

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

Emerging growth company ☐

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

Item 1.01 Entry into a Material Definitive Agreement

On June 30, 2023, Farmer Bros. Co., a Delaware corporation (the “Company”) and certain of its subsidiaries entered into that certain Consent and Amendment No. 4 to Credit Agreement (the “Fourth Amendment”), with the lenders party thereto, and Wells Fargo Bank, National Association, as administrative agent for each member of the lender group. The Fourth Amendment amends that certain Credit Agreement, originally entered into by the parties on April 26, 2021, which governs the Company’s revolving and term loan credit facilities (the “Credit Agreement”).

The Fourth Amendment includes a consent to the Sale (defined below) by the administrative agent and the lenders and amends certain terms and conditions of the Credit Agreement by, among other things: (i) reflecting the payoff in full, with proceeds from the Sale, of the \$47.0 million term loan facility, (ii) reflecting the paydown, with proceeds from the Sale, of the revolving credit facility (and a reduction of the maximum commitment of the lenders under the revolving credit facility to \$75.0 million), (iii) releasing liens of the administrative agent securing the obligations under the Credit Agreement on assets sold pursuant to the Sale, and (iv) amending the Credit Agreement so that the Company’s financial covenant (i.e., fixed charge coverage ratio) is only in effect during such times when the Company’s liquidity falls below certain thresholds.

The foregoing description of the Fourth Amendment does not purport to be complete and is qualified in its entirety by reference to the full text of the Fourth Amendment, which is filed herewith as Exhibit 10.1 and incorporated herein by reference.

Item 2.01 Completion of Acquisition or Disposition of Assets.

On June 30, 2023, the Company completed its previously announced sale of certain assets of the Company related to its direct ship and private label business, including the Company’s production facility and corporate office building in Northlake, Texas (the “Sale”) pursuant to that certain Asset Purchase Agreement, dated as of June 6, 2023 (the “Original Agreement” and as amended by that certain Amendment, dated as of June 30, 2023 (the “Amendment”), the “Purchase Agreement”) by and between the Company and TreeHouse Foods, Inc., a Delaware corporation (“Buyer”) for a purchase price of \$100 million in cash, subject to customary working capital and certain other adjustments, including a reduction for liabilities associated with a specified retained litigation matter. In connection with the Sale, the Company and the Buyer have agreed to a mutual transitional co-manufacturing agreement where the Company will manufacture certain products for Buyer and Buyer will manufacture certain products for the Company for an initial period of twelve months. In addition, the Company is also providing Buyer with certain transition services for an initial period of nine months and the Buyer is providing the Company with a lease of office and warehouse space at the Northlake, Texas facility sold in the Sale for an initial period of twelve months.

The foregoing descriptions of the Purchase Agreement and the Sale do not purport to be complete and are qualified in their entirety by reference to the Original Agreement and the Amendment, copies of which are filed as Exhibit 10.2 and 10.3, respectively, hereto and incorporated herein by reference.

The information set forth below in Item 9.01(b) to this Current Report on Form 8-K is incorporated by reference into this Item 2.01.

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 above in Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 2.03.

Item 5.02 Departure of Certain Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

Management Changes

As previously disclosed, on June 26, 2023, Christopher P. Mottern informed the Company's board of directors (the "Board") of his resignation from the Board effective as of 5:00 p.m. (Central Time) on June 30, 2023. On June 30, 2023, the Board elected Alfred Poe, a member of the Board since 2020, as Chairman of the Board effective following Mr. Mottern's resignation.

On June 30, 2023, the Board appointed each of John Moore and Tom Bauer as executive officers of the Company. Mr. Bauer remains Vice President, Head of DSD, and Mr. Moore remains Vice President, Head of Coffee. Also on June 30, 2023, the Company and each of Mr. Moore and Mr. Bauer entered into the Company's standard form of Indemnification Agreement for directors and officers. Pursuant to the Indemnification Agreement, the Company will, to the extent permitted by applicable law, indemnify and hold harmless the executive officer against all expenses, judgements, fines, penalties and amounts paid in settlement in connection with any threatened, pending or completed proceeding by reason of his or her status as an officer of the Company. The foregoing description is qualified in its entirety by the full text of the Indemnification Agreement, the form of which is filed herewith as Exhibit 10.4.

Form of Severance Agreement

On June 30, 2023, the Company entered into an amended and restated severance agreement (collectively, the "Severance Agreements"), with each of Scott Drake, Chief Financial Officer, Amber Jefferson, Chief Human Resources Officer, Jared Vitemb, Vice President, General Counsel, Chief Compliance Officer and Secretary, John Moore, Vice President, Head of Coffee, and Tom Bauer, Vice President, Head of DSD. The Severance Agreements replace the Change in Control Severance Agreements previously entered into (collectively, the "Prior Agreements"), have a one-year term and will be automatically extended thereafter for one-year renewal periods unless a party provides prior notice of non-renewal to the other party.

Each Severance Agreement provides that if the executive experiences an involuntary termination or resigns for good reason (as described below) on the date of or within twelve months after a change in control (as described below), then he or she will be entitled to receive the following severance payments and benefits: (i) accrued benefits, including earned but unpaid salary, bonus payment for the previous fiscal year (if any), vacation time and reimbursements, (ii) a lump sum payment of an amount equal to two times the sum of base salary and the amount the executive would pay on an annual basis for COBRA, (iii) a lump sum payment equal to a pro-rated portion of target bonus, and (iv) \$20,000 in outplacement services.

In addition, if an executive experiences an involuntary termination or resigns for good reason not in connection with a change in control, then he or she will be entitled to receive: (i) accrued benefits, including earned but unpaid salary, bonus payment for the previous fiscal year (if any), vacation time and reimbursements, (ii) an amount equal to the sum of base salary and the amount the executive would pay on an annual basis for COBRA, payable in installments in conformance with payroll, and (iii) a payment equal to a pro-rated portion of annual bonus based on actual performance paid when other executives are paid. If an executive experiences death or disability, he or she will be entitled to receive: (i) accrued benefits, including earned but unpaid salary, bonus payment for the previous fiscal year (if any), vacation time and reimbursements, and (ii) a lump sum payment in an amount equal to twelve times the monthly cost for COBRA.

Payment of any and all severance benefits under each Severance Agreement is conditioned upon the executive first signing and not rescinding a separate release of claims against the Company.

For purposes of the Agreements, a “change in control” is defined in the same manner as in Prior Agreements, and generally occurs if (i) a third-party acquires or becomes the beneficial owner of 50% or more of the outstanding voting stock or voting power of the Company, (ii) a majority of the members of the Company’s Board are replaced, or (iii) the Company’s stockholders approve a reorganization, consolidation, complete liquidation or dissolution of the Company or the sale of substantially all of the assets of the Company.

Each Agreement provides that “good reason” for a resignation generally occurs if (i) there is a material diminution in the executive’s duties and responsibilities, material adverse change in reporting responsibilities or title(s) or removal or failure to re-elect the executive to any such position, (ii) a material reduction in base salary (other than reduction applicable to all executives or employees of the company generally) or (iii) the principal place of employment is relocated more than 50 miles from its current location.

The foregoing description of the Severance Agreement does not purport to be complete and is qualified in its entirety by reference to the Severance Agreement, a copy of which is filed as Exhibit 10.5 hereto and incorporated herein by reference.

Item 7.01 Regulation FD Disclosure.

On June 30, 2023, the Company issued a press release announcing the closing of the Sale. The press release is attached hereto as Exhibit 99.1 and incorporated herein by reference.

As provided in General Instruction B.2. of Form 8-K, the information and exhibits furnished pursuant to Item 7.01 of this report are being furnished and shall not be deemed “filed” for the purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or otherwise subject to the liabilities of that Section, and shall not be incorporated by reference into any registration statement or other document filed pursuant to the Securities Act of 1933 or the Exchange Act, regardless of any general incorporation language in such filing.

Item 9.01 Financial Statements and Exhibits.

(b) Pro Forma Financial Information

The unaudited pro forma condensed consolidated financial statements of the Company have been derived from the Company’s historical consolidated financial statements and are being presented to give effect to the Sale. The unaudited pro forma condensed consolidated balance sheet of the Company as of March 31, 2023, and the unaudited pro forma condensed consolidated statements of operations of the Company for the nine months ended March 31, 2023 for each of the years ended June 30, 2022, June 30, 2021, and June 30, 2020, and the related notes thereto, are furnished as Exhibit 99.2 to this Current Report on Form 8-K.

(d) Exhibits

Exhibit No.	Description
<u>10.1*</u>	<u>Consent and Amendment No. 4 to Credit Agreement, dated June 30, 2023, by and among Farmer Bros. Co., Boyd Assets Co., FBC Finance Company, Coffee Bean Holding Co., Inc., Coffee Bean International, Inc. and China Mist Brands, Inc., as borrowers, the lenders party thereto, and Wells Fargo Bank, N.A., as administrative agent.</u>
<u>10.2*</u>	<u>Purchase Agreement, dated June 6, 2023, by and among Farmer Bros. Co. and TreeHouse Foods Inc.</u>
<u>10.3*</u>	<u>Amendment to Purchase Agreement, dated June 30, by and among Farmer Bros. Co. and TreeHouse Foods Inc.</u>
<u>10.4</u>	<u>Form of Indemnification Agreement for Directors and Officers of the Company, as adopted on December 8, 2017 (filed as Exhibit 10.32 to the Company's Annual Report on 10-K filed with the SEC on September 2, 2022 and incorporated herein by reference)</u>
<u>10.5</u>	<u>Form of Amended and Restated Severance Agreement for Executive Officers of the Company</u>
<u>99.1</u>	<u>Press Release of Farmer Bros. Co. dated June 30, 2023</u>
<u>99.2</u>	<u>Unaudited pro forma condensed consolidated financial information</u>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

* Certain exhibits and schedules have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The Company hereby undertakes to furnish copies of such omitted materials supplementally upon request by the SEC.

SIGNATURE

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.

Dated: July 6, 2023

FARMER BROS. CO.

By: /s/ Jared Vitemb
Jared Vitemb
VP, General Counsel, Secretary and Chief Compliance Officer

CONSENT AND AMENDMENT NO. 4 TO CREDIT AGREEMENT

This **CONSENT AND AMENDMENT NO. 4 TO CREDIT AGREEMENT** (this "Amendment") is entered into as of June 30, 2023, by and among **FARMER BROS. CO.**, a Delaware corporation ("Parent"), the Subsidiaries of Parent from time to time party to the Credit Agreement (as defined below) as borrowers in accordance with the terms thereof (together with Parent, each a "Borrower" and individually and collectively, jointly and severally, "Borrowers"), the undersigned Lenders (as defined below) and **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association, as administrative agent for each member of the Lender Group and the Bank Product Providers (in such capacity, "Agent") under the Credit Agreement referred to below.

WHEREAS, pursuant to that certain Credit Agreement dated as of April 26, 2021 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among the lenders identified on the signature pages thereto (each of such lenders, together with its successor and permitted assigns, a "Lender"), Agent, Borrowers, and the other Loan Parties from time to time party thereto, the Lender Group has agreed to make or issue Loans, Letters of Credit and other certain financial accommodations thereunder; and

WHEREAS, Borrowers have informed Agent and Lenders that Parent has entered into that certain Asset Purchase Agreement dated as of June 6, 2023, a copy of which has been furnished to Agent prior to the date hereof (the "Northlake Purchase Agreement") by and between Parent and Treehouse Foods, Inc., a Delaware corporation ("Buyer"), pursuant to which Parent will sell, transfer, assign, convey and deliver to Buyer all right, title and interest in and to the Purchased Assets (as defined in the Northlake Purchase Agreement), in accordance with the Northlake Purchase Agreement and applicable law (such sale, the "Northlake Sale");

WHEREAS, Borrowers have requested that Agent and the Lenders (i) consent to the Northlake Sale, and (ii) agree to amend the Credit Agreement in certain respects, in each case, as more specifically set forth herein, and Agent and the Lenders have agreed to the foregoing, all on the terms and subject to the conditions set forth herein.

NOW THEREFORE, in consideration of the premises and mutual agreements herein contained, the parties hereto agree as follows:

1. Defined Terms. Unless otherwise defined herein, capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Credit Agreement.

2. Consent. Effective upon the satisfaction of the conditions to effectiveness set forth in Section 6 below and in reliance on the representations and warranties set forth in Section 7 below, Agent and Lenders hereby consent to the Northlake Sale. Contemporaneously with the closing of the Northlake Sale, Parent shall cause not less than \$89,674,574.00 of the Net Cash Proceeds from the Northlake Sale to be received by Agent by wire transfer in immediately available funds to Agent's Account, such Net Cash Proceeds to be applied in accordance with the that certain "term loan payoff and revolver paydown letter" letter dated as of the date hereof by and among Agent, Lenders and Borrowers (the "Term Loan Payoff and Revolver Paydown Letter"). For the avoidance of doubt, after giving effect to this consent, the Northlake Sale shall be considered a "Permitted Disposition" for all purposes under the Credit Agreement and the other Loan Documents. The foregoing consent (a) shall only be relied upon and used for the specific purpose set forth herein, (b) shall not constitute nor be deemed to constitute a waiver of any Default or Event of Default, (c) shall not constitute nor be deemed to constitute a consent by Agent or any Lender to anything other than the specific matters set forth herein and (iv) shall not constitute a course of dealing among the parties hereto.

3. Amendments to Credit Agreement. In reliance upon the representations and warranties of Borrowers set forth in Section 7 below, and subject to the satisfaction of the conditions to effectiveness set forth in Section 6 below, the Credit Agreement is hereby amended as follows:

(a) The Credit Agreement is hereby amended (a) to delete red or green stricken text (indicated textually in the same manner as the following examples: ~~stricken text~~ and ~~stricken text~~) and (b) to add the blue or green double-underlined text (indicated textually in the same manner as the following examples: double-underlined text and double-underlined text), in each case, as set forth in the conformed copy of the Credit Agreement attached hereto as Exhibit A.

(b) Schedule C-1 of the Credit Agreement is hereby amended and restated in its entirety as set forth on Schedule C-1 hereto.

(c) Schedule R-1 of the Credit Agreement is hereby amended and restated in its entirety as set forth on Schedule R-1 hereto.

(d) Schedule 5.1 of the Credit Agreement is hereby amended and restated in its entirety as set forth on Schedule 5.1 hereto.

4. Continuing Effect. Except as expressly set forth in Section 2 and Section 3 of this Amendment, nothing in this Amendment shall constitute a modification or alteration of the terms, conditions or covenants of the Credit Agreement or any other Loan Document, or a waiver of any other terms or provisions thereof, and the Credit Agreement and the other Loan Documents shall remain unchanged and shall continue in full force and effect, in each case as amended hereby. This Amendment is a Loan Document.

5. Reaffirmation and Confirmation. Each Borrower hereby ratifies, affirms, acknowledges and agrees that the Credit Agreement and the other Loan Documents to which it is a party represent the valid, enforceable and collectible obligations of such Borrower, except as enforcement may be limited by equitable principles or by bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or limiting creditors' rights generally, and further acknowledges that there are no existing claims, defenses, personal or otherwise, or rights of setoff whatsoever with respect to the Credit Agreement or any other Loan Document. Each Borrower hereby agrees that this Amendment in no way acts as a release or relinquishment of the Liens and rights securing payments of the Obligations. The Liens and rights securing payment of the Obligations are hereby ratified and confirmed by each Borrower in all respects.

6. Conditions to Effectiveness. This Amendment shall become effective upon the satisfaction of each of the following conditions precedent, in each case satisfactory to Agent in all respects:

- (a) Agent shall have received a copy of this Amendment executed and delivered by Agent, the Lenders and the Borrowers;
- (b) Agent shall have received a copy of the Term Loan Payoff and Revolver Paydown Letter executed and delivered by Agent, Lenders and Borrowers;
- (c) The Northlake Sale shall have been consummated pursuant to the Purchase Agreement and applicable law contemporaneously with the effectiveness of this Agreement;
- (d) no Default or Event of Default shall have occurred and be continuing on the date hereof;
- (e) each of the representations and warranties of each Loan Party set forth in the Credit Agreement and each of the other Loan Documents, shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of the date hereof (except to the extent that such representations and warranties relate solely to an earlier date, in which case such representations and warranties shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of such earlier date); and
- (f) Borrowers shall have paid all reasonable and documented out-of-pocket costs and expenses of Agent (including reasonable and documented outside attorneys' fees) incurred in connection with the preparation, negotiation, execution, delivery and administration of this Amendment, and all other instruments or documents provided for herein or delivered or to be delivered hereunder or in connection herewith that have been invoiced on or before the date hereof.

7. Representations and Warranties. In order to induce Agent and the Lenders to enter into this Amendment, each Borrower hereby represents and warrants to Agent and the Lenders that:

- (a) after giving effect to this Amendment, all representations and warranties of each Loan Party set forth in the Credit Agreement and each of the other Loan Documents, are true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of the date hereof (except to the extent that such representations and warranties relate solely to an earlier date, in which case such representations and warranties shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of such earlier date);
- (b) no Default or Event of Default has occurred and is continuing;

(c) this Amendment and the Loan Documents, as modified hereby, constitute legal, valid and binding obligations of such Loan Party and are enforceable against such Loan Party in accordance with their respective terms, except as enforcement may be limited by equitable principles or by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally; and

(d) The copy of the Northlake Purchase Agreement delivered to Agent by Parent prior to the date hereof is true, correct and complete.

8. Miscellaneous.

(a) Expenses. Borrowers agree to pay on demand all reasonable and documented out-of-pocket costs and expenses of Agent and the Lenders (including reasonable and documented outside counsel's fees) incurred in connection with the preparation, negotiation, execution, delivery and administration of this Amendment and all other instruments or documents provided for herein or delivered or to be delivered hereunder or in connection herewith. All obligations provided in this Section 8(a) shall survive any termination of this Amendment and the Credit Agreement as amended hereby.

(b) Choice of Law and Venue; Jury Trial Waiver. Without limiting the applicability of any other provision of the Credit Agreement or any other Loan Document, the terms and provisions set forth in Section 12 of the Credit Agreement are expressly incorporated herein by reference.

(c) Counterparts. This Amendment may be executed in any number of counterparts, and by the parties hereto on the same or separate counterparts, and each such counterpart, when executed and delivered, shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Amendment.

9. Release.

(a) In consideration of the agreements of Agent and the Lenders contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each Loan Party, on behalf of itself and its successors, assigns, and other legal representatives, hereby absolutely, unconditionally and irrevocably releases, remises and forever discharges Agent and the Lenders, and their successors and assigns, and their present and former shareholders, affiliates, subsidiaries, divisions, predecessors, directors, officers, attorneys, employees, agents and other representatives (Agent, each Lender and all such other Persons being hereinafter referred to collectively as the "Releasees" and individually as a "Releasee"), of and from all demands, actions, causes of action, suits, controversies, damages and any and all other claims, counterclaims, defenses, rights of set-off, demands and liabilities whatsoever (individually, a "Claim" and collectively, "Claims") of every name and nature, known or unknown, suspected or unsuspected, both at law and in equity, which such Loan Party or any of its successors, assigns, or other legal representatives may now own, hold, have or claim to have against the Releasees or any of them for, upon, or by reason of any circumstance, action, cause or thing whatsoever which arises at any time on or prior to the day and date of this Amendment for or on account of, or in relation to, or in any way in connection with any of the Credit Agreement, or any of the other Loan Documents or transactions thereunder or related thereto; *provided, however*, nothing in this Section 9 shall apply to any Claim that a court of competent jurisdiction finally determines to have resulted from the gross negligence of, willful misconduct of, or material breach of the Loan Documents by a Releasee or its officers, directors, employees, attorneys or agents. For the avoidance of doubt, nothing in this Section 9 shall prevent the Loan Parties from bringing a suit against Agent or the Lenders in a court of competent jurisdiction alleging gross negligence of, willful misconduct of, or material breach of the Loan Documents by a Releasee or its officers, directors, employees, attorneys or agents.

(b) Each Loan Party understands, acknowledges and agrees that the release set forth above may be pleaded as a full and complete defense and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of such release.

(c) Each Loan Party agrees that no fact, event, circumstance, evidence or transaction which could now be asserted or which may hereafter be discovered shall affect in any manner the final, absolute and unconditional nature of the release set forth above.

[Signature Page Follows]

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

BORROWERS:

FARMER BROS. CO., a Delaware corporation

By: /s/ D. Deverl Maserang II
Name: D. Deverl Maserang II
Title: President and CEO

BOYD ASSETS CO., a Delaware corporation

By: /s/ D. Deverl Maserang II
Name: D. Deverl Maserang II
Title: President and CEO

FBC FINANCE COMPANY, a California corporation

By: /s/ D. Deverl Maserang II
Name: D. Deverl Maserang II
Title: President and CEO

COFFEE BEAN HOLDING CO., INC., a Delaware corporation

By: /s/ D. Deverl Maserang II
Name: D. Deverl Maserang II
Title: President and CEO

COFFEE BEAN INTERNATIONAL, INC., an Oregon corporation

By: /s/ D. Deverl Maserang II
Name: D. Deverl Maserang II
Title: President and CEO

CHINA MIST BRANDS, INC., a Delaware corporation

By: /s/ D. Deverl Maserang II
Name: D. Deverl Maserang II
Title: President and CEO

Signature Page to Consent and Amendment No. 4 to Credit Agreement

WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association as Agent and a Lender

By: /s/ Michael Gerard
Name: Michael Gerard
Title: Director

Signature Page to Consent and Amendment No. 4 to Credit Agreement

EXHIBIT A

Amended Credit Agreement

[See attached]



CREDIT AGREEMENT

by and among

WELLS FARGO BANK, NATIONAL ASSOCIATION,

as Agent,

THE LENDERS THAT ARE PARTIES HERETO

as the Lenders,

FARMER BROS. CO.,

as Parent and as a Borrower, and

**BOYD ASSETS CO.,
FBC FINANCE COMPANY,
COFFEE BEAN HOLDING CO., INC.,
COFFEE BEAN INTERNATIONAL, INC., and
CHINA MIST BRANDS, INC.,**

as Borrowers

Dated as of April 26, 2021

TABLE OF CONTENTS

	Page
1. DEFINITIONS AND CONSTRUCTION.	1
1.1. Definitions	1
1.2. Accounting Terms	65 <u>64</u>
1.3. Code	65 <u>64</u>
1.4. Construction	65 <u>64</u>
1.5. Time References	66 <u>65</u>
1.6. Schedules and Exhibits	66 <u>65</u>
1.7. Divisions	67 <u>65</u>
1.8. Rates	67 <u>66</u>
2. LOANS AND TERMS OF PAYMENT	67 <u>66</u>
2.1. Revolving Loans	67 <u>66</u>
2.2. Term Loan 68 <u>[Reserved]</u>	67 <u>67</u>
2.3. Borrowing Procedures and Settlements	69 <u>67</u>
2.4. Payments; Reductions of Commitments; Prepayments	76 <u>75</u>
2.5. Promise to Pay; Promissory Notes	82 <u>80</u>
2.6. Interest Rates and Letter of Credit Fee; Rates, Payments, and Calculations	82 <u>81</u>
2.7. Crediting Payments	84 <u>83</u>
2.8. Designated Account	85 <u>83</u>
2.9. Maintenance of Loan Account; Statements of Obligations	85 <u>83</u>
2.10. Fees	85 <u>83</u>
2.11. Letters of Credit	86 <u>84</u>
2.12. SOFR Option	95 <u>93</u>
2.13. Capital Requirements	99 <u>97</u>
2.14. Incremental Facilities	100 <u>99</u>
2.15. Joint and Several Liability of Borrowers	102 <u>100</u>
3. CONDITIONS; TERM OF AGREEMENT	106 <u>104</u>
3.1. Conditions Precedent to the Initial Extension of Credit	106 <u>104</u>
3.2. Conditions Precedent to all Extensions of Credit	106 <u>104</u>
3.3. Maturity	106 <u>105</u>
3.4. Effect of Maturity	106 <u>105</u>
3.5. Early Termination by Borrowers	107 <u>105</u>
3.6. Conditions Subsequent	107 <u>105</u>
4. REPRESENTATIONS AND WARRANTIES	107 <u>106</u>
4.1. Due Organization and Qualification; Subsidiaries	108 <u>106</u>
4.2. Due Authorization; No Conflict	108 <u>107</u>
4.3. Governmental Consents	109 <u>107</u>
4.4. Binding Obligations; Perfected Liens	109 <u>107</u>
4.5. Title to Assets; No Encumbrances	109 <u>108</u>
4.6. Litigation	110 <u>108</u>
4.7. Compliance with Laws	110 <u>108</u>
4.8. No Material Adverse Effect	110 <u>108</u>

TABLE OF CONTENTS

(continued)

	Page
4.9. Solvency	110 <u>109</u>
4.10. Employee Benefits	110 <u>109</u>
4.11. Environmental Condition	112 <u>110</u>
4.12. Complete Disclosure	113 <u>111</u>
4.13. Patriot Act	113 <u>112</u>
4.14. Indebtedness	113 <u>112</u>
4.15. Payment of Taxes	113 <u>112</u>
4.16. Margin Stock	114 <u>112</u>
4.17. Governmental Regulation	114 <u>112</u>
4.18. OFAC; Sanctions; Anti-Corruption Laws; Anti-Money Laundering Laws	114 <u>112</u>
4.19. Employee and Labor Matters	114 <u>113</u>
4.20. Material Contracts	115 <u>113</u>
4.21. Leases	115 <u>114</u>
4.22. Eligible Accounts	115 <u>114</u>
4.23. Eligible Inventory	115 <u>114</u>
4.24. [Reserved]	116 <u>114</u>
4.25. Location of Inventory	116 <u>114</u>
4.26. Inventory Records	116 <u>114</u>
4.27. [Reserved]	116 <u>114</u>
4.28. [Reserved]	116 <u>114</u>
4.29. Hedge Agreements	116 <u>114</u>
4.30. Adverse Agreements, Etc.	116 <u>114</u>
4.31. Permits, Etc.	116 <u>115</u>
4.32. Insurance	117 <u>115</u>
4.33. Customers and Suppliers	117 <u>115</u>
5. AFFIRMATIVE COVENANTS	117 <u>115</u>
5.1. Financial Statements, Reports, Certificates	117 <u>115</u>
5.2. Reporting	117 <u>116</u>
5.3. Existence	118 <u>116</u>
5.4. Maintenance of Properties and Intellectual Property	118 <u>116</u>
5.5. Taxes	118 <u>116</u>
5.6. Insurance	118 <u>117</u>
5.7. Inspection	119 <u>118</u>
5.8. Compliance with Laws	120 <u>118</u>
5.9. Environmental	120 <u>118</u>
5.10. Disclosure Updates	120 <u>119</u>
5.11. Formation of Subsidiaries	121 <u>119</u>
5.12. Further Assurances	121 <u>120</u>
5.13. Material Contracts	122 <u>121</u>
5.14. Location of Inventory; Chief Executive Office	122 <u>121</u>
5.15. OFAC; Sanctions; Anti-Corruption Laws; Anti-Money Laundering Laws	123 <u>121</u>
5.16. Compliance with ERISA and the IRC	123 <u>121</u>

TABLE OF CONTENTS

(continued)

		Page
6.	NEGATIVE COVENANTS	+23 <u>122</u>
6.1.	Indebtedness	+23 <u>122</u>
6.2.	Liens	+23 <u>122</u>
6.3.	Restrictions on Fundamental Changes	+24 <u>122</u>
6.4.	Disposal of Assets	+24 <u>123</u>
6.5.	Nature of Business	+25 <u>123</u>
6.6.	Prepayments and Amendments	+25 <u>123</u>
6.7.	Restricted Payments	+25 <u>124</u>
6.8.	Accounting Methods	+26 <u>124</u>
6.9.	Investments	+26 <u>124</u>
6.10.	Transactions with Affiliates	+26 <u>125</u>
6.11.	Use of Proceeds	+27 <u>125</u>
6.12.	Limitation on Issuance of Equity Interests	+27 <u>126</u>
6.13.	Inventory with Bailees	+27 <u>126</u>
6.14.	Employee Benefits	+27 <u>126</u>
6.15.	Limitations on Dividends and Other Payment Restrictions Affecting Subsidiaries	+28 <u>127</u>
6.16.	Limitations on Negative Pledges	+29 <u>128</u>
6.17.	Investment Company Act	+29 <u>128</u>
<u>6.18.</u>	<u>Negative Pledge</u>	<u>128</u>
7.	FINANCIAL COVENANT	+30 <u>128</u>
8.	EVENTS OF DEFAULT	+30 <u>129</u>
8.1.	Payments	+30 <u>129</u>
8.2.	Covenants	+30 <u>129</u>
8.3.	Judgments	+31 <u>130</u>
8.4.	Voluntary Bankruptcy, etc.	+31 <u>130</u>
8.5.	Involuntary Bankruptcy, etc.	+31 <u>130</u>
8.6.	Default Under Other Agreements	+31 <u>130</u>
8.7.	Representations, etc.	+31 <u>130</u>
8.8.	Guaranty	+32 <u>131</u>
8.9.	Security Documents	+32 <u>131</u>
8.10.	Loan Documents	+32 <u>131</u>
8.11.	Change of Control	+32 <u>131</u>
8.12.	ERISA and Employee Benefits	+32 <u>131</u>
8.13.	Proceedings	+32 <u>131</u>
8.14.	Subordinated Indebtedness	+32 <u>131</u>
9.	RIGHTS AND REMEDIES	+33 <u>132</u>
9.1.	Rights and Remedies	+33 <u>132</u>
9.2.	Remedies Cumulative	+34 <u>133</u>

TABLE OF CONTENTS

(continued)

	Page
10. WAIVERS; INDEMNIFICATION	134 <u>133</u>
10.1. Demand; Protest; etc.	134 <u>133</u>
10.2. The Lender Group's Liability for Collateral	134 <u>133</u>
10.3. Indemnification	134 <u>133</u>
11. NOTICES	135 <u>134</u>
12. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER; JUDICIAL REFERENCE PROVISION	136 <u>135</u>
13. ASSIGNMENTS AND PARTICIPATIONS; SUCCESSORS	140 <u>139</u>
13.1. Assignments and Participations	140 <u>139</u>
13.2. Successors	144 <u>143</u>
14. AMENDMENTS; WAIVERS	144 <u>143</u>
14.1. Amendments and Waivers	144 <u>143</u>
14.2. Replacement of Certain Lenders	147 <u>146</u>
14.3. No Waivers; Cumulative Remedies	147 <u>146</u>
15. AGENT; THE LENDER GROUP	148 <u>147</u>
15.1. Appointment and Authorization of Agent	148 <u>147</u>
15.2. Delegation of Duties	149 <u>148</u>
15.3. Liability of Agent	149 <u>148</u>
15.4. Reliance by Agent	149 <u>148</u>
15.5. Notice of Default or Event of Default	150 <u>149</u>
15.6. Credit Decision	150 <u>149</u>
15.7. Costs and Expenses; Indemnification	151 <u>150</u>
15.8. Agent in Individual Capacity	151 <u>150</u>
15.9. Successor Agent	152 <u>151</u>
15.10. Lender in Individual Capacity	152 <u>151</u>
15.11. Collateral Matters	153 <u>152</u>
15.12. Restrictions on Actions by Lenders; Sharing of Payments	155 <u>154</u>
15.13. Agency for Perfection	155 <u>154</u>
15.14. Payments by Agent to the Lenders	155 <u>154</u>
15.15. Concerning the Collateral and Related Loan Documents	156 <u>155</u>
15.16. Field Examination Reports; Confidentiality; Disclaimers by Lenders; Other Reports and Information	156 <u>155</u>
15.17. Several Obligations; No Liability	157 <u>156</u>
15.18. Subordination Agreement	157 <u>156</u>
16. WITHHOLDING TAXES	157 <u>156</u>
16.1. Payments	157 <u>156</u>
16.2. Exemptions	158 <u>157</u>
16.3. Reductions	160 <u>159</u>
16.4. Refunds	161 <u>160</u>

TABLE OF CONTENTS

(continued)

	Page
17. GENERAL PROVISIONS	+64 <u>160</u>
17.1. Effectiveness	+64 <u>160</u>
17.2. Section Headings	+64 <u>160</u>
17.3. Interpretation	+64 <u>160</u>
17.4. Severability of Provisions	+64 <u>160</u>
17.5. Bank Product Providers	+64 <u>160</u>
17.6. Debtor-Creditor Relationship	+62 <u>161</u>
17.7. Counterparts; Electronic Execution	+62 <u>161</u>
17.8. Revival and Reinstatement of Obligations; Certain Waivers	+63 <u>162</u>
17.9. Confidentiality	+63 <u>162</u>
17.10. Survival	+65 <u>164</u>
17.11. Patriot Act; Due Diligence	+65 <u>164</u>
17.12. Integration	+66 <u>165</u>
17.13. Parent as Agent for Borrowers	+66 <u>165</u>
17.14. Acknowledgement and Consent to Bail-In of Affected Financial Institutions	+67 <u>166</u>
17.15. Acknowledgement Regarding Any Supported QFCs	+67 <u>166</u>
17.16. Erroneous Payments	+68 <u>167</u>

EXHIBITS AND SCHEDULES

Exhibit A-1	Form of Assignment and Acceptance
Exhibit B-1	Form of Borrowing Base Certificate
Exhibit C-1	Form of Compliance Certificate
Exhibit J-1	Form of Joinder
Exhibit L-1	Form of SOFR Notice
Exhibit P-1	Form of Perfection Certificate
Schedule A-1	Agent's Account
Schedule A-2	Authorized Persons
Schedule C-1	Commitments
Schedule C-2	Customs Brokers
Schedule D-1	Designated Account
Schedule F-1	Farmer Trademark
Schedule H-1	Houston Assets
Schedule I-1	Immaterial Marks
Schedule L-1	Existing Obligations
Schedule P-1	Permitted Investments
Schedule P-2	Permitted Liens
Schedule R-1	Real Property Collateral
Schedule S-1	Specified Real Property
Schedule 3.1	Conditions Precedent
Schedule 3.6	Conditions Subsequent
Schedule 4.1(b)	Capitalization of Borrowers
Schedule 4.1(c)	Capitalization of Borrowers' Subsidiaries
Schedule 4.1(d)	Subscriptions, Options, Warrants, Calls
Schedule 4.6(b)	Litigation
Schedule 4.10(a)	Pension Plans and Multiemployer Plans
Schedule 4.10(f)	Employee Benefits
Schedule 4.11	Environmental Matters
Schedule 4.14	Permitted Indebtedness
Schedule 4.20	Material Contracts
Schedule 4.25	Location of Inventory
Schedule 4.32	Insurance
Schedule 5.1	Financial Statements, Reports, Certificates
Schedule 5.2	Collateral Reporting
Schedule 6.5	Nature of Business
Schedule 6.15	Restrictive Agreements

CREDIT AGREEMENT

THIS CREDIT AGREEMENT, is entered into as of April 26, 2021 by and among the lenders identified on the signature pages hereof (each of such lenders, together with its successors and permitted assigns, is referred to hereinafter as a "Lender", as that term is hereinafter further defined), **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association, as administrative agent for each member of the Lender Group and the Bank Product Providers (in such capacity, together with its successors and assigns in such capacity, "Agent"), FARMER BROS. CO., a Delaware corporation ("Parent"), the Subsidiaries of Parent identified on the signature pages hereof as "Borrowers", and those additional entities that hereafter become parties hereto as Borrowers in accordance with the terms hereof by executing the form of Joinder attached hereto as Exhibit J-1 (together with Parent, each, a "Borrower" and individually and collectively, jointly and severally, the "Borrowers").

The parties agree as follows:

1. DEFINITIONS AND CONSTRUCTION.

1.1. Definitions. As used in this Agreement, the following terms shall have the following definitions:

"Acceptable Appraisal" means, with respect to an appraisal of Inventory, the most recent appraisal of such property received by Agent (a) from an appraisal company satisfactory to Agent, (b) the scope and methodology (including, to the extent relevant, any sampling procedure employed by such appraisal company) of which are satisfactory to Agent, and (c) the results of which are satisfactory to Agent, in each case, in Agent's Permitted Discretion.

"Account" means an account (as that term is defined in the Code).

"Account Debtor" means any Person who is obligated on an Account, chattel paper, or a general intangible.

"Account Party" has the meaning specified therefor in Section 2.11(h) of this Agreement.

"Accounting Changes" means changes in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants (or successor thereto or any agency with similar functions).

"Acquired Indebtedness" means Indebtedness of a Person whose assets or Equity Interests are acquired by a Loan Party or any of its Subsidiaries in a Permitted Acquisition; provided, that such Indebtedness (a) is (i) purchase money Indebtedness, (ii) a Capital Lease with respect to Equipment, (iii) mortgage financing with respect to Real Property, or (iv) other Indebtedness with the prior written consent of Agent, (b) was in existence prior to the date of such Permitted Acquisition, and (c) was not incurred in connection with, or in contemplation of, such Permitted Acquisition.

"Acquisition" means any transaction, or any series of related transactions, consummated on or after the Closing Date, by which any Loan Party or any Subsidiary (a) acquires any division or business line of any Person or all or substantially all of the assets of any Person, whether through purchase of assets, merger or otherwise or (b) purchases or otherwise acquires (whether by means of a merger, consolidation, or otherwise) all of the Equity Interests of any other Person.

"Additional Documents" has the meaning specified therefor in Section 5.12 of this Agreement.

"Additional Real Property Collateral Event" means a Cash Dominion Event has occurred and a Cash Dominion Period is in effect.

"Administrative Borrower" has the meaning specified therefor in Section 17.13 of this Agreement.

"Administrative Questionnaire" has the meaning specified therefor in Section 13.1(a) of this Agreement.

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

"Affected Lender" has the meaning specified therefor in Section 2.13(b) of this Agreement.

"Affiliate" means, as applied to any Person, any other Person who controls, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" means the possession, directly or indirectly through one or more intermediaries, of the power to direct the management and policies of a Person, whether through the ownership of Equity Interests, by contract, or otherwise; provided, that for purposes of the definition of Eligible Accounts and Section 6.10 of this Agreement: (a) if any Person owns directly or indirectly 10% or more of the Equity Interests having ordinary voting power for the election of directors or other members of the governing body of a Person or 10% or more of the partnership or other ownership interests of a Person (other than as a limited partner of such Person), then both such Persons shall be Affiliates of each other, (b) each director (or comparable manager) of a Person shall be deemed to be an Affiliate of such Person, and (c) each partnership in which a Person is a general partner shall be deemed an Affiliate of such Person.

"Agent" has the meaning specified therefor in the preamble to this Agreement.

"Agent-Related Persons" means Agent, together with its Affiliates, officers, directors, employees, attorneys, and agents.

"Agent's Account" means the Deposit Account of Agent identified on Schedule A-1 to this Agreement (or such other Deposit Account of Agent that has been designated as such, in writing, by Agent to Borrowers and the Lenders).

"Agent's Liens" means the Liens granted by each Loan Party or its Subsidiaries to Agent under the Loan Documents and securing the Obligations.

"Agreement" means this Credit Agreement, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"Anti-Corruption Laws" means the FCPA, the U.K. Bribery Act of 2010, as amended, and all other applicable laws and regulations or ordinances concerning or relating to bribery or corruption in any jurisdiction in which any Loan Party or any of its Subsidiaries or Affiliates is located or is doing business.

"Anti-Money Laundering Laws" means the applicable laws or regulations in any jurisdiction in which any Loan Party or any of its Subsidiaries or Affiliates is located or is doing business that relates to money laundering, any predicate crime to money laundering, or any financial record keeping and reporting requirements related thereto.

"Applicable Margin" means (a) in the case of a Base Rate Loan which is a Revolving Loan, 0.75 percentage points (the "Revolving Loan Base Rate Margin"), and (b) in the case of a SOFR Loan which is a Revolving Loan, 1.75 percentage points (the "Revolving Loan SOFR Margin"); ~~(c) in the case of a Base Rate Loan which is a Term Loan, 1.25 percentage points (the "Term Loan Base Rate Margin"); and (d) in the case of a SOFR Loan which is a Term Loan, 2.25 percentage points (the "Term Loan SOFR Margin").~~

"Applicable Unused Line Fee Percentage" means, as of any date of determination, the applicable percentage set forth in the following table that corresponds to the Average Revolver Usage of Borrowers for the most recently completed ~~month~~calendar quarter as determined by Agent in its Permitted Discretion; ~~provided, that for the period from the Closing Date through and including May 31, 2021, the Applicable Unused Line Fee Percentage shall be set at the rate in the row styled "Level II"; provided further,~~ that any time an Event of Default has occurred and is continuing, the Applicable Unused Line Fee Percentage shall be set at the margin in the row styled "Level II":

Level	Average Revolver Usage	Applicable Unused Line Fee Percentage
I	> 50% of the Maximum Revolver Amount	0.375 percentage points
II	≤ 50% of the Maximum Revolver Amount	0.50 percentage points

The Applicable Unused Line Fee Percentage shall be re-determined on the first date of each ~~month~~calendar quarter by Agent.

"Application Event" means (a) the occurrence of a failure by Borrowers to repay all of the Obligations in full on the Maturity Date, or (b) the occurrence and continuation of an Event of Default and the election by Agent or the Required Lenders to require that payments and proceeds of Collateral be applied pursuant to Section 2.4(b)(iii) of this Agreement.

"Assignee" has the meaning specified therefor in Section 13.1(a) of this Agreement.

"Assignment and Acceptance" means an Assignment and Acceptance Agreement substantially in the form of Exhibit A-1 to this Agreement, or such other form as approved by Agent.

"Authorized Person" means any one of the individuals identified as an officer of a Borrower on Schedule A-2 to this Agreement, or any other individual identified by Administrative Borrower as an authorized person and authenticated through Agent's electronic platform or portal in accordance with its procedures for such authentication.

"Availability" means, as of any date of determination, the amount that Borrowers are entitled to borrow as Revolving Loans under Section 2.1 of this Agreement (after giving effect to the then outstanding Revolver Usage).

"Available Increase Amount" means, ~~as of any date of determination, an amount equal to the result of (a) \$20,000,000, minus (b) the aggregate principal amount of Increases to the Revolver Commitments previously made pursuant to Section 2.14 of this Agreement. As of the Third Amendment Effective Date, the remaining Available Increase Amount is \$10,000,000.~~

"Available Tenor" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (a) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (b) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark pursuant to this Agreement, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of "Interest Period" pursuant to Section 2.12(d)(iii)(D).

"Average Revolver Usage" means, with respect to any period, the sum of the aggregate amount of Revolver Usage for each day in such period (calculated as of the end of each respective day) divided by the number of days in such period.

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

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

"Bank Product" means any one or more of the following financial products or accommodations extended to any Loan Party or any of its Subsidiaries by a Bank Product Provider: (a) credit cards (including commercial cards (including so-called "purchase cards", "procurement cards" or "p-cards")), (b) payment card processing services, (c) debit cards, (d) stored value cards, (e) Cash Management Services, or (f) transactions under Hedge Agreements.

"Bank Product Agreements" means those agreements entered into from time to time by any Loan Party or any of its Subsidiaries with a Bank Product Provider in connection with the obtaining of any of the Bank Products.

"Bank Product Collateralization" means providing cash collateral (pursuant to documentation reasonably satisfactory to Agent) to be held by Agent for the benefit of the Bank Product Providers (other than the Hedge Providers) in an amount determined by Agent as sufficient to satisfy the reasonably estimated credit exposure, operational risk or processing risk with respect to the then existing Bank Product Obligations (other than Hedge Obligations).

"Bank Product Obligations" means (a) all obligations, liabilities, reimbursement obligations, fees, or expenses owing by each Loan Party and its Subsidiaries to any Bank Product Provider pursuant to or evidenced by a Bank Product Agreement and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, (b) all Hedge Obligations, and (c) all amounts that Agent or any Lender is obligated to pay to a Bank Product Provider as a result of Agent or such Lender purchasing participations from, or executing guarantees or indemnities or reimbursement obligations to, a Bank Product Provider with respect to the Bank Products provided by such Bank Product Provider to a Loan Party or its Subsidiaries.

"Bank Product Provider" means Wells Fargo or any of its Affiliates, including each of the foregoing in its capacity, if applicable, as a Hedge Provider.

"Bank Product Reserves" means, as of any date of determination, those reserves that Agent deems necessary or appropriate, in its Permitted Discretion, to establish (based upon the Bank Product Providers' determination of the liabilities and obligations of each Loan Party and its Subsidiaries in respect of Bank Product Obligations) in respect of Bank Products then provided or outstanding.

"Bankruptcy Code" means title 11 of the United States Code, as in effect from time to time.

"Base Rate" means, for any day, the greatest of (a) the Federal Funds Rate plus ½%, (b) Term SOFR for a one month tenor in effect on such day, plus 1%; provided that this clause (b) shall not be applicable during any period in which Term SOFR is unavailable or unascertainable, and (c) the rate of interest announced, from time to time, within Wells Fargo at its principal office in San Francisco as its "prime rate", with the understanding that the "prime rate" is one of Wells Fargo's base rates (not necessarily the lowest of such rates) and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto and is evidenced by the recording thereof after its announcement in such internal publications as Wells Fargo may designate (and, if any such announced rate is below zero, then the rate determined pursuant to this clause (c) shall be deemed to be zero).

"Base Rate Loan" means each portion of ~~(i) the Revolving Loans or (ii) the Term Loan, in each case~~ that bears interest at a rate determined by reference to the Base Rate.

"Base Rate Margin" means the Revolving Loan Base Rate Margin ~~or the Term Loan Base Rate Margin, as applicable.~~

"Benchmark" means, initially, the Term SOFR Reference Rate; provided that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.12(d)(iii)(A).

"Benchmark Replacement" means, with respect to any Benchmark Transition Event, the sum of: (a) the alternate benchmark rate that has been selected by Agent and Administrative Borrower giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for Dollar-denominated syndicated credit facilities and (b) the related Benchmark Replacement Adjustment; provided that if such Benchmark Replacement as so determined would be less than the Floor, such Benchmark Replacement shall be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

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

"Benchmark Replacement Date" means the earliest to occur of the following events with respect to the then-current Benchmark:

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

(b) in the case of clause (c) of the definition of "Benchmark Transition Event," the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

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

"Benchmark Transition Event" means the occurrence of one or more of the following events with respect to the then-current Benchmark:

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

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Board of Governors, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

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

"Benchmark Transition Start Date" means, in the case of a Benchmark Transition Event, the earlier of (a) the applicable Benchmark Replacement Date and (b) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication).

"Benchmark Unavailability Period" means the period (if any) (x) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.12(d)(iii) and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.12(d)(iii).

"Beneficial Ownership Certification" means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

"Beneficial Ownership Regulation" means 31 C.F.R. § 1010.230.

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

"Board of Directors" means, as to any Person, the board of directors (or comparable managers) of such Person, or any committee thereof duly authorized to act on behalf of the board of directors (or comparable managers).

"Board of Governors" means the Board of Governors of the Federal Reserve System of the United States (or any successor).

"Borrower" and "Borrowers" have the respective meanings specified therefor in the preamble to this Agreement.

"Borrower Materials" has the meaning specified therefor in Section 17.9(c) of this Agreement.

"Borrowing" means a borrowing consisting of Revolving Loans made on the same day by the Lenders (or Agent on behalf thereof), or by Swing Lender in the case of a Swing Loan, or by Agent in the case of an Extraordinary Advance.

"Borrowing Base" means, as of any date of determination, the result of:

(a) 85% of the amount of Eligible Accounts, less the amount, if any, of the Dilution Reserve, plus

(b) the lesser of (A) the product of 80% multiplied by the value (calculated at the lower of cost or market on a basis consistent with Borrowers' historical (or, with the prior written consent of Agent, then current) accounting practices) of Eligible Raw Material Inventory, Eligible In-Transit Inventory and Eligible Finished Goods Inventory at such time, and (B) the product of 85% multiplied by the Net Recovery Percentage identified in the most recent Acceptable Appraisal of Inventory, multiplied by the value (calculated at the lower of cost or market on a basis consistent with Borrowers' historical (or, with the prior written consent of Agent, then current) accounting practices) of Eligible Raw Material Inventory, Eligible In-Transit Inventory and Eligible Finished Goods Inventory (such determination may be made as to different categories of Eligible Raw Material Inventory, Eligible In-Transit Inventory and Eligible Finished Goods Inventory based upon the Net Recovery Percentage applicable to such categories) at such time, minus

(c) the aggregate amount of Reserves, if any, established by Agent from time to time under Section 2.1(c) of this Agreement;

provided, however, that not more than \$5,000,000 of the Borrowing Base shall be attributable to Eligible Finished Goods Inventory that constitutes Coffee Brewing Equipment.

"Borrowing Base Certificate" means a certificate substantially in the form of Exhibit B-1 to this Agreement, which such form of Borrowing Base Certificate may be amended, restated, supplemented or otherwise modified from time to time (including without limitation changes to the format thereof), as approved by Agent in Agent's Permitted Discretion.

"Business Day." means any day that is not a Saturday, Sunday or other day on which the Federal Reserve Bank of New York is closed.

"Capital Expenditures" means, with respect to any Person for any period, the amount of all expenditures by such Person and its Subsidiaries during such period that are capital expenditures as determined in accordance with GAAP, whether such expenditures are paid in cash or financed, but excluding, without duplication (a) **[reserved]**, (b) with respect to the purchase price of assets that are purchased substantially contemporaneously with the trade-in of existing assets during such period, the amount that the gross amount of such purchase price is reduced by the credit granted by the seller of such assets for the assets being traded in at such time, and (c) expenditures made during such period to consummate one or more Permitted Acquisitions.

"Capital Lease" means a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP, including, without limitation, any "finance lease" under GAAP.

"Capitalized Lease Obligation" means that portion of the obligations under a Capital Lease that is required to be capitalized in accordance with GAAP.

"Cash Dominion Event" has the meaning specified therefor in the Guaranty and Security Agreement.

"Cash Dominion Period" has the meaning specified therefor in the Guaranty and Security Agreement.

"Cash Equivalents" means (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within one year from the date of acquisition thereof, (b) marketable direct obligations issued or fully guaranteed by any state of the United States or any political subdivision of any such state or any public instrumentality thereof maturing within one year from the date of acquisition thereof and, at the time of acquisition, having one of the two highest ratings obtainable from either Standard & Poor's Rating Group ("S&P") or Moody's Investors Service, Inc. ("Moody's"), (c) commercial paper maturing no more than 270 days from the date of creation thereof and, at the time of acquisition, having a rating of at least A-1 from S&P or at least P-1 from Moody's, (d) certificates of deposit, time deposits, overnight bank deposits or bankers' acceptances maturing within one year from the date of acquisition thereof issued by any bank organized under the laws of the United States or any state thereof or the District of Columbia or any United States branch of a foreign bank having at the date of acquisition thereof combined capital and surplus of not less than \$1,000,000,000, (e) Deposit Accounts maintained with (i) any bank that satisfies the criteria described in clause (d) above, or (ii) any other bank organized under the laws of the United States or any state thereof so long as the full amount maintained with any such other bank is insured by the Federal Deposit Insurance Corporation, (f) repurchase obligations of any commercial bank satisfying the requirements of clause (d) of this definition or of any recognized securities dealer having combined capital and surplus of not less than \$1,000,000,000, having a term of not more than seven days, with respect to securities satisfying the criteria in clauses (a) or (d) above, (g) debt securities with maturities of six months or less from the date of acquisition backed by standby letters of credit issued by any commercial bank satisfying the criteria described in clause (d) above, and (h) Investments in money market funds substantially all of whose assets are invested in the types of assets described in clauses (a) through (g) above.

"Cash Management Services" means any cash management or related services including treasury, depository, return items, overdraft, controlled disbursement, merchant store value cards, e-payables services, electronic funds transfer, interstate depository network, automatic clearing house transfer (including the Automated Clearing House processing of electronic funds transfers through the direct Federal Reserve Fedline system) and other cash management arrangements.

"Change in Law" means the occurrence after the date of this Agreement of: (a) the adoption or effectiveness of any law, rule, regulation, judicial ruling, judgment or treaty, (b) any change in any law, rule, regulation, judicial ruling, judgment or treaty or in the administration, interpretation, implementation or application by any Governmental Authority of any law, rule, regulation, guideline or treaty, (c) any new, or adjustment to, requirements prescribed by the Board of Governors for "Eurocurrency Liabilities" (as defined in Regulation D of the Board of Governors), requirements imposed by the Federal Deposit Insurance Corporation, or similar requirements imposed by any domestic or foreign governmental authority or resulting from compliance by Agent or any Lender with any request or directive (whether or not having the force of law) from any central bank or other Governmental Authority and related in any manner to SOFR, the Term SOFR Reference Rate or Term SOFR, or (d) the making or issuance by any Governmental Authority of any request, rule, guideline or directive, whether or not having the force of law; provided, that notwithstanding anything in this Agreement to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith, and (ii) all requests, rules, guidelines or directives concerning capital adequacy 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 shall, in each case, be deemed to be a "Change in Law," regardless of the date enacted, adopted or issued.

"Change of Control" means that:

(a) any Person or two or more Persons acting in concert shall have acquired beneficial ownership, directly or indirectly, of Equity Interests of Parent (or other securities convertible into such Equity Interests) representing 35% or more of the combined economic or voting power of all Equity Interests of Parent entitled (without regard to the occurrence of any contingency) to vote for the election of members of the Board of Directors of Parent,

(b) any Person or two or more Persons acting in concert shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement that, upon consummation thereof, will result in its or their acquisition of the power to direct, directly or indirectly, the management or policies of Parent or control over the Equity Interests of such Person entitled to vote for members of the Board of Directors of Parent on a fully-diluted basis (and taking into account all such Equity Interests that such Person or group has the right to acquire pursuant to any option right) representing 35% or more of the combined economic or voting power of such Equity Interests,

(c) during any period of 24 consecutive months commencing on or after the Closing Date, the occurrence of a change in the composition of the Board of Directors of Parent such that a majority of the members of such Board of Directors are not Continuing Directors,

(d) Parent fails to own and control, directly or indirectly, 100% of the Equity Interests of each other Loan Party, or

(e) the occurrence of any "Change of Control" (or any comparable term or provision) under or with respect to any Indebtedness of the Parent or any of its Subsidiaries having an aggregate principal amount outstanding in excess of \$5,000,000.

"Closing Date" means the date of the making of the initial Revolving Loan (or other extension of credit) under this Agreement.

"Code" means the New York Uniform Commercial Code, as in effect from time to time.

"Coffee Brewing Equipment" means coffee brewers and grinders, cocoa and cappuccino dispensing machines and similar machines, including parts and accessories thereto, that are located at the Borrowers' customer locations or locations set forth on Schedule 4.25.

"Collateral" means all assets and interests in assets and proceeds thereof now owned or hereafter acquired by any Loan Party or its Subsidiaries in or upon which a Lien is granted by such Person in favor of Agent or the Lenders under any of the Loan Documents. For the avoidance of doubt, the Collateral shall exclude all assets expressly excluded from the Collateral (as defined in the Guaranty and Security Agreement) pursuant to the final paragraph of Section 3 of the Guaranty and Security Agreement.

"Collateral Access Agreement" means a landlord waiver, bailee letter, or acknowledgement agreement of any lessor, warehouseman, processor, consignee, or other Person in possession of, having a Lien upon, or having rights or interests in any Loan Party's or its Subsidiaries' books and records, Equipment, or Inventory, in each case, in form and substance reasonably satisfactory to Agent.

"Collections" means, all cash, checks, notes, instruments, and other items of payment (including insurance proceeds, cash proceeds of asset sales, rental proceeds and tax refunds).

"Commitment" means, with respect to each Lender, its Revolver Commitment ~~or its Term Loan Commitment, as the context requires,~~ and, with respect to all Lenders, their Revolver Commitments ~~or their Term Loan Commitments, as the context requires,~~ in each case as such Dollar amounts are set forth beside such Lender's name under the applicable heading on Schedule C-1 to this Agreement or in the Assignment and Acceptance pursuant to which such Lender became a Lender under this Agreement, as such amounts may be reduced or increased from time to time pursuant to assignments made in accordance with the provisions of Section 13.1 of this Agreement.

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

"Compliance Certificate" means a certificate substantially in the form of Exhibit C-1 to this Agreement delivered by the chief financial officer or treasurer of Parent to Agent.

"Confidential Information" has the meaning specified therefor in Section 17.9(a) of this Agreement.

"Conforming Changes" means, with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Base Rate," the definition of "Business Day," the definition of "U.S. Government Securities Business Day," the definition of "Interest Period" or any similar or analogous definition (or the addition of a concept of "interest period"), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 2.12(b)(ii) and other technical, administrative or operational matters) that Agent decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by Agent in a manner substantially consistent with market practice (or, if Agent decides that adoption of any portion of such market practice is not administratively feasible or if Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

"Continuing Director" means (a) any member of the Board of Directors who was a director (or comparable manager) of Parent on the Closing Date, and (b) any individual who becomes a member of the Board of Directors after the Closing Date if such individual was approved, appointed or nominated for election to the Board of Directors by a majority of the Continuing Directors.

"Contractual Obligation" means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"Control Agreement" means a control agreement, in form and substance reasonably satisfactory to Agent, executed and delivered by a Loan Party or one of its Subsidiaries, Agent, and the applicable securities intermediary (with respect to a Securities Account) or bank (with respect to a Deposit Account).

"Copyright Security Agreement" has the meaning specified therefor in the Guaranty and Security Agreement.

"Covenant Testing Period" means a period (a) commencing on the last day of the fiscal month of Parent most recently ended prior to a Covenant Trigger Event for which Borrowers are required to deliver to Agent monthly, quarterly or annual financial statements pursuant to Schedule 5.1 to this Agreement, and (b) continuing through and including the first day after such Covenant Trigger Event that Excess Availability has equaled or exceeded the greater of (i) 12.5% of the Line Cap or (ii) ~~\$10,000,000~~9,375,000, in each case, for 30 consecutive days.

"Covenant Trigger Event" means if at any time ~~prior to the date on which the financial statements and Compliance Certificate for the month ended June 30, 2023 are required to be delivered hereunder~~ Excess Availability is less than the greater of (i) 12.5% of the Line Cap and (ii) ~~\$10,000,000~~9,375,000.

"Covered Entity" means any of the following:

- (a) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (b) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
- (c) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"Covered Party" has the meaning specified therefor in Section 17.15 of this Agreement.

"Customs Brokers" shall mean the persons listed on Schedule C-2 hereto or such other person or persons as may be selected by Administrative Borrower after the date hereof and after written notice by Administrative Borrower to Agent who are reasonably acceptable to Agent to handle the receipt of Inventory within the United States or to clear Inventory through the Bureau of Customs and Border Protection or other domestic or foreign export control authorities or otherwise perform port of entry services to process Inventory imported by a Borrower from outside the United States (such persons sometimes being referred to herein individually as a "Customs Broker"), provided, that, as to each such person, (a) Agent shall have received a customs broker agreement by such person in favor of Agent (in form and substance reasonably satisfactory to Agent) duly authorized, executed and delivered by such person, (b) such agreement shall be in full force and effect and (c) such person shall be in compliance in all material respects with the terms thereof.

"Default" means an event, condition, or default that, with the giving of notice, the passage of time, or both, would be an Event of Default.

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

"Defaulting Lender" means any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies Agent and Administrative Borrower in writing that such failure is the result of such Lender's good faith determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable Default or Event of Default, shall, in each case, be specifically identified in such writing) has not been satisfied, or (ii) pay to Agent, Issuing Bank, or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit) within two Business Days of the date when due, (b) has notified any Borrower, Agent or Issuing Bank in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's good faith determination that a condition precedent to funding (which condition precedent, together with any applicable Default or Event of Default, shall, in each case, be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by Agent or Administrative Borrower, to confirm in writing to Agent and Administrative Borrower that it will comply with its prospective funding obligations hereunder (provided, that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by Agent and Administrative Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of any Insolvency Proceeding, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity, or (iii) become the subject of a Bail-in Action; provided, that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender 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 Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender upon delivery of written notice of such determination to Administrative Borrower, Issuing Bank, and each Lender.

"Defaulting Lender Rate" means (a) for the first three days from and after the date the relevant payment is due, the Base Rate, and (b) thereafter, the interest rate then applicable to Revolving Loans that are Base Rate Loans (inclusive of the Base Rate Margin applicable thereto).

"Deposit Account" means any deposit account (as that term is defined in the Code).

"Designated Account" means the Deposit Account of Administrative Borrower identified on Schedule D-1 to this Agreement (or such other Deposit Account of Administrative Borrower located at Designated Account Bank that has been designated as such, in writing, by Borrowers to Agent).

"Designated Account Bank" has the meaning specified therefor in Schedule D-1 to this Agreement (or such other bank that is located within the United States that has been designated as such, in writing, by Borrowers to Agent).

"Dilution" means, as of any date of determination, a percentage, based upon the experience of the immediately prior twelve months, that is the result of dividing the Dollar amount of (a) bad debt write-downs, discounts, advertising allowances, credits, or other dilutive items with respect to Borrowers' Accounts during such period, by (b) Borrowers' billings with respect to Accounts during such period.

"Dilution Reserve" means, as of any date of determination, an amount sufficient to reduce the advance rate against Eligible Accounts by the extent to which Dilution is in excess of 5%; provided that any Dilution Reserve established by Agent shall not be duplicative of any other reserve established and currently maintained by Agent in accordance with this Agreement, or any eligibility criteria set forth in the definition of Eligible Accounts.

"Disposition" means any transaction, or series of related transactions, pursuant to which any Person or any of its Subsidiaries sells, assigns, transfers, leases, licenses (as licensor) or otherwise disposes of any property or assets (whether now owned or hereafter acquired) to any other Person, in each case, whether or not the consideration therefor consists of cash, securities or other assets owned by the acquiring Person. For purposes of clarification, "Disposition" shall include (a) the sale or other disposition for value of any contracts and (b) any disposition of property through a "plan of division" under the Delaware Limited Liability Company Act or any comparable transaction under any similar law .

"Disqualified Equity Interests" means any Equity Interests that, by their terms (or by the terms of any security or other Equity Interests into which they are convertible or for which they are exchangeable), or upon the happening of any event or condition (a) matures or are mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments), (b) are redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part, (c) provide for the scheduled payments of dividends in cash, or (d) are or become convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is 180 days after the Maturity Date.

"Dollars" or "\$" means United States dollars.

"Drawing Document" means any Letter of Credit or other document presented for purposes of drawing under any Letter of Credit, including by electronic transmission such as SWIFT, electronic mail, facsimile or computer generated communication.

"Earn-Outs" means unsecured liabilities of a Loan Party arising under an agreement to make any deferred payment as a part of the Purchase Price for a Permitted Acquisition, including performance bonuses or consulting payments in any related services, employment or similar agreement, in an amount that is subject to or contingent upon the revenues, income, cash flow or profits (or the like) of the target of such Permitted Acquisition.

"EBITDA" means, with respect to any fiscal period and with respect to Parent determined, in each case, on a consolidated basis in accordance with GAAP:

(a) the consolidated net income (or loss),

minus

(b) without duplication, the sum of the following amounts for such period to the extent included in determining consolidated net income (or loss) for such period:

(i) (A) any unusual or non-recurring non-cash gains, and (B) any unusual or non-recurring cash gains,

(ii) interest income,

(iii) the amount of any non-controlling interest income consisting of gains attributed to non-controlling interests of third parties in any non-wholly owned Subsidiaries of Parent to the extent included in consolidated net income (or loss) and not received in cash by Parent,

(iv) the amount of net income of any Subsidiary of Parent that is, on the last day of such period, subject to any restriction or limitation on the payment of dividends or the making of other distributions, to the extent of such restriction or limitation,

(v) unrealized gains in respect of obligations under hedging transactions, and gains resulting from currency translation or transaction gains related to currency re-measurements of Indebtedness, and all other foreign currency translation or transaction gains,

(vi) any tax credit based on income, profits or capital,

(vii) gains on sales of fixed assets or discontinued or disposed of operations, and

(viii) income arising by reason of the application of FAS 141R, ASC 805, or any applicable successor to either of the foregoing,

plus

(c) without duplication, the sum of the following amounts for such period to the extent deducted in determining consolidated net income (or loss) for such period:

(i) any unusual or non-recurring non-cash losses or non-cash expenses,

(ii) Interest Expense,

(iii) tax expense based on income, profits or capital, including federal, foreign, state, franchise and similar taxes (and for the avoidance of doubt, specifically excluding any sales taxes or any other taxes held in trust for a Governmental Authority),

(iv) depreciation and amortization,

(v) with respect to any Permitted Acquisition after the Closing Date, costs, fees, charges, or expenses consisting of out-of-pocket expenses owed by the Loan Parties or any of their Subsidiaries to any Person for services performed by such Person in connection with such Permitted Acquisition incurred within 180 days of the consummation of such Permitted Acquisition, (i) up to an aggregate amount (for all such items in this clause (v)) for such Permitted Acquisition not to exceed \$1,000,000, and (ii) in any amount to the extent such costs, fees, charges, or expenses in this clause (v) are paid with proceeds of new equity investments in exchange for Qualified Equity Interests of Parent contemporaneously made that does not constitute a Change of Control,

(vi) with respect to any Permitted Acquisitions after the Closing Date: (1) non-cash purchase accounting adjustments, including a dollar for dollar adjustment for that portion of revenue that would have been recorded in the relevant period had the balance of deferred revenue (unearned income) recorded on the closing balance sheet and before application of purchase accounting not been adjusted downward to fair value to be recorded on the opening balance sheet in accordance with GAAP purchase accounting rules; and (2) non-cash adjustments in accordance with GAAP purchase accounting rules under FASB Statement No. 141 and EITF Issue No. 01-3 or any applicable successor or successors thereto, in the event that such an adjustment is required by Parent's independent auditors, in each case, as determined in accordance with GAAP,

(vii) fees, costs, charges and expenses, in respect of Earn-Outs incurred in connection with any Permitted Acquisition to the extent permitted to be incurred under this Agreement that are required by the application of FAS 141R to be and are expensed by the Loan Parties and their Subsidiaries,

(viii) non-cash compensation expense (including deferred non-cash compensation expense), or other non-cash expenses or charges, arising from the sale or issuance of Equity Interests, the granting of stock options, and the granting of stock appreciation rights and similar arrangements (including any repricing, amendment, modification, substitution, or change of any such Equity Interests, stock option, stock appreciation rights, or similar arrangements),

(ix) the amount of any non-controlling interest expense consisting of losses attributed to non-controlling interests of third parties in any non-wholly owned Subsidiaries of Parent,

(x) expenses, charges and fees (including expenses, charges and fees paid to Agent and Lenders) incurred during such period and after the Closing Date in connection with the administration (including in connection with any waiver, amendment, supplementation or other modification thereto of the Loan Documents ~~or the Prior Term Loan Documents~~) of the Loan Documents ~~and the Prior Term Loan Documents~~,

(xi) documented expenses, charges and fees related to an investment or incurrence of Indebtedness permitted by this Agreement (whether or not consummated or incurred, and including any non-consummated sale of Equity Interests to the extent the proceeds thereof were intended to be contributed to the equity of Parent) in an aggregate amount not to exceed \$500,000 for such period,

(xii) costs and expenses incurred (A) to the extent covered by indemnification or reimbursement provisions in any agreement with a Person in connection with any Permitted Acquisition, or (B) to the extent indemnified or reimbursed by a Person that is not an Affiliate of the Loan Parties, and in each case, solely to the extent such indemnification or reimbursement did not increase consolidated net income for such period and such costs and expenses are actually reimbursed in cash by such Persons,

(xiii) non-cash, unrealized losses in respect of obligations under hedging transactions, and non-cash losses resulting from currency translation or non-cash transaction losses related to currency re-measurements of Indebtedness, and all other non-cash foreign currency translation or transaction losses,

(xiv) non-cash losses on sales of fixed assets or discontinued or disposed of operations or write-downs of fixed or intangible assets (excluding write-downs of Accounts or Inventory) (provided, that to the extent any non-cash item added back to EBITDA in any period results in a cash payment in such period or a subsequent period such cash payment shall result in a reduction of EBITDA in the period when such payment is made),

(xv) unusual or non-recurring cash charges, expenses or losses related to strategic initiatives, integration costs, opening, pre-opening, closing and transition costs for facilities and distribution centers, signing costs, retention or completion bonuses, systems establishment costs, curtailments or modifications to pension and retirement benefit plans and contract termination costs, in an aggregate amount not to exceed \$5,000,000 for such period,

(xvi) non-cash pension costs, net of non-cash gains, associated with the Farmer Bros. Co. Hourly Employees' Pension Plan and Farmer Bros. Co. Pension Plan, and

(xvii) other one-time, non-recurring or unusual expenses not otherwise added back to EBITDA, including restructuring expenses, severance expenses, relocation expenses, acquisition costs, integration costs, expenses, charges or losses relating to discontinued facilities, or signing, retention or completeness bonuses (collectively, "Cost Savings") projected by Borrowers in good faith to be realized as a result of any merger, acquisition, joint venture, material disposition taken or to be taken by the Borrowers or any of their Subsidiaries and permitted hereunder during such period (calculated on a pro forma basis as though such Cost-Savings had been realized on the first day of such period), net of the amount of actual benefits realized during such period from such actions; provided, that that in order to be added back pursuant to this clause (xvii), all such expenses and costs shall (A) be based upon actions that have been taken, (B) be reasonably identifiable, factually supportable, reasonably attributable to the actions specified and reasonably anticipated to result from such actions, (C) be incurred within 12 months of such actions and the benefits resulting from such actions are reasonably anticipated by the Borrowers to be realized within twelve (12) months of the date of consummation of such merger, acquisition, joint venture or material disposition, (D) not be duplicative of any expenses or charges that are either excluded in computing consolidated net income (or loss) or included (i.e., added back) in computing EBITDA for such period, and (E) the aggregate amount of Cost-Savings added pursuant to this clause (xvii) shall not exceed 15% of EBITDA for such period (calculated prior to giving effect to this clause (xvii));

provided, that, the aggregate amount added back pursuant to clause (xv) and (xvii) in the 12 month period ending (x) on or prior to June 30, 2022 shall not exceed 20% of EBITDA for such period (calculated prior to giving effect to clauses (xv) and (xvii)), (y) after June 30, 2022 but on or prior to September 30, 2022 shall not exceed 17.5% of EBITDA for such period (calculated prior to giving effect to clauses (xv) and (xvii)) and (z) after September 30, 2022 shall not exceed 15.0% of EBITDA for such period (calculated prior to giving effect to clauses (xv) and (xvii)).

For the purposes of calculating EBITDA for any ~~period of twelve consecutive months (each, a~~ "Reference Period"), if at any time during such Reference Period (and on or after the Closing Date), any Loan Party or any of its Subsidiaries shall have made a Permitted Acquisition, EBITDA for such Reference Period shall be calculated after giving *pro forma* effect thereto (including *pro forma* adjustments arising out of events which are directly attributable to such Permitted Acquisition, are factually supportable, and are expected to have a continuing impact, in each case determined on a basis consistent with Article 11 of Regulation S-X promulgated under the Securities Act and as interpreted by the staff of the SEC) or in such other manner acceptable to Agent as if any such Permitted Acquisition or adjustment occurred on the first day of such Reference Period.

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

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

"EEA Resolution Authority." means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"Eligible Accounts" means those Accounts created by a Borrower in the ordinary course of its business, that arise out of such Borrower's sale of goods or rendition of services, that comply in all material respects with each of the representations and warranties respecting Eligible Accounts made in the Loan Documents, and that are not excluded as ineligible by virtue of one or more of the excluding criteria set forth below; provided, that such criteria may be revised from time to time by Agent in Agent's Permitted Discretion to address the results of any information with respect to the Borrowers' business or assets of which Agent becomes aware after the Closing Date, including any field examination performed by (or on behalf of) Agent from time to time after the Closing Date. In determining the amount to be included, Eligible Accounts shall be calculated net of customer deposits, unapplied cash and service charges, and net of discounts, credits, allowances, and rebates, calculated using methodologies that are consistent with the field examination and applied by Agent in its Permitted Discretion. Eligible Accounts shall not include the following:

(a) Accounts that the Account Debtor has failed to pay (i) within 150 days of original invoice date or 90 days of due date, solely in the case of Account Debtors classified as direct-ship customers (i.e., goods are direct shipped to customers), and (ii) within 90 days of original invoice date or 60 days of due date, in the case of Account Debtors classified as route business customers (i.e., goods are delivered via route trucks), and any other Account Debtors who are not described by the foregoing clause (a)(i),

(b) Accounts owed by an Account Debtor (or its Affiliates) where 50% or more of all Accounts owed by that Account Debtor (or its Affiliates) are deemed ineligible under clause (a) above,

(c) Accounts with payment terms of more than 90 days,

(d) Accounts with respect to which the Account Debtor is an Affiliate of any Borrower or an employee or agent of any Borrower or any Affiliate of any Borrower,

(e) Accounts (i) arising in a transaction wherein goods are placed on consignment or are sold pursuant to a guaranteed sale, a sale or return, a sale on approval, a bill and hold, or any other terms by reason of which the payment by the Account Debtor may be conditional, or (ii) with respect to which the payment terms are "C.O.D.", cash on delivery or other similar terms,

(f) Accounts that are not payable in Dollars or Canadian dollars,

(g) Accounts with respect to which the Account Debtor either (i) does not maintain its chief executive office in the United States or Canada, or (ii) is not organized under the laws of the United States or Canada or any state or province thereof, or (iii) is the government of any foreign country or sovereign state, or of any state, province, municipality, or other political subdivision thereof, or of any department, agency, public corporation, or other instrumentality thereof, unless (A) the Account is supported by an irrevocable letter of credit satisfactory to Agent in its Permitted Discretion (as to form, substance, and issuer or domestic confirming bank) that has been delivered to Agent and, if requested by Agent, is directly drawable by Agent, or (B) the Account is covered by credit insurance in form, substance, and amount, and by an insurer, satisfactory to Agent in its Permitted Discretion,

(h) Accounts with respect to which the Account Debtor is either (i) the United States or any department, agency, or instrumentality of the United States (exclusive, however, of Accounts with respect to which Borrowers have complied, to the satisfaction of Agent in its Permitted Discretion, with the Assignment of Claims Act, 31 USC §3727), or (ii) any state of the United States or any other Governmental Authority,

(i) Accounts with respect to which the Account Debtor is a creditor of a Borrower, has or has asserted a right of recoupment or setoff, or has disputed its obligation to pay all or any portion of the Account, to the extent of such claim, right of recoupment or setoff, or dispute,

(j) Accounts with respect to an Account Debtor whose Eligible Accounts owing to Borrowers exceed 15%, or solely with respect to (i) Target Corporation and its Affiliates, taken as whole, (ii) Sturms Foods, Inc. and its Affiliates, taken as a whole, (iii) McDonalds Corporation and its Affiliates, taken as a whole, (iv) Winco Foods, Inc. and its Affiliates, taken as a whole, (v) Amazon.com, Inc. and its Affiliates, taken as a whole, (vi) Sheetz, Inc. and its Affiliates, taken as a whole, (vii) Dunkin Donuts and its Affiliates, taken as a whole, (viii) SuperValu, Inc. and its Affiliates, taken as a whole, (ix) Aramark Corporation and its Affiliates, taken as a whole, (x) Nordstrom, Inc. and its Affiliates, taken as a whole, and (xi) Core-Mark Holding Company, Inc. and its Affiliates, taken as a whole, exceed 25% (such applicable percentage, as applied to a particular Account Debtor, being subject to reduction by Agent in its Permitted Discretion if the creditworthiness of such Account Debtor deteriorates) of all Eligible Accounts, to the extent of the obligations owing by such Account Debtor in excess of such percentage; provided, that in each case, the amount of Eligible Accounts that are excluded because they exceed the foregoing percentage shall be determined by Agent in its Permitted Discretion based on all of the otherwise Eligible Accounts prior to giving effect to any eliminations based upon the foregoing concentration limit,

(k) Accounts with respect to which the Account Debtor is subject to an Insolvency Proceeding (other than post-petition accounts payable of an Account Debtor that is a debtor-in-possession in an Insolvency Proceeding and reasonably acceptable to the Agent), is not Solvent, has gone out of business, or as to which any Borrower has received notice of an imminent Insolvency Proceeding or a material impairment of the financial condition of such Account Debtor,

(l) Accounts, the collection of which, Agent, in its Permitted Discretion, believes to be doubtful, including by reason of the Account Debtor's financial condition,

(m) Accounts that are not subject to a valid and perfected first priority Agent's Lien,

(n) Accounts with respect to which (i) the goods giving rise to such Account have not been shipped and billed to the Account Debtor, or (ii) the services giving rise to such Account have not been performed and billed to the Account Debtor,

(o) Accounts with respect to which the Account Debtor is a Sanctioned Person or Sanctioned Entity,

(p) Accounts (i) that represent the right to receive progress payments or other advance billings that are due prior to the completion of performance by the applicable Borrower of the subject contract for goods or services, or (ii) that represent credit card sales, or

(q) Accounts owned by a target acquired in connection with a Permitted Acquisition or Permitted Investment, or Accounts owned by a Person that is joined to this Agreement as a Borrower pursuant to the provisions of this Agreement, until the completion of a field examination with respect to such Accounts, in each case, satisfactory to Agent in its Permitted Discretion.

"Eligible Finished Goods Inventory," means Inventory that qualifies as Eligible Inventory and consists of first quality finished goods (a) that are held for sale in the ordinary course of Borrowers' business or (b) constitute Coffee Brewing Equipment.

"Eligible In-Transit Inventory," means those items of Inventory that do not qualify as Eligible Inventory solely because they are not in a location set forth on Schedule 4.25 to this Agreement (as such Schedule 4.25 may be amended from time to time in accordance with Section 5.14), in transit among such locations or in transit to a customer location (including via route truck) and a Borrower does not have actual and exclusive possession thereof, but as to which,

(a) such Inventory currently is in transit (whether by vessel, air, or land) from a location in the continental United States or Canada or, if approved by Agent in writing, any other location outside of the continental United States or Canada, to a location set forth on Schedule 4.25 to this Agreement (as such Schedule 4.25 may be amended from time to time in accordance with Section 5.14),

(b) title to such Inventory has passed to a Borrower and Agent shall have received such evidence thereof as it may from time to time require,

(c) such Inventory is insured against types of loss, damage, hazards, and risks, and in amounts, satisfactory to Agent in its Permitted Discretion, and, if applicable, Agent shall have received a copy of the certificate of marine cargo insurance in connection therewith in which it has been named as an additional insured and loss payee in a manner acceptable to Agent,

(d) unless Agent otherwise agrees in writing, such Inventory either:

(i) is the subject of a (1) negotiable bill of lading governed by the laws of a state within the United States (x) that is consigned to Agent or one of its Customs Brokers (either directly or by means of endorsements), (y) that was issued by the carrier (including a non-vessel operating common carrier) in possession of the Inventory that is subject to such bill of lading, and (z) that either is in the possession of Agent or a Customs Broker (in each case in the continental United States), or (2) non-negotiable bill of lading governed by the laws of a state within the United States and either (x) Agent has received a written agreement by the seller of such Inventory, in form and substance reasonably satisfactory to Agent, that waives all rights of stoppage, diversion or similar rights of the seller to such Inventory, or (y) the bill of lading provides that the seller does not have any right of stoppage, diversion or similar rights with respect to such Inventory,

(ii) is the subject of a (1) negotiable forwarder's cargo receipt governed by the laws of a state within the United States and is not the subject of a bill of lading (other than a negotiable bill of lading consigned to, and in the possession of, a consolidator or Agent, or their respective agents) and such negotiable cargo receipt on its face indicates the name of the Customs Broker as a carrier or multimodal transport operator and has been signed or otherwise authenticated by it in such capacity or as a named agent for or on behalf of the carrier or multimodal transport operator, in any case respecting such Inventory (x) consigned to Agent or one of its Customs Brokers that is handling the importing, shipping and delivery of such Inventory (either directly or by means of endorsements), (y) that was issued by a consolidator respecting the subject Inventory, and (z) that is in the possession of Agent or a Customs Broker (in each case in the continental United States), or (2) a non-negotiable forwarder's cargo receipt governed by the laws of a state within the United States and either (x) Agent has received a written agreement by the seller of such Inventory, in form and substance reasonably satisfactory to Agent, that waives all rights of stoppage, diversion or similar rights of the seller to such Inventory, or (y) the forwarder's cargo receipt provides that the seller does not have any right of stoppage, diversion or similar rights with respect to such Inventory;

(e) such Inventory is in the possession of a common carrier (including on behalf of any non-vessel operating common carrier) that has issued the bill of lading or other document of title with respect thereto or the Customs Broker handling the importing, shipping and delivery of such Inventory;

(f) the documents of title related thereto are subject to the valid and perfected first priority Lien of Agent;

(g) Agent reasonably determines that such Inventory is not subject to (i) any Person's right of reclamation, repudiation, stoppage in transit or diversion or (ii) any other right or claim of any other Person which is (or is capable of being) senior to, or pari passu with, the Lien of Agent or Agent reasonably determines that any Person's right or claim impairs, or interferes with, in each case in any material respect, directly or indirectly, the ability of Agent to realize on, or reduces in any material respect the amount that Agent may realize from the sale or other disposition of such Inventory;

(h) Administrative Borrower has provided (i) a certificate to Agent that certifies that, to the best knowledge of such Borrower, such Inventory meets all of Borrowers' representations and warranties contained in the Loan Documents concerning Eligible In-Transit Inventory in all material respects, that it knows of no reason why such Inventory would not be accepted by such Borrower when it arrives in the continental United States and that the shipment as evidenced by the documents conforms to the related order documents, and (ii) upon Agent's request, a copy of the invoice, packing slip and manifest with respect thereto,

- (i) such Inventory is subject to a Letter of Credit, or
- (j) such Inventory shall not have been in transit for more than thirty (30) days.

"Eligible Inventory" means Inventory of a Borrower, that complies in all material respects with each of the representations and warranties respecting Eligible Inventory made in the Loan Documents, and that is not excluded as ineligible by virtue of one or more of the excluding criteria set forth below; provided, that such criteria may be revised from time to time by Agent in Agent's Permitted Discretion to address the results of any information with respect to the Borrowers' business or assets of which Agent becomes aware after the Closing Date, including any field examination or appraisal performed or received by Agent from time to time after the Closing Date. In determining the amount to be so included, Inventory shall be valued at the lower of cost or market on a basis consistent with Borrowers' historical accounting practices. An item of Inventory shall not be included in Eligible Inventory if:

- (a) a Borrower does not have good, valid, and marketable title thereto,
- (b) a Borrower does not have actual and exclusive possession thereof (either directly or through a bailee or agent of a Borrower),
- (c) it is not located at one of the locations in the continental United States set forth on Schedule 4.25 to this Agreement (as such Schedule 4.25 may be amended from time to time in accordance with Section 5.14) (or in-transit from one such location to another such location or from one such location to a customer location, in either case in accordance with the parenthetical set forth in clause (e) below),
- (d) except with respect to Inventory in-transit in accordance with the parenthetical set forth in clause (e) below, it is stored at locations holding less than \$75,000 of the aggregate value of such Borrower's Inventory,
- (e) it is in-transit to or from a location of a Borrower (other than (i) in-transit from one location set forth on Schedule 4.25 to this Agreement to another location set forth on Schedule 4.25 to this Agreement, or (ii) located on a motor vehicle owned by a Loan Party and in-transit from one location set forth on Schedule 4.25 to this Agreement to a customer location) (in each case of this clause (e), as such Schedule 4.25 may be amended from time to time in accordance with Section 5.14),
- (f) following the Required Access Agreement Deadline, it is located on real property leased by a Borrower or in a contract warehouse or with a bailee, in each case, which is a Required Access Agreement Location, unless either (i) it is subject to a Collateral Access Agreement executed by the lessor or warehouseman, as the case may be, and it is segregated or otherwise separately identifiable from goods of others, if any, stored on the premises, or (ii) Agent has established a Landlord Reserve with respect to such location,
- (g) it is the subject of a bill of lading or other document of title,
- (h) it is not subject to a valid and perfected first priority Agent's Lien,

(i) it consists of goods returned or rejected by a Borrower's customers; provided, that this clause (i) shall not exclude any Coffee Brewing Equipment,

(j) it consists of goods that are obsolete, slow moving, spoiled or are otherwise past the stated expiration, "sell-by" or "use by" date applicable thereto, work-in-process, packaging and shipping materials, supplies used or consumed in Borrowers' business, bill and hold goods, defective goods, "seconds," or Inventory acquired on consignment,

(k) it is subject to third party intellectual property, licensing or other proprietary rights, unless Agent is satisfied that such Inventory can be freely sold by Agent on and after the occurrence of an Event of a Default despite such third party rights, or

(l) it was acquired in connection with a Permitted Acquisition or Permitted Investment, or such Inventory is owned by a Person that is joined to this Agreement as a Borrower pursuant to the provisions of this Agreement, until the completion of an Acceptable Appraisal of such Inventory and the completion of a field examination with respect to such Inventory that is satisfactory to Agent in its Permitted Discretion.

"Eligible Raw Material Inventory" means Inventory that qualifies as Eligible Inventory and consists of goods that are first quality raw materials and that are not located in open containers.

"Employee Benefit Plan" means any employee benefit plan within the meaning of Section 3(3) of ERISA, whether or not subject to ERISA, (a) that is or within the preceding six (6) years has been sponsored, maintained or contributed to by, or required to be contributed to by, any Loan Party or ERISA Affiliate or (b) to which any Loan Party or ERISA Affiliate has, or has had at any time within the preceding six (6) years, any liability, contingent or otherwise.

"Environmental Action" means any written complaint, summons, citation, notice, directive, order, claim, litigation, investigation, judicial or administrative proceeding, judgment, letter or other written communication from any Governmental Authority, or any third party involving violations of, or non-compliance with, Environmental Laws or permits issued under Environmental Laws, or releases of Hazardous Materials (a) from any assets, properties, or businesses of any Borrower, any Subsidiary of any Borrower, or any of their predecessors in interest, (b) from adjoining properties or businesses, or (c) from or onto any facilities which received Hazardous Materials generated by any Borrower, any Subsidiary of any Borrower, or any of their predecessors in interest.

"Environmental Law" means any applicable federal, state, provincial, foreign or local statute, law, rule, regulation, ordinance, code, binding and enforceable guideline of any Governmental Authority, binding and enforceable written policy of any Governmental Authority, or rule of common law now or hereafter in effect and enforceable in the applicable jurisdiction, and in each case as amended, or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, in each case, to the extent binding on any Loan Party or its Subsidiaries, relating to the environment, the effect of the environment on employee health, or Hazardous Materials, in each case as amended from time to time.

"Environmental Liabilities" means all actual liabilities, monetary obligations, losses, damages, costs and expenses (including all reasonable, documented and out-of-pocket fees, disbursements and expenses of counsel, experts, or consultants, and reasonable, documented and out-of-pocket costs of investigation and feasibility studies), fines, penalties, sanctions, and interest incurred as a result of any claim or demand, or Remedial Action required, by any Governmental Authority or Environmental Law, and which relate to any Environmental Action.

"Environmental Lien" means any Lien in favor of any Governmental Authority for Environmental Liabilities.

"Equipment" means equipment (as that term is defined in the Code).

"Equity Interests" means, with respect to a Person, all of the shares, options, warrants, interests, participations, or other equivalents (regardless of how designated) of or in such Person, whether voting or nonvoting, including capital stock (or other ownership or profit interests or units), preferred stock, or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the SEC under the Exchange Act).

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute thereto.

"ERISA Affiliate" means any trade or business (whether or not incorporated) that is treated as a single employer with any Loan Party under ERISA Section 4001(b), under IRC Section 414(b), (c), (m) or (o).

"Erroneous Payment" has the meaning specified therefor in Section 17.16 of this Agreement.

"Erroneous Payment Deficiency Assignment" has the meaning specified therefor in Section 17.16 of this Agreement.

"Erroneous Payment Impacted Loans" has the meaning specified therefor in Section 17.16 of this Agreement.

"Erroneous Payment Return Deficiency." has the meaning specified therefor in Section 17.16 of this Agreement.

"ESOP" means the Farmer Bros. Co. Amended and Restated Employee Stock Ownership Plan, effective January 1, 2000, as the same now exists and may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

"ESOT" means Farmer Bros. Co. Employee Stock Ownership Benefit Trust, created by Parent pursuant to the ESOT Trust Agreement to implement the ESOP, as the same now exists and may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

"ESOT Trust Agreement" means the Farmer Bros. Co. Employee Stock Ownership Trust Agreement, dated September 28, 2005, between Parent and the ESOT Trustee, as the same now exists and may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

"ESOT Trustee" means Greatbanc Trust Company and any successors in such capacity.

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

"Event of Default" has the meaning specified therefor in Section 8 of this Agreement.

"Excess" has the meaning specified therefor in Section 2.14 of this Agreement.

"Excess Availability" means, as of any date of determination, the amount equal to Availability minus the aggregate amount, if any, of all trade payables of the Loan Parties and their Subsidiaries aged in excess of historical levels with respect thereto and all book overdrafts of the Loan Parties and their Subsidiaries in excess of historical practices with respect thereto, in each case to the extent required by, and if so required, in an amount determined by, Agent in its Permitted Discretion.

"Exchange Act" means the Securities Exchange Act of 1934, as in effect from time to time.

"Excluded Banking Services Account" has the meaning specified therefor in clause (w) of definition of Permitted Liens.

"Excluded L/C Account" has the meaning specified therefor in clause (w) of definition of Permitted Liens.

"Excluded Swap Obligation" means, with respect to any Loan Party, any Swap Obligation if, and to the extent that, all or a portion of the guaranty of such Loan Party of (including by virtue of the joint and several liability provisions of Section 2.15), or the grant by such Loan Party of a security interest to secure, such Swap Obligation (or any guaranty thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Loan Party's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the guaranty of such Loan Party or the grant of such security interest becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such guaranty or security interest is or becomes illegal.

"Excluded Taxes" means (i) any tax imposed on the net income or net profits of any Lender or any Participant (including any branch profits taxes), in each case imposed by the jurisdiction (or by any political subdivision or taxing authority thereof) in which such Lender or such Participant is organized or the jurisdiction (or by any political subdivision or taxing authority thereof) in which such Lender's or such Participant's principal office is located in or as a result of a present or former connection between such Lender or such Participant and the jurisdiction or taxing authority imposing the tax (other than any such connection arising solely from such Lender or such Participant having executed, delivered or performed its obligations or received payment under, or enforced its rights or remedies under this Agreement or any other Loan Document), (ii) United States federal withholding taxes that would not have been imposed but for a Lender's or a Participant's failure to comply with the requirements of Section 16.2 of this Agreement, (iii) any United States federal withholding taxes that would be imposed on amounts payable to a Foreign Lender based upon the applicable withholding rate in effect at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office, other than a designation made at the request of a Loan Party), provided that Excluded Taxes shall not include (A) any amount that such Foreign Lender (or its assignor, if any) was previously entitled to receive pursuant to Section 16.1 of this Agreement, if any, with respect to such withholding tax at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office), and (B) additional United States federal withholding taxes that may be imposed after the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office), as a result of a change in law, rule, regulation, treaty, order or other decision or other Change in Law with respect to any of the foregoing by any Governmental Authority, and (iv) any United States federal withholding taxes imposed under FATCA.

"Existing Banking Services Obligations" means the banking services obligations of the Loan Parties that are existing on the Closing Date under the Existing Credit Facility.

"Existing Credit Facility" means the loans and other credit accommodations provided pursuant to that certain Amended and Restated Credit Agreement, dated as of November 6, 2018, among each Loan Party, the lenders from time to time party thereto and JPMorgan Chase Bank, N.A., as administrative agent, as such agreement has been amended, restated, supplemented or otherwise modified from time to time.

"Existing Letters of Credit" means the letters of credit for the account of a Loan Party that are existing on the Closing Date and listed on Schedule L-1.

"Extraordinary Advances" has the meaning specified therefor in Section 2.3(d)(iii) of this Agreement.

"Extraordinary Receipts" means any payments received by any Loan Party or any of its Subsidiaries not in the ordinary course of business (and not consisting of proceeds described in Section 2.4(e)(ii) of this Agreement) including, without limitation, (a) foreign, United States, state or local tax refunds, (b) pension plan reversions, (c) proceeds of insurance (other than to the extent such insurance proceeds are (i) immediately payable to a Person that is not the Parent or any of its Subsidiaries in accordance with applicable Requirements of Law or with Contractual Obligations entered into in the ordinary course of business or (ii) received by the Parent or any of its Subsidiaries as reimbursement for any out-of-pocket costs incurred or made by such Person prior to the receipt thereof directly related to the event resulting from the payment of such proceeds), (d) proceeds of judgments, proceeds of settlements, or other consideration of any kind received in connection with any cause of action or claim (and not consisting of proceeds described in Section 2.4(e)(ii) of this Agreement, but including proceeds of business interruption insurance), (e) indemnity payments (other than to the extent such indemnity payments are immediately payable to a Person that is not an Affiliate of any Loan Party or any of its Subsidiaries), and (f) any purchase price adjustment received in connection with any purchase agreement.

"Farmer Trademark" means, collectively, the trademarks owned by any Loan Party set forth on Schedule F-1.

"FATCA" means Sections 1471 through 1474 of the IRC, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), and (a) any current or future regulations or official interpretations thereof, (b) any agreements entered into pursuant to Section 1471(b)(1) of the IRC, and (c) any intergovernmental agreement entered into by the United States (or any fiscal or regulatory legislation, rules, or practices adopted pursuant to any such intergovernmental agreement entered into in connection therewith).

"FCPA" means the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder.

"Federal Funds Rate" means, for any period, a fluctuating interest rate *per annum* equal to, for each day during such period, the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, 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 which is a Business Day, the average of the quotations for such day on such transactions received by Agent from three Federal funds brokers of recognized standing selected by it (and, if any such rate is below zero, then the rate determined pursuant to this definition shall be deemed to be zero).

"Fee Letter" means that certain fee letter, dated as of even date with this Agreement, among Borrowers and Agent, in form and substance reasonably satisfactory to Agent.

"Fixed Charge Coverage Ratio" means, with respect to any fiscal period and with respect to Parent determined on a consolidated basis in accordance with GAAP, the ratio of (a) EBITDA for such period minus Unfinanced Capital Expenditures made (to the extent not already incurred in a prior period) or incurred during such period, to (b) Fixed Charges for such period.

For the purposes of calculating Fixed Charge Coverage Ratio for any Reference Period, if at any time during such Reference Period (and after the Closing Date), any Loan Party or any of its Subsidiaries shall have made a Permitted Acquisition, Fixed Charges and Unfinanced Capital Expenditures for such Reference Period shall be calculated after giving *pro forma* effect thereto or in such other manner acceptable to Agent as if any such Permitted Acquisition occurred on the first day of such Reference Period. For the purpose of calculating Fixed Charge Coverage Ratio for the Reference Period ending May 31, 2023, and for each Reference Period thereafter through and including May 31, 2024, Fixed Charges for such Reference Period shall be calculated after giving *pro forma* effect to (i) the Term Loan Payoff, as if the Term Loan Payoff occurred on the first day of such Reference Period, and (ii) the Revolver Paydown, as if the actual aggregate outstanding principal amount of the Revolving Loans had been reduced, on the first day of such Reference Period and on each day thereafter through but excluding the Fourth Amendment Effective Date, by an amount equal to the amount of the Revolver Paydown on such day.

"Fixed Charges" means, with respect to any fiscal period and with respect to Parent determined on a consolidated basis in accordance with GAAP, the sum, without duplication, of (a) Interest Expense on Indebtedness required to be paid (other than interest paid-in-kind, amortization of financing fees, and other non-cash Interest Expense) during such period, (b) scheduled principal payments in respect of Indebtedness that are required to be paid during such period (including any required payments or prepayments from excess cash flow during such period), (c) all federal, state, and local income taxes required to be paid during such period, (d) all Restricted Payments paid (whether in cash or other property, other than common Equity Interests) during such period, and (e) all payments required to be made during such period in respect of the Farmer Bros. Co. Hourly Employees' Pension Plan or Farmer Bros. Co. Brewmatic Plan or for any Withdrawal Liability, including, without limitation, any funding deficiency or funding shortfall with respect thereto.

"Flood Laws" means the National Flood Insurance Act of 1968, Flood Disaster Protection Act of 1973, and related laws, rules and regulations, including any amendments or successor provisions.

"Floor" means a rate of interest equal to 0%.

"Flow of Funds Agreement" means a flow of funds agreement, dated as of even date with this Agreement, in form and substance reasonably satisfactory to Agent, executed and delivered by Borrowers, ~~Term Loan Agent, lenders under the Term Loan Credit Agreement, Lenders and Agent~~Lenders, Agent and others.

"Foreign Lender" means any Lender or Participant that is not a United States person within the meaning of IRC section 7701(a)(30).

"Fourth Amendment Effective Date" means June 30, 2023.

"Funding Date" means the date on which a Borrowing occurs.

"Funding Losses" has the meaning specified therefor in Section 2.12(b)(ii) of this Agreement.

"GAAP" means generally accepted accounting principles as in effect from time to time in the United States, consistently applied.

"Governing Documents" means, with respect to any Person, the certificate or articles of incorporation, by-laws, or other organizational documents of such Person.

"Governmental Authority" means the government of any nation or any political subdivision thereof, whether at the national, state, territorial, provincial, county, municipal or any other level, 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 supra-national bodies such as the European Union or the European Central Bank).

"Guarantor" means (a) each Person that guaranties all or a portion of the Obligations, including Parent and any Person that is a "Guarantor" under the Guaranty and Security Agreement, and (b) each other Person that becomes a guarantor after the Closing Date pursuant to Section 5.11 of this Agreement.

"Guaranty and Security Agreement" means a guaranty and security agreement, dated as of even date with this Agreement, in form and substance reasonably satisfactory to Agent, executed and delivered by each of the Loan Parties to Agent.

"Hazardous Materials" means any element, material, substance, waste, compound or chemical that is defined, listed or otherwise classified as a contaminant, pollutant, toxic or hazardous substance, hazardous waste, universal waste, special waste, or solid waste or is otherwise characterized by words of similar import under any Environmental Law or that is regulated under, or for which liability or standards of care are imposed, pursuant to any Environmental Law, including, without limitation, petroleum, polychlorinated biphenyls; asbestos-containing materials, lead or lead-containing materials, urea formaldehyde-containing materials, radioactive materials, radon, per- and polyfluoroalkyl substances and mold.

"Hedge Agreement" means a "swap agreement" as that term is defined in Section 101(53B)(A) of the Bankruptcy Code.

"Hedge Obligations" means any and all obligations or liabilities, whether absolute or contingent, due or to become due, now existing or hereafter arising, of each Loan Party and its Subsidiaries arising under, owing pursuant to, or existing in respect of Hedge Agreements entered into with one or more of the Hedge Providers.

"Hedge Provider" means Wells Fargo or any of its Affiliates.

"Houston Assets" means the assets specified on Schedule H-1 to this Agreement.

"Immaterial Marks" means the trademarks specified on Schedule I-1 to this Agreement.

"Increase" has the meaning specified therefor in Section 2.14.

"Increase Date" has the meaning specified therefor in Section 2.14.

"Increase Joinder" has the meaning specified therefor in Section 2.14.

"Increased Reporting Event" means if at any time Excess Availability is less than the greater of (i) 12.5% of the Line Cap and (ii) ~~\$10,000,000~~ \$9,375,000.

"Increased Reporting Period" means the period commencing after the continuance of an Increased Reporting Event and continuing until the date when no Increased Reporting Event has occurred for 30 consecutive days.

"Indebtedness" as to 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 other similar instruments and all reimbursement or other obligations in respect of letters of credit, bankers acceptances, or other financial products, (c) all obligations of such Person as a lessee under Capital Leases, but for purposes of clarity, not any lease of real property for a term of years, (d) all obligations or liabilities of others secured by a Lien on any asset of such Person, irrespective of whether such obligation or liability is assumed, (e) all obligations of such Person to pay the deferred purchase price of assets (for the avoidance of doubt, other than royalty payments payable in the ordinary course of business in respect of non-exclusive licenses) and any Earn-Out or similar obligations, (f) all obligations of such Person owing under Hedge Agreements (which amount shall be calculated based on the amount that would be payable by such Person if the Hedge Agreement were terminated on the date of determination), (g) any Disqualified Equity Interests of such Person, and (h) any obligation of such Person guaranteeing or intended to guarantee (whether directly or indirectly guaranteed, endorsed, co-made, discounted, or sold with recourse) any obligation of any other Person that constitutes Indebtedness under any of clauses (a) through (g) above. For purposes of this definition, (i) the term Indebtedness shall not include (A) trade accounts or accounts payable, accrued expenses and liabilities incurred and customer deposits received, in each instance, in the ordinary course of business and not outstanding for more than 90 days after the date such obligation appears in the liabilities section of such Person's balance sheet and not constituting indebtedness for borrowed money or evidenced by notes or other instruments or (B) purchase price holdbacks arising in the ordinary course of business in respect of a portion of the purchase price of an asset to satisfy warranties or other unperformed obligations of the seller of such asset, (ii) the amount of any Indebtedness represented by a guaranty or other similar instrument shall be the lesser of the principal amount of the obligations guaranteed and still outstanding and the maximum amount for which the guaranteeing Person may be liable pursuant to the terms of the instrument embodying such Indebtedness, and (iii) the amount of any Indebtedness which is limited or is non-recourse to a Person or for which recourse is limited to an identified asset shall be valued at the lesser of (A) if applicable, the limited amount of such obligations, and (B) if applicable, the fair market value of such assets securing such obligation.

"Indemnified Liabilities" has the meaning specified therefor in Section 10.3 of this Agreement.

"Indemnified Person" has the meaning specified therefor in Section 10.3 of this Agreement.

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

"Ineligible Institution" means a (a) natural person, (b) Defaulting Lender or its Affiliate, or (c) company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person or relative(s) thereof; provided that, with respect to this clause (c), such company, investment vehicle or trust shall not constitute an Ineligible Institution if it (x) has not been established for the primary purpose of acquiring any Loans or Commitments, (y) is managed by an advisor who is not such natural person or a relative thereof, and (z) is primarily engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

"Insolvency Proceeding" means any proceeding commenced by or against any Person under any provision of the Bankruptcy Code or under any other state or federal bankruptcy or insolvency law, assignments for the benefit of creditors, formal or informal moratoria, compositions, extensions generally with creditors, or proceedings seeking reorganization, arrangement, or other similar relief.

"Intercompany Subordination Agreement" means an intercompany subordination agreement, dated as of even date with this Agreement, executed and delivered by each Loan Party and each of its Subsidiaries, and Agent, the form and substance of which is reasonably satisfactory to Agent.

"Interest Expense" means, for any period, the aggregate of the interest expense of Parent for such period, determined on a consolidated basis in accordance with GAAP, including (i) commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing, (ii) net cash cost under Hedge Agreements (other than early termination thereof), and (iii) non-cash interest expense in connection with or related to any pension plan of Parent and/or any of its Subsidiaries.

"Interest Period" means, with respect to any SOFR Loan, a period commencing on the date of the making of such SOFR Loan (or the continuation of a SOFR Loan or the conversion of a Base Rate Loan to a SOFR Loan) and ending 1~~-or, solely with respect to Revolving Loans~~, 3 or 6 months thereafter; provided, that (a) interest shall accrue at the applicable rate based upon Term SOFR from and including the first day of each Interest Period to, but excluding, the day on which any Interest Period expires, (b) any Interest Period that would end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day, (c) with respect to an Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period), the Interest Period shall end on the last Business Day of the calendar month that is 1~~-or, solely with respect to Revolving Loans~~, 3 or 6 months after the date on which the Interest Period began, as applicable, (d) Borrowers may not elect an Interest Period which will end after the Maturity Date and (e) no tenor that has been removed from this definition pursuant to Section 2.12(d)(iii)(D) shall be available for specification in any SOFR Notice or conversion or continuation notice.

"Inventory" means inventory (as that term is defined in the Code).

"Inventory Reserves" means, as of any date of determination, (a) Landlord Reserves in respect of Inventory, (b) those reserves that Agent deems necessary or appropriate, in its Permitted Discretion and subject to Section 2.1(c), to establish and maintain (including reserves for slow moving Inventory and Inventory shrinkage) with respect to Eligible Inventory or the Maximum Revolver Amount, including based on the results of appraisals, and (c) with respect to Eligible In-Transit Inventory, those reserves that Agent deems necessary or appropriate, in its Permitted Discretion and subject to Section 2.1(c), to establish and maintain with respect to Eligible In-Transit Inventory or the Maximum Revolver Amount (i) for the estimated costs relating to unpaid freight charges, warehousing or storage charges, taxes, duties, and other similar unpaid costs associated with the acquisition of such Eligible In-Transit Inventory, plus (ii) for the estimated reclamation claims of unpaid sellers of such Eligible In-Transit Inventory.

"Investment" means, with respect to any Person, any investment by such Person in any other Person (including Affiliates) in the form of loans, guarantees, advances, capital contributions (excluding (a) commission, travel, and similar advances to officers and employees of such Person made in the ordinary course of business, and (b) *bona fide* accounts receivable arising in the ordinary course of business), or acquisitions of Indebtedness, Equity Interests, or all or substantially all of the assets of such other Person (or of any division or business line of such other Person), and any other items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustment for increases or decreases in value, or write-ups, write-downs, or write-offs with respect to such Investment.

"IRC" means the Internal Revenue Code of 1986, as in effect from time to time.

"ISP" means, with respect to any Letter of Credit, the International Standby Practices 1998 (International Chamber of Commerce Publication No. 590) and any version or revision thereof accepted by the Issuing Bank for use.

"Issuer Document" means, with respect to any Letter of Credit, a letter of credit application, a letter of credit agreement, or any other document, agreement or instrument entered into (or to be entered into) by a Borrower in favor of Issuing Bank and relating to such Letter of Credit.

"Issuing Bank" means Wells Fargo or any other Lender that, at the request of the Administrative Borrower and with the consent of Agent, agrees, in such Lender's sole discretion, to become an Issuing Bank for the purpose of issuing Letters of Credit pursuant to Section 2.11 of this Agreement, and Issuing Bank shall be a Lender.

"Joinder" means a joinder agreement substantially in the form of Exhibit J-1 to this Agreement.

"Landlord Reserve" means, as to each Required Access Agreement Location as to which a Collateral Access Agreement has not been received by Agent within 90 days following the Closing Date (the "Required Access Agreement Deadline"), a reserve imposed by Agent (at Agent's option, in its Permitted Discretion), in an amount equal to 2 months' rent, storage charges, fees or other amounts under the lease or other applicable agreement relative to such location.

"Lender" has the meaning set forth in the preamble to this Agreement, shall include Issuing Bank and the Swing Lender, and shall also include any other Person made a party to this Agreement pursuant to the provisions of Section 13.1 of this Agreement and "Lenders" means each of the Lenders or any one or more of them.

"Lender Group" means each of the Lenders (including Issuing Bank and the Swing Lender) and Agent, or any one or more of them.

"Lender Group Expenses" means all (a) costs or expenses (including taxes and insurance premiums) required to be paid by any Loan Party or its Subsidiaries under any of the Loan Documents that are paid, advanced, or incurred by the Lender Group, (b) reasonable, documented and out-of-pocket fees or charges paid or incurred by Agent in connection with the Lender Group's transactions with each Loan Party and its Subsidiaries under any of the Loan Documents, including, photocopying, notarization, couriers and messengers, telecommunication, public record searches, filing fees, recording fees, publication, real estate surveys, real estate title policies and endorsements, and environmental audits, (c) Agent's customary fees and charges imposed or incurred in connection with any background checks or OFAC/PEP searches related to any Loan Party or its Subsidiaries, (d) Agent's customary fees and charges (as adjusted from time to time) with respect to the disbursement of funds (or the receipt of funds) to or for the account of any Borrower (whether by wire transfer or otherwise), together with any reasonable, documented and out-of-pocket costs and expenses incurred in connection therewith, (e) customary charges imposed or incurred by Agent resulting from the dishonor of checks payable by or to any Loan Party, (f) reasonable, documented out-of-pocket costs and expenses paid or incurred by the Lender Group to correct any default or enforce any provision of the Loan Documents, or during the continuance of an Event of Default, in gaining possession of, maintaining, handling, preserving, storing, shipping, selling, preparing for sale, or advertising to sell the Collateral, or any portion thereof, irrespective of whether a sale is consummated, (g) reasonable and documented field examination, appraisal, and valuation fees and expenses of Agent related to any field examinations, appraisals, or valuation to the extent of the fees and charges (and up to the amount of any limitation) provided in Section 5.7(c) of this Agreement, (h) Agent's and Lenders' reasonable, documented and out-of-pocket costs and expenses (including reasonable and documented attorneys' fees and expenses (limited to one primary outside counsel to the Lender Group taken as a whole and, if reasonably necessary, one local and specialty counsel in each relevant jurisdiction and specialty area to all Lender Group, taken as a whole (and, in the event of any actual or potential conflict of interests, one additional primary outside counsel for each group of similarly-situated Lender Group members, and, if reasonably necessary, of one local and specialty counsel in each relevant jurisdiction and specialty area for each group of similarly-situated Lender Group members, taken as a whole)) relative to third party claims or any other lawsuit or adverse proceeding paid or incurred, whether in enforcing or defending the Loan Documents or otherwise in connection with the transactions contemplated by the Loan Documents, Agent's Liens in and to the Collateral, or the Lender Group's relationship with any Loan Party or any of its Subsidiaries, (i) Agent's reasonable, documented and out-of-pocket costs and expenses (including reasonable and documented attorneys' fees and due diligence expenses (limited to one primary outside counsel and, if reasonably necessary, one local and specialty counsel in in each relevant jurisdiction and specialty area)) incurred in advising, structuring, drafting, reviewing, administering (including travel, meals, and lodging), syndicating (including reasonable costs and expenses relative to ~~the rating of the Term Loan, CUSIP, DXSyndicate™, SyndTrak~~ or other communication costs incurred in connection with a syndication of the loan facilities), or amending, waiving, or modifying the Loan Documents, and (j) Agent's and each Lender's reasonable, documented and out-of-pocket costs and expenses (including reasonable and documented attorneys, accountants, consultants, and other advisors fees and expenses) incurred in terminating, enforcing (including attorneys, accountants, consultants, and other advisors fees and expenses incurred in connection with a "workout," a "restructuring," or an Insolvency Proceeding concerning any Loan Party or any of its Subsidiaries or in exercising rights or remedies under the Loan Documents), or defending the Loan Documents, irrespective of whether a lawsuit or other adverse proceeding is brought, or in taking any enforcement action or any Remedial Action with respect to the Collateral. Notwithstanding the foregoing, in no event shall the definition of Lender Group Expenses include any costs, expenses, or charges incurred by a Person in the Lender Group which (A) are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Person or (B) arise out of any dispute solely between or among the Persons in the Lender Group (excluding any disputes between or among Agent on the one hand, and any other Person, on the other hand) that do not involve any acts or omissions of any Loan Party or any of its Subsidiaries.

"Lender Group Representatives" has the meaning specified therefor in Section 17.9 of this Agreement.

"Lender-Related Person" means, with respect to any Lender, such Lender, together with such Lender's Affiliates, officers, directors, employees, attorneys, and agents.

"Letter of Credit" means a letter of credit (as that term is defined in the Code) issued by Issuing Bank.

"Letter of Credit Collateralization" means either (a) providing cash collateral (pursuant to documentation reasonably satisfactory to Agent (including that Agent has a first priority perfected Lien in such cash collateral), including provisions that specify that the Letter of Credit Fees and all commissions, fees, charges and expenses provided for in Section 2.11(k) of this Agreement (including any fronting fees) will continue to accrue while the Letters of Credit are outstanding) to be held by Agent for the benefit of the Revolving Lenders in an amount equal to 105% of the then existing Letter of Credit Usage, (b) delivering to Agent documentation executed by all beneficiaries under the Letters of Credit, in form and substance reasonably satisfactory to Agent and Issuing Bank, terminating all of such beneficiaries' rights under the Letters of Credit, or (c) providing Agent with a standby letter of credit, in form and substance reasonably satisfactory to Agent, from a commercial bank acceptable to Agent (in its sole discretion) in an amount equal to 105% of the then existing Letter of Credit Usage (it being understood that the Letter of Credit Fee and all fronting fees set forth in this Agreement will continue to accrue while the Letters of Credit are outstanding and that any such fees that accrue must be an amount that can be drawn under any such standby letter of credit).

"Letter of Credit Disbursement" means a payment made by Issuing Bank pursuant to a Letter of Credit.

"Letter of Credit Exposure" means, as of any date of determination with respect to any Lender, such Lender's participation in the Letter of Credit Usage pursuant to Section 2.11(e) on such date.

"Letter of Credit Fee" has the meaning specified therefor in Section 2.6(b) of this Agreement.

"Letter of Credit Indemnified Costs" has the meaning specified therefor in Section 2.11(f) of this Agreement.

"Letter of Credit Related Person" has the meaning specified therefor in Section 2.11(f) of this Agreement.

"Letter of Credit Sublimit" means \$10,000,000.

"Letter of Credit Usage" means, as of any date of determination, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit, *plus* (b) the aggregate amount of outstanding reimbursement obligations with respect to Letters of Credit which remain unreimbursed or which have not been paid through a Revolving Loan.

"Lien" means any mortgage, deed of trust, pledge, hypothecation, assignment, charge, deposit arrangement, encumbrance, lien (statutory or other), security interest, or other security arrangement which in each case grants (or purports to grant) a preference, priority, or preferential arrangement to the beneficiary thereunder, including any conditional sale contract or other title retention agreement, the interest of a lessor under a Capital Lease and any synthetic or other financing lease having substantially the same economic effect as any of the foregoing.

"Line Cap" means, as of any date of determination, the lesser of (a) the Maximum Revolver Amount, and (b) the Borrowing Base as of such date of determination.

"Loan" means any Revolving Loan, Swing Loan, or Extraordinary Advance, ~~or Term Loan~~ made (or to be made) hereunder.

"Loan Account" has the meaning specified therefor in Section 2.9 of this Agreement.

"Loan Documents" means this Agreement, the Control Agreements, the Copyright Security Agreement, any Borrowing Base Certificate, the Fee Letter, the Guaranty and Security Agreement, the Intercompany Subordination Agreement, any Issuer Documents, the Letters of Credit, any Loan Manager Side Letter, the Mortgages, any negative pledge agreement entered into in connection with any Real Property that is not Real Property Collateral (including the Negative Pledge Agreements), the Patent Security Agreement, the Trademark Security Agreement, any note or notes executed by Borrowers in connection with this Agreement and payable to any member of the Lender Group, and any other instrument or agreement entered into, now or in the future, by any Loan Party or any of its Subsidiaries and any member of the Lender Group in connection with this Agreement (but specifically excluding Bank Product Agreements).

"Loan Manager Side Letter" means any letter agreement between the Borrowers and Wells Fargo regarding the terms under which Wells Fargo will provide services to the Borrowers in respect of Wells Fargo's proprietary automated loan management program.

"Loan Party" means any Borrower or any Guarantor.

"Margin Stock" as defined in Regulation U of the Board of Governors as in effect from time to time.

"Material Adverse Effect" means (a) a material adverse effect in the business, operations, results of operations, assets, liabilities or financial condition of the Loan Parties and their Subsidiaries, taken as a whole, (b) a material impairment of the Loan Parties' and their Subsidiaries' ability, taken as a whole, to perform their obligations under the Loan Documents to which they are parties or of the Lender Group's ability to enforce the Obligations or realize upon the Collateral (other than as a result of an action taken or not taken that is solely in the control of Agent), or (c) a material impairment of the enforceability or priority of Agent's Liens with respect to all or a material portion of the Collateral.

"Material Contract" means, with respect to any Person, each contract or agreement to which such Person or any of its Subsidiaries is a party, the loss of which could reasonably be expected to result in a Material Adverse Effect.

"Maturity Date" means ~~(a) April 26, 2027 with respect to the Revolver Commitments (the "Revolver Maturity Date"), and (b) August 31, 2037 with respect to the Term Loan; provided that if the Revolver Commitments are not extended on or prior to April 1, 2027 to a date that is after April 26, 2027, then the "Maturity Date" with respect to the Term Loan means the Revolver Maturity Date.~~

"Maximum Revolver Amount" means ~~\$90,000,000~~ 75,000,000, decreased by the amount of reductions in the Revolver Commitments made in accordance with Section 2.4(c) of this Agreement and increased by the amount of any Increase made in accordance with Section 2.14 of this Agreement.

"Moody's" has the meaning specified therefor in the definition of Cash Equivalents.

"Mortgages" means, individually and collectively, one or more mortgages, deeds of trust, or deeds to secure debt, executed and delivered by a Loan Party or one of its Subsidiaries in favor of Agent, in form and substance reasonably satisfactory to Agent, that encumber the Real Property Collateral.

"Multiemployer Plan" means any multiemployer plan within the meaning of Section 3(37) or 4001(a)(3) of ERISA with respect to which any Loan Party or ERISA Affiliate has an obligation to contribute or has any liability, contingent or otherwise or could be assessed withdrawal liability assuming a complete or partial withdrawal from any such multiemployer plan.

"Negative Pledge Agreements" means, collectively, each negative pledge agreement made by a Borrower in favor of Agent, dated as of the Fourth Amendment Effective Date, as it may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"Net Cash Proceeds" means:

(a) with respect to any sale or disposition by any Loan Party or any of its Subsidiaries of assets, the amount of cash proceeds received (directly or indirectly) from time to time (whether as initial consideration or through the payment of deferred consideration) by or on behalf of such Loan Party or such Subsidiary, in connection therewith after deducting therefrom only (i) the amount of any Indebtedness secured by any Permitted Lien on any asset (other than (A) Indebtedness owing to Agent or any Lender under this Agreement or the other Loan Documents, and (B) Indebtedness assumed by the purchaser of such asset) which is required to be, and is, repaid in connection with such sale or disposition, (ii) reasonable fees, commissions, and expenses related thereto and required to be paid by such Loan Party or such Subsidiary in connection with such sale or disposition, (iii) taxes paid or payable to any taxing authorities by such Loan Party or such Subsidiary in connection with such sale or disposition, in each case to the extent, but only to the extent, that the amounts so deducted are, at the time of receipt of such cash, actually paid or payable to a Person that is not an Affiliate of any Loan Party or any of its Subsidiaries, and are properly attributable to such transaction, and (iv) all amounts that are set aside as a reserve (A) for adjustments in respect of the purchase price of such assets, (B) for any liabilities associated with such sale or casualty, to the extent such reserve is required by GAAP, and (C) for the payment of unassumed liabilities relating to the assets sold or otherwise disposed of at the time of, or within 30 days after, the date of such sale or other disposition, to the extent that in each case the funds described above in this clause (iv) are (x) deposited into escrow with a third party escrow agent or set aside in a separate Deposit Account that is subject to a Control Agreement in favor of Agent, and (y) paid to Agent as a prepayment of the applicable Obligations in accordance with Section 2.4(e) of this Agreement at such time when such amounts are no longer required to be set aside as such a reserve; and

(b) with respect to the issuance or incurrence of any Indebtedness by any Loan Party or any of its Subsidiaries, or the issuance by any Loan Party or any of its Subsidiaries of any Equity Interests, the aggregate amount of cash received (directly or indirectly) from time to time (whether as initial consideration or through the payment or disposition of deferred consideration) by or on behalf of such Loan Party or such Subsidiary in connection with such issuance or incurrence, after deducting therefrom only (i) reasonable fees, commissions, and expenses related thereto and required to be paid by such Loan Party or such Subsidiary in connection with such issuance or incurrence, and (ii) taxes paid or payable to any taxing authorities by such Loan Party or such Subsidiary in connection with such issuance or incurrence, in each case to the extent, but only to the extent, that the amounts so deducted are, at the time of receipt of such cash, actually paid or payable to a Person that is not an Affiliate of any Loan Party or any of its Subsidiaries, and are properly attributable to such transaction.

"Net Recovery Percentage" means, as of any date of determination, the percentage of the book value of Borrowers' Inventory that is estimated to be recoverable in an orderly liquidation of such Inventory net of all associated costs and expenses of such liquidation, such percentage to be determined as to each category of Inventory and to be as specified in the most recent Acceptable Appraisal of Inventory.

"Non-Consenting Lender" has the meaning specified therefor in Section 14.2(a) of this Agreement.

"Non-Defaulting Lender" means each Lender other than a Defaulting Lender.

"Notification Event" means (a) the occurrence of a "reportable event" described in Section 4043 of ERISA, (b) the withdrawal of any Loan Party or ERISA Affiliate from a Pension Plan during a plan year in which it was a "substantial employer" as defined in Section 4001(a)(2) of ERISA, (c) the termination of a Pension Plan, the filing of a notice of intent to terminate a Pension Plan or the treatment of a Pension Plan amendment as a termination, under Section 4041 of ERISA, or the receipt by any Loan Party or ERISA Affiliate from the PBGC of a written notice relating to an intention to terminate a Pension Plan or to appoint a trustee to administer a Pension Plan under Section 4042 of ERISA, (d) the institution of proceedings to terminate, or the appointment of a trustee with respect to, any Pension Plan by the PBGC or any Pension Plan or Multiemployer Plan administrator, (e) any other event or condition that would constitute grounds under Section 4042(a) of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan, (f) the imposition of a Lien pursuant to the IRC or ERISA in connection with any Employee Benefit Plan or the existence of any facts or circumstances that could reasonably be expected to result in the imposition of a Lien, (g) the partial or complete withdrawal of any Loan Party or ERISA Affiliate from a Multiemployer Plan, or the receipt by any Loan Party or ERISA Affiliate of a written notice demanding payment of Withdrawal Liability; (h) any event or condition that could reasonably be expected to result in the insolvency of a Multiemployer Plan (within the meaning of Section 4245 of ERISA) or the receipt by any Loan Party or an ERISA Affiliate that a Multiemployer Plan is, or is expected to be, insolvent, (i) any event or condition that results in the termination of a Multiemployer Plan under Section 4041A of ERISA or the institution by the PBGC of proceedings to terminate or to appoint a trustee to administer a Multiemployer Plan under ERISA or the filing of a notice of intent to terminate a Multiemployer Plan, (j) any Pension Plan being in "at risk status" within the meaning of IRC Section 430(i) or Section 303(i) of ERISA, (k) any Multiemployer Plan being in "endangered status" or "critical status" within the meaning of IRC Section 432(b) or Section 305 of ERISA or the receipt by any Loan Party or an ERISA Affiliate that a Multiemployer Plan is, or is expected to be, in "endangered status: or "critical status", (l) with respect to any Pension Plan, any Loan Party or ERISA Affiliate incurring a substantial cessation of operations within the meaning of ERISA Section 4062(e), (m) the failure of any Loan Party, ERISA Affiliate, Pension Plan or Multiemployer Plan to comply with the Pension Funding Rules, in each case, whether or not waived or to make a required contribution to a Multiemployer Plan, (n) any event that results in or could reasonably be expected to result in a liability by a Loan Party pursuant to Title I of ERISA or any of IRC Sections 4971 through 5000A (other than IRC Sections 4981 and 4982) or any event that results in or could reasonably be expected to result in a liability to any Loan Party or ERISA Affiliate pursuant to Title IV of ERISA or Section 401(a)(29) of the IRC, (o) an Employee Benefit Plan that is intended to be qualified under Section 401(a) of the IRC loses such qualification, (p) the Parent's projected liability, individually or in the aggregate, with respect to unfunded nonqualified deferred compensation and/or post-termination health and/or welfare benefits exceeds \$3,000,000 (excluding any amounts with respect to such benefits disclosed on Parent's annual report on Form 10-K for the fiscal year ended June 30, 2020), or (q) any of the foregoing is reasonably likely to occur in the following 30 days.

"Obligations" means (a) all loans (including the ~~Term Loan and the~~ Revolving Loans (inclusive of Extraordinary Advances and Swing Loans)), debts, principal, interest (including any interest that accrues after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding), reimbursement or indemnification obligations with respect to Letters of Credit (irrespective of whether contingent), premiums, liabilities (including all amounts charged to the Loan Account pursuant to this Agreement), obligations (including indemnification obligations), fees (including the fees provided for in the Fee Letter), Lender Group Expenses (including any fees or expenses payable under the Loan Documents that accrue after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding), guaranties, and all covenants and duties of any other kind and description owing by any Loan Party arising out of, under, pursuant to, in connection with, or evidenced by this Agreement or any of the other Loan Documents and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and including all interest not paid when due and all other expenses or other amounts that any Loan Party is required to pay or reimburse by the Loan Documents or by law or otherwise in connection with the Loan Documents, and (b) all Bank Product Obligations; provided that, anything to the contrary contained in the foregoing notwithstanding, the Obligations shall exclude any Excluded Swap Obligation. Without limiting the generality of the foregoing, the Obligations of Borrowers under the Loan Documents include the obligation to pay (i) the principal of the Revolving Loans ~~and the Term Loan~~, (ii) interest accrued on the Revolving Loans ~~and the Term Loan~~, (iii) the amount necessary to reimburse Issuing Bank for amounts paid or payable pursuant to Letters of Credit, (iv) Letter of Credit commissions, fees (including fronting fees) and charges payable under Sections 2.6 and 2.11, (v) Lender Group Expenses, (vi) fees payable under this Agreement or any of the other Loan Documents, and (vii) indemnities and other amounts payable by any Loan Party under any Loan Document. Any reference in this Agreement or in the Loan Documents to the Obligations shall include all or any portion thereof and any extensions, modifications, renewals, or alterations thereof, both prior and subsequent to any Insolvency Proceeding.

"OFAC" means The Office of Foreign Assets Control of the U.S. Department of the Treasury.

"Originating Lender" has the meaning specified therefor in Section 13.1(e) of this Agreement.

"Other Taxes" means all present or future stamp, court, excise, value added, or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document.

"Overadvance" means, as of any date of determination, that the Revolver Usage is greater than any of the limitations set forth in Section 2.1 or Section 2.11 of this Agreement.

"Parent" has the meaning specified therefor in the preamble to this Agreement.

"Participant" has the meaning specified therefor in Section 13.1(e) of this Agreement.

"Participant Register" has the meaning set forth in Section 13.1(i) of this Agreement.

"Patent Security Agreement" has the meaning specified therefor in the Guaranty and Security Agreement.

"Patriot Act" has the meaning specified therefor in Section 4.13 of this Agreement.

"Payment Conditions" means, at the time of determination with respect to a proposed payment to fund a Specified Transaction, that:

- (a) no Default or Event of Default then exists or would arise as a result of the consummation of such Specified Transaction,
- (b) either

(i) Excess Availability, (x) at all times during the 30 consecutive days immediately preceding the date of such proposed payment and the consummation of such Specified Transaction, calculated on a *pro forma* basis as if such proposed payment was made, and the Specified Transaction was consummated, on the first day of such period, and (y) after giving effect to such proposed payment and Specified Transaction, in each case, is not less than the greater of (A) 32.5% of the Line Cap, and (B) ~~\$27,500,000~~ 24,375,000, or

(ii) both (A) the Fixed Charge Coverage Ratio of the Loan Parties and their Subsidiaries is equal to or greater than 1.00:1.00 for the trailing 12 month period most recently ended for which financial statements are required to have been delivered to Agent pursuant to Schedule 5.1 to this Agreement (calculated on a *pro forma* basis as if such proposed payment is a Fixed Charge made on the last day of such 12 month period (it being understood that such proposed payment shall also be a Fixed Charge made on the last day of such 12 month period for purposes of calculating the Fixed Charge Coverage Ratio under this clause (ii) for any subsequent proposed payment to fund a Specific Transaction)), and (B) Excess Availability, (x) at all times during the 30 consecutive days immediately preceding the date of such proposed payment and the consummation of such Specified Transaction, calculated on a *pro forma* basis as if such proposed payment was made, and the Specified Transaction was consummated, on the first day of such period, and (y) after giving effect to such proposed payment and Specified Transaction, in each case, is not less than the greater of (1) 27.5% of the Line Cap, and (2) ~~\$22,500,000~~ 20,625,000, and

(c) Administrative Borrower has delivered a certificate to Agent certifying that all conditions described in clauses (a) and (b) above have been satisfied.

"Payment Recipient" has the meaning specified therefor in Section 17.16 of this Agreement.

"PBGC" means the Pension Benefit Guaranty Corporation or any successor agency.

"Pension Act" means the Pension Protection Act of 2006.

"Pension Funding Rules" means the rules of the IRC and ERISA regarding minimum funding standards and minimum required contributions (including any installment payment thereof) to Pension Plans and Multiemployer Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the IRC and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Sections 412, 430, 431, 432 and 436 of the IRC and Sections 302, 303, 304 and 305 of ERISA.

"Pension Plan" means any Employee Benefit Plan, other than a Multiemployer Plan, which is subject to the provisions of Title IV or Section 302 of ERISA or Sections 412 or 430 of the Code sponsored, maintained, or contributed to by any Loan Party or ERISA Affiliate or to which any Loan Party or ERISA Affiliate has any liability, contingent or otherwise.

"Perfection Certificate" means a certificate in the form of Exhibit P-1 to this Agreement.

"Periodic Term SOFR Determination Day" has the meaning specified therefor in the definition of "Term SOFR".

"Permitted Acquisition" means any Acquisition so long as:

(a) no Default or Event of Default shall have occurred and be continuing or would result from the consummation of the proposed Acquisition and the proposed Acquisition is consensual,

(b) no Indebtedness will be incurred, assumed, or would exist with respect to any Loan Party or its Subsidiaries as a result of such Acquisition, other than Indebtedness permitted under clauses (f) or (g) of the definition of Permitted Indebtedness and no Liens will be incurred, assumed, or would exist with respect to the assets of any Loan Party or its Subsidiaries as a result of such Acquisition other than Permitted Liens,

(c) Borrowers have provided Agent with written confirmation, supported by reasonably detailed calculations, that on a *pro forma* basis (including *pro forma* adjustments arising out of events which are directly attributable to such proposed Acquisition, are factually supportable, and are expected to have a continuing impact, in each case, determined as if the combination had been accomplished at the beginning of the relevant period; such eliminations and inclusions determined on a basis consistent with Article 11 of Regulation S-X promulgated under the Securities Act and as interpreted by the staff of the SEC) created by adding the historical combined financial statements of Parent (including the combined financial statements of any other Person or assets that were the subject of a prior Permitted Acquisition during the relevant period) to the historical consolidated financial statements of the Person to be acquired (or the historical financial statements related to the assets to be acquired) pursuant to the proposed Acquisition, the Loan Parties and their Subsidiaries (i) would have been in compliance with the financial covenant(s) in Section 7 of this Agreement for the fiscal month ended immediately prior to the proposed date of consummation of such proposed Acquisition regardless of whether such financial covenant(s) are required to be tested for such fiscal month, and (ii) are projected to be in compliance with the financial covenant(s) in Section 7 of this Agreement for each of the twelve fiscal months in the period ended one year after the proposed date of consummation of such proposed Acquisition assuming that such financial covenant(s) will be required to be tested in each such fiscal month,

(d) Borrowers have provided Agent with its due diligence package relative to the proposed Acquisition, including forecasted balance sheets, profit and loss statements, and cash flow statements of the Person or assets to be acquired, all prepared on a basis consistent with such Person's (or assets') historical financial statements, together with appropriate supporting details and a statement of underlying assumptions for the one year period following the date of the proposed Acquisition, on a quarter by quarter basis), in form and substance (including as to scope and underlying assumptions) reasonably satisfactory to Agent,

(e) the assets being acquired or the Person whose Equity Interests are being acquired did not have negative EBITDA during the 12 consecutive month period most recently concluded prior to the date of the proposed Acquisition,

(f) Borrowers have provided Agent with written notice of the proposed Acquisition at least 15 Business Days prior to the anticipated closing date of the proposed Acquisition and, not later than five Business Days prior to the anticipated closing date of the proposed Acquisition, copies of the acquisition agreement and other material documents relative to the proposed Acquisition, which agreement and documents must be reasonably acceptable to Agent,

(g) the assets being acquired (other than a *de minimis* amount of assets in relation to Borrowers' and their Subsidiaries' total assets), or the Person whose Equity Interests are being acquired, are useful in or engaged in, as applicable, the business of the Loan Parties and their Subsidiaries or a business reasonably related thereto,

(h) the assets being acquired (other than a *de minimis* amount of assets in relation to the assets being acquired) are located within the United States or the Person whose Equity Interests are being acquired is organized in a jurisdiction located within the United States,

(i) the subject assets or Equity Interests, as applicable, are being acquired directly by a Borrower or one of its Subsidiaries that is a Loan Party, and, in connection therewith, the applicable Loan Party shall have complied with Section 5.11 or 5.12 of this Agreement, as applicable, of this Agreement and, in the case of an acquisition of Equity Interests, the Person whose Equity Interests are acquired shall become a Loan Party and the applicable Loan Party shall have demonstrated to Agent that the new Loan Parties have received consideration sufficient to make the joinder documents binding and enforceable against such new Loan Parties,

(j) the Purchase Price (including deferred payment obligations) payable in respect of all Acquisitions (including the proposed Acquisition) shall not exceed \$10,000,000 in the aggregate during the term of this Agreement, and

(k) except with respect to Specified Acquisitions or Investments, the Payment Conditions are satisfied.

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

"Permitted Dispositions" means:

(a) (i) sales, abandonment, or other dispositions of Equipment in the ordinary course of business that is substantially worn, damaged, or obsolete and (ii) a Loan Party's election to terminate or not to renew or extend any leases or subleases of Real Property which such Loan Party deems, in its sole but commercially reasonable business judgment, no longer useful in the conduct of the business of the Loan Parties and their Subsidiaries,

- (b) (i) sales of Inventory to buyers in the ordinary course of business, and (ii) sales of Coffee Brewing Equipment in the ordinary course of business,
- (c) the use or transfer of money or Cash Equivalents in a manner that is not prohibited by the terms of this Agreement or the other Loan Documents,
- (d) the licensing, on a non-exclusive basis, of patents, trademarks, copyrights, and other intellectual property rights in the ordinary course of business,
- (e) the granting of Permitted Liens,
- (f) the sale or discount, in each case without recourse, of accounts receivable (other than Eligible Accounts) arising in the ordinary course of business, but only in connection with the compromise or collection thereof,
- (g) any involuntary loss, damage or destruction of property,
- (h) any involuntary condemnation, seizure or taking, by exercise of the power of eminent domain or otherwise, or confiscation or requisition of use of property,
- (i) the leasing or subleasing of assets (other than Real Property Collateral) of any Loan Party or its Subsidiaries in the ordinary course of business,
- (j) the sale or issuance of Equity Interests (other than Disqualified Equity Interests) of Parent,
- (k) (i) the lapse of registered patents, trademarks, copyrights and other intellectual property of any Loan Party or any of its Subsidiaries to the extent not economically desirable in the conduct of its business, or (ii) the abandonment of patents, trademarks, copyrights, or other intellectual property rights in the ordinary course of business so long as (in each case under clauses (i) and (ii)), (A) with respect to copyrights, such copyrights are not material revenue generating copyrights, (B) such lapse is not materially adverse to the interests of the Lender Group, and (C) excluding, for the avoidance of doubt, the Farmer Trademark,
- (l) the making of Restricted Payments that are expressly permitted to be made pursuant to this Agreement,
- (m) the making of Permitted Investments,
- (n) so long as no Event of Default has occurred and is continuing or would immediately result therefrom, transfers of assets (i) from any Loan Party or any of its Subsidiaries to a Loan Party, and (ii) from any Subsidiary of any Loan Party that is not a Loan Party to any other Subsidiary of any Loan Party,

(o) Disposition of any Specified Real Property, or other real property owned in fee (other than the Real Property Collateral); provided that (i) written notice thereof shall be provided to the Agent at least ten (10) days in advance thereof, (ii) such sale shall be on commercially reasonable prices and terms and conducted as part of a bona fide arm's length transaction, (iii) no Event of Default shall have then occurred and be continuing or would result therefrom (it being agreed, however, that if an Event of Default shall occur during the pendency of any agreement of purchase and sale, Loan Party shall be permitted to consummate the transaction as required by such agreement of purchase and sale with the prior written consent of the Agent), and (iv) the aggregate fair market value of all real property sold pursuant to this clause (o) (other than the Specified Real Property) shall not exceed \$15,000,000;

(p) Dispositions of Equipment or Real Property (other than Real Property Collateral) to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property, or (ii) the proceeds of such disposition are promptly applied to the purchase price of such replacement property; provided, that to the extent the property being transferred constitutes Collateral, such replacement property shall constitute Collateral,

(q) Dispositions of assets acquired by the Loan Parties and their Subsidiaries pursuant to a Permitted Acquisition consummated within 12 months of the date of the proposed Disposition so long as (i) the consideration received for the assets to be so disposed is at least equal to the fair market value of such assets, (ii) the assets to be so disposed are not necessary or economically desirable in connection with the business of the Loan Parties and their Subsidiaries, and (iii) the assets to be so disposed are readily identifiable as assets acquired pursuant to the subject Permitted Acquisition,

(r) any Disposition of Houston Assets so long as (i) such sale shall be on commercially reasonable prices and terms and conducted as part of a bona fide arm's length transaction and (ii) the Net Cash Proceeds of such Dispositions do not exceed \$1,000,000,

(s) any Disposition of investments in joint ventures to the extent required by, or made pursuant to customary buy/sell arrangements between, the joint venture parties set forth in joint venture arrangements and similar binding arrangements,

(t) the unwinding of any Hedge Agreement,

(u) any disposition by any Loan Party of assets in connection with the closing of a warehouse or facility which consist of leasehold interests in the premises of such warehouse or facility, the equipment and fixtures located at such premises and the books and records relating exclusively and directly to the operations of such warehouse or facility (and not related to Eligible Accounts or Eligible Inventory); provided that (i) written notice thereof shall be provided to the Agent at least ten (10) days in advance thereof, (ii) such sale shall be on commercially reasonable prices and terms in a bona fide arm's length transaction, (iii) no Event of Default shall have then occurred and be continuing or would result therefrom, and (iv) the aggregate fair market value of all assets disposed of pursuant to this clause (u) in any fiscal year shall not exceed \$2,500,000, and

(v) Dispositions of fixed assets (including intangible property related to such fixed assets) (other than Real Property Collateral) not otherwise permitted in clauses (a) through (u) above in an aggregate amount not less than the fair market value of such assets; provided that the Net Cash Proceeds of such Dispositions (including the proposed Disposition) do not exceed \$5,000,000 in the aggregate in any fiscal year,

provided, that if, as of any date of determination, sales or dispositions by the Loan Parties during the period of time from the first day of the month in which such date of determination occurs until such date of determination, either individually or in the aggregate, involve \$2,500,000 or more of assets included in the Borrowing Base (based on the fair market value of the assets so disposed) (the "Threshold Amount"), then Borrowers shall have, prior to consummation of the sale or disposition that causes the assets included in the Borrowing that are disposed of during such period to exceed the Threshold Amount, delivered to Agent an updated Borrowing Base Certificate that reflects the removal of the applicable assets from the Borrowing Base.

"Permitted Indebtedness" means:

- (a) Indebtedness in respect of the Obligations,
- (b) Indebtedness as of the Closing Date set forth on Schedule 4.14 to this Agreement and any Refinancing Indebtedness in respect of such Indebtedness,
- (c) Permitted Purchase Money Indebtedness and any Refinancing Indebtedness in respect of such Indebtedness,
- (d) Indebtedness arising in connection with the endorsement of instruments or other payment items for deposit,
- (e) Indebtedness consisting of (i) unsecured guarantees incurred in the ordinary course of business with respect to surety and appeal bonds, performance bonds, bid bonds, appeal bonds, completion guarantee and similar obligations; (ii) unsecured guarantees arising with respect to customary indemnification obligations to purchasers in connection with Permitted Dispositions; and (iii) unsecured guarantees with respect to Indebtedness of any Loan Party or one of its Subsidiaries, to the extent that the Person that is obligated under such guaranty could have incurred such underlying Indebtedness,
- (f) unsecured Indebtedness of any Loan Party that is incurred on the date of the consummation of a Permitted Acquisition solely for the purpose of consummating such Permitted Acquisition so long as (i) no Event of Default has occurred and is continuing or would result therefrom, (ii) such unsecured Indebtedness is not incurred for working capital purposes, (iii) such unsecured Indebtedness does not mature prior to the date that is 12 months after the Maturity Date, (iv) such unsecured Indebtedness does not amortize until 12 months after the Maturity Date, (v) such unsecured Indebtedness does not provide for the payment of interest thereon in cash or Cash Equivalents prior to the date that is 12 months after the Maturity Date, and (vi) such Indebtedness is subordinated in right of payment to the Obligations on terms and conditions reasonably satisfactory to Agent and is otherwise on terms and conditions (including economic terms and absence of covenants) reasonably satisfactory to Agent,
- (g) Acquired Indebtedness in an amount not to exceed \$10,000,000 outstanding at any one time,
- (h) Indebtedness incurred in the ordinary course of business under performance, surety, statutory, or appeal bonds,

(i) Indebtedness owed to any Person providing property, casualty, liability, or other insurance to any Loan Party or any of its Subsidiaries, so long as the amount of such Indebtedness is not in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the year in which such Indebtedness is incurred and such Indebtedness is outstanding only during such year,

(j) the incurrence by any Loan Party or its Subsidiaries of Indebtedness under Hedge Agreements that is incurred for the bona fide purpose of hedging the interest rate, commodity, or foreign currency risks associated with such Loan Party's or such Subsidiary's operations and not for speculative purposes,

(k) Indebtedness incurred in the ordinary course of business in respect of credit cards, credit card processing services, debit cards, stored value cards, commercial cards (including so-called "purchase cards", "procurement cards" or "p-cards"), or Cash Management Services,

(l) unsecured Indebtedness of any Loan Party owing to employees, former employees, former officers, directors, or former directors (or any spouses, ex-spouses, or estates of any of the foregoing) incurred in connection with the repurchase or redemption by such Loan Party of the Equity Interests of Parent that has been issued to such Persons, so long as (i) no Default or Event of Default has occurred and is continuing or would result from the incurrence of such Indebtedness, (ii) the aggregate amount of all such Indebtedness outstanding at any one time does not exceed \$3,000,000, and (iii) such Indebtedness is subordinated in right of payment to the Obligations on terms and conditions reasonably acceptable to Agent,

(m) contingent liabilities in respect of any indemnification obligation, adjustment of purchase price, non-compete, or similar obligation of any Loan Party incurred in connection with the consummation of one or more Permitted Acquisitions,

(n) Indebtedness comprising Permitted Investments,

(o) unsecured Indebtedness incurred in respect of netting services, overdraft protection, and other like services, in each case, incurred in the ordinary course of business,

(p) unsecured Indebtedness of any Loan Party or its Subsidiaries in respect of Earn-Outs owing to sellers of assets or Equity Interests to such Loan Party or its Subsidiaries that is incurred in connection with the consummation of one or more Permitted Acquisitions so long as such unsecured Indebtedness is (i) on terms and conditions reasonably acceptable to Agent, and (ii) is subordinated in right of payment to the Obligations on terms and conditions reasonably acceptable to Agent,

(q) Subordinated Indebtedness not to exceed an aggregate outstanding principal amount of \$2,500,000 at any time,

(r) accrual of interest, accretion or amortization of original issue discount, or the payment of interest in kind, in each case, on Indebtedness that otherwise constitutes Permitted Indebtedness,

(s) **[reserved]**,

(t) any Refinance Indebtedness in respect of any Indebtedness permitted under clauses (f) and (g) hereof,

(u) 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,

(v) Indebtedness representing deferred compensation to employees, directors and officers of any Loan Party incurred in the ordinary course of business,

(w) (i) prior to the scheduled expiration date of each Existing Letter of Credit, reimbursement obligations with respect to such Existing Letter of Credit; provided, that the aggregate face amount of all Existing Letters of Credit shall not exceed \$4,548,443.55 at any time and (ii) reimbursement obligations with respect to Existing Banking Services Obligations; provided, that the aggregate face amount of all Existing Banking Services Obligations shall not exceed \$250,000.00 at any time, and

(x) any other unsecured Indebtedness incurred by any Loan Party or any of its Subsidiaries in an aggregate outstanding amount not to exceed \$10,000,000 at any one time.

"Permitted Intercompany Advances" means loans made by (a) a Loan Party to another Loan Party other than Parent, (b) a Subsidiary of a Loan Party that is not a Loan Party to another Subsidiary of a Loan Party that is not a Loan Party, (c) a Subsidiary of a Loan Party that is not a Loan Party to a Loan Party, so long as the parties thereto are party to the Intercompany Subordination Agreement, and (d) a Loan Party to a Subsidiary of a Loan Party that is not a Loan Party so long as (i) the aggregate amount of all such loans (by type, not by the borrower) does not exceed \$5,000,000 outstanding at any one time, and (ii) at the time of the making of such loan, no Event of Default has occurred and is continuing or would result therefrom.

"Permitted Investments" means:

(a) Investments in cash and Cash Equivalents,

(b) Investments in negotiable instruments deposited or to be deposited for collection in the ordinary course of business,

(c) advances made in connection with purchases of goods or services in the ordinary course of business,

(d) Investments received in settlement of amounts due to any Loan Party or any of its Subsidiaries effected in the ordinary course of business or owing to any Loan Party or any of its Subsidiaries as a result of Insolvency Proceedings involving an account debtor or upon the foreclosure or enforcement of any Lien in favor of a Loan Party or its Subsidiaries,

(e) Investments owned by any Loan Party or any of its Subsidiaries on the Closing Date and set forth on Schedule P-1 to this Agreement,

- (f) guarantees permitted under the definition of Permitted Indebtedness,
- (g) Permitted Intercompany Advances,
- (h) Equity Interests or other securities acquired in connection with the satisfaction or enforcement of Indebtedness or claims due or owing to a Loan Party or its Subsidiaries (in bankruptcy of customers or suppliers or otherwise outside the ordinary course of business) or as security for any such Indebtedness or claims,
- (i) deposits of cash made in the ordinary course of business to secure performance of operating leases,
- (j) (i) non-cash loans and advances to employees, officers, and directors of a Loan Party or any of its Subsidiaries for the purpose of purchasing Equity Interests in Parent so long as the proceeds of such loans are used in their entirety to purchase such Equity Interests in Parent, and (ii) loans and advances to employees and officers of a Loan Party or any of its Subsidiaries in the ordinary course of business for any other business purpose and in an aggregate amount not to exceed \$3,000,000 at any one time,
- (k) Permitted Acquisitions,
- (l) Investments in the form of capital contributions and the acquisition of Equity Interests made by any Loan Party in any other Loan Party (other than capital contributions to or the acquisition of Equity Interests of Parent),
- (m) Investments resulting from entering into (i) Bank Product Agreements, or (ii) agreements relative to obligations permitted under clause (j) of the definition of Permitted Indebtedness,
- (n) equity Investments by any Loan Party in any Subsidiary of such Loan Party which is required by law to maintain a minimum net capital requirement or as may be otherwise required by applicable law,
- (o) Investments held by a Person acquired in a Permitted Acquisition to the extent that such Investments were not made in contemplation of or in connection with such Permitted Acquisition and were in existence on the date of such Permitted Acquisition,
- (p) Investments in the form of financings of certain Coffee Brewing Equipment to "ampm" franchisees through equipment sale and security agreements pursuant to a product upcharge option thereunder in an aggregate amount not to exceed \$2,000,000 at any time outstanding,
- (q) Investments by any Loan Party in Equity Interests in their respective Subsidiaries that are not Loan Parties, provided, that the aggregate amount of such Investments shall not exceed \$1,000,000 in the aggregate at any time outstanding (determined without regard to any write-downs or write-offs),

- (r) Investments constituting deposits described in clauses (h) and (i) of the definition of the term "Permitted Liens",
- (s) deposits, prepayments, advances and other credits to suppliers, vendors, customers, lessors and landlords or in connection with marketing promotions, such as sweepstakes, in each instance, made in the ordinary course of business,
- (t) advances of payroll payments to employees in the ordinary course of business, and
- (u) other Investments (other than Acquisitions) so long as the Payment Conditions are satisfied.

"Permitted Liens" means:

- (a) Liens granted to, or for the benefit of, Agent to secure the Obligations,
- (b) Liens for unpaid taxes, assessments, or other governmental charges or levies that either (i) are not yet delinquent, or (ii) do not have priority over Agent's Liens and the underlying taxes, assessments, or charges or levies are the subject of Permitted Protests,
- (c) judgment Liens (other than for the payment of taxes, assessments, or other governmental charges or levies) arising solely as a result of the existence of judgments, orders, or awards that do not constitute an Event of Default under Section 8.3 of this Agreement,
- (d) Liens set forth on Schedule P-2 to this Agreement; provided, that to qualify as a Permitted Lien, any such Lien described on Schedule P-2 to this Agreement shall only secure the Indebtedness that it secures on the Closing Date and any Refinancing Indebtedness in respect thereof,
- (e) (i) the interests of lessors and sublessors under operating leases and non-exclusive licensors or sublicensors under license agreements, and (ii) Liens arising from precautionary financing statement filings under the Code (or similar filings under applicable law regarding operating leases),
- (f) purchase money Liens on fixed assets or the interests of lessors under Capital Leases to the extent that such Liens or interests secure Permitted Purchase Money Indebtedness and so long as (i) such Lien attaches only to the fixed asset purchased or acquired and the proceeds thereof, and (ii) such Lien only secures the Indebtedness that was incurred to acquire the fixed asset purchased or acquired or any Refinancing Indebtedness in respect thereof,
- (g) Liens arising by operation of law in favor of warehousemen, landlords, carriers, mechanics, materialmen, laborers, or suppliers, incurred in the ordinary course of business and not in connection with the borrowing of money, and which Liens either (i) are for sums not yet delinquent, or (ii) are the subject of Permitted Protests,
- (h) Liens on amounts deposited to secure any Borrower's and its Subsidiaries obligations in connection with worker's compensation or other unemployment insurance,

(i) Liens on amounts deposited to secure any Borrower's and its Subsidiaries obligations in connection with the making or entering into of bids, tenders, leases, trade contracts, statutory obligations, surety, appeal bonds, performance bonds and other obligations of like nature, in each case, in the ordinary course of business and not in connection with the borrowing of money,

(j) Liens on Immaterial Marks described on Schedule I-1 to this Agreement existing on the Closing Date so long as (i) the fair market value of the Immaterial Marks does not exceed \$50,000 in the aggregate and (ii) such Immaterial Mark is not material to, or necessary in the conduct of, the business of any Loan Party or its Subsidiaries,

(k) with respect to any Real Property, easements, rights of way, and zoning restrictions (i) which are disclosed on a policy of title insurance issued in favor of any of the Lender Group solely in connection with any of the Real Property Collateral, (ii) that do not secure obligations for the payment of money, or (iii) that do not materially impair the value of such Real Property or its use by any Loan Party or any of its Subsidiaries in the normal conduct of such Person's business,

(l) non-exclusive licenses of patents, trademarks, copyrights, and other intellectual property rights in the ordinary course of business,

(m) Liens that are replacements of Permitted Liens to the extent that the original Indebtedness is the subject of permitted Refinancing Indebtedness and so long as the replacement Liens only encumber those assets that secured the original Indebtedness,

(n) rights of setoff or bankers' liens upon deposits of funds in favor of banks or other depository institutions, solely to the extent incurred in connection with the maintenance of such Deposit Accounts in the ordinary course of business,

(o) Liens granted in the ordinary course of business on the unearned portion of insurance premiums securing the financing of insurance premiums to the extent the financing is permitted under the definition of Permitted Indebtedness,

(p) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods,

(q) Liens solely on any cash earnest money deposits, escrow arrangements or similar arrangements made by a Loan Party or any of its Subsidiaries in connection with any letter of intent or purchase agreement with respect to a Permitted Acquisition,

(r) ~~so long as Borrowers are undertaking commercially reasonable efforts to remove such Liens, Liens in existence on the Third Amendment Effective Date in favor of the Prior Term Loan Agent pursuant to the Prior Term Loan Documents and solely in respect of the Titled Collateral (as defined in the Guaranty and Security Agreement), which Liens shall secure no Indebtedness or other obligations owing to the Prior Term Loan Agent from and after the Third Amendment Effective Date;~~ Reserved].

(s) (A) Liens on deposits made to secure obligations under coffee-related Hedge Agreements in an amount outstanding at any time not to exceed \$1,000,000, and (B) Liens on deposits made to secure obligations under Hedge Agreements permitted under Section 6.1 that are not coffee-related so long as the aggregate amount of deposits subject to such Liens, when taken together with the aggregate amount of obligations secured by Liens permitted under clause (y) below, does not exceed \$1,000,000 at any time outstanding,

(t) Liens assumed by any Loan Party or its Subsidiaries in connection with a Permitted Acquisition that secure Acquired Indebtedness that is Permitted Indebtedness,

(u) Liens or rights of setoff against credit balances of any Loan Party with credit card issuers or credit card processors to secure obligations of such Loan Party to any such credit card issuer or credit card processor solely to the extent incurred in the ordinary course of business as a result of fees and chargebacks,

(v) Liens in the nature of the right of setoff in favor of counterparties to contractual agreements with any Loan Party in the ordinary course of business,

(w) cash collateral and cash on deposit in deposit accounts of the Loan Parties specified on Schedule L-1 securing (i) Existing Letters of Credit constituting Permitted Indebtedness under clause (w)(i) of the definition of Permitted Indebtedness (the "Excluded L/C Account"); provided that the aggregate amount of such cash collateral and cash in Excluded L/C Account does not exceed 105% of the face amount of the Existing Letters of Credit, and (ii) Existing Banking Services Obligations constituting Permitted Indebtedness under clause (w)(ii) of the definition of Permitted Indebtedness (the "Excluded Banking Services Account"); provided that the aggregate amount of such cash collateral and cash in Excluded Banking Services Account does not exceed \$250,000,

(x) customary restrictions on subletting and assignments thereof contained in leases not otherwise prohibited hereunder, and

(y) other Liens which do not secure Indebtedness for borrowed money or letters of credit, when taken together with the aggregate amount of deposits subject to Liens permitted under clause (s)(B) above, and as to which the aggregate amount of the obligations secured thereby does not exceed \$1,000,000.

"Permitted Protest" means the right of any Loan Party or any of its Subsidiaries to protest any Lien (other than any Lien that secures the Obligations), taxes (other than payroll taxes or taxes that are the subject of a United States federal tax lien), or rental payment; provided, that (a) a reserve with respect to such obligation is established on such Loan Party's or its Subsidiaries' books and records in such amount as is required under GAAP, (b) any such protest is instituted promptly and prosecuted diligently by such Loan Party or its Subsidiary, as applicable, in good faith, and (c) Agent is satisfied (in its sole but commercially reasonable judgment) that, while any such protest is pending, there will be no impairment of the enforceability, validity, or priority of any of Agent's Liens.

"Permitted Purchase Money Indebtedness" means, as of any date of determination, Indebtedness (other than the Obligations, but including Capitalized Lease Obligations), incurred at the time of, or within 90 days after, the acquisition of any fixed assets for the purpose of financing all or any part of the acquisition cost thereof, in an aggregate principal amount outstanding at any one time not in excess of \$6,500,000.

"Person" means natural persons, corporations, limited liability companies, limited partnerships, general partnerships, limited liability partnerships, joint ventures, trusts, land trusts, business trusts, or other organizations, irrespective of whether they are legal entities, and governments and agencies and political subdivisions thereof.

"Plan Asset Regulations" means 29 CFR § 2510.3-101 *et seq.*, as modified by Section 3(42) of ERISA.

"Platform" has the meaning specified therefor in Section 17.9(c) of this Agreement.

"Post-Increase Revolver Lenders" has the meaning specified therefor in Section 2.14 of this Agreement.

"Pre-Increase Revolver Lenders" has the meaning specified therefor in Section 2.14 of this Agreement.

~~"Prior Term Loan Agent" means MGG Investment Group LP, a Delaware limited partnership, as administrative agent, and its successors and assigns.~~

~~"Prior Term Loan Credit Agreement" means that certain Credit Agreement, dated as of the Closing Date, by and among the Borrowers, Prior Term Loan Agent, the other Loan Parties and the lenders from time to time party thereto. For the avoidance of doubt, the Prior Term Loan Credit Agreement is being repaid in full and terminated as of the Third Amendment Effective Date.~~

~~"Prior Term Loan Documents" means the Prior Term Loan Credit Agreement and the other "Loan Documents" as defined in the Prior Term Loan Credit Agreement.~~

"Pro Rata Share" means, as of any date of determination:

(a) with respect to a Lender's obligation to make all or a portion of the Revolving Loans, with respect to such Lender's right to receive payments of interest, fees, and principal with respect to the Revolving Loans, and with respect to all other computations and other matters related to the Revolver Commitments or the Revolving Loans, the percentage obtained by dividing (i) the Revolving Loan Exposure of such Lender, by (ii) the aggregate Revolving Loan Exposure of all Lenders,

(b) with respect to a Lender's obligation to participate in the Letters of Credit, with respect to such Lender's obligation to reimburse Issuing Bank, and with respect to such Lender's right to receive payments of Letter of Credit Fees, and with respect to all other computations and other matters related to the Letters of Credit, the percentage obtained by dividing (i) the Revolving Loan Exposure of such Lender, by (ii) the aggregate Revolving Loan Exposure of all Lenders; provided, that if all of the Revolving Loans have been repaid in full and all Revolver Commitments have been terminated, but Letters of Credit remain outstanding, Pro Rata Share under this clause shall be the percentage obtained by dividing (A) the Letter of Credit Exposure of such Lender, by (B) the Letter of Credit Exposure of all Lenders,

(c) ~~with respect to a Lender's obligation to make all or a portion of the Term Loan, with respect to such Lender's right to receive payments of interest, fees, and principal with respect to the Term Loan, and with respect to all other computations and other matters related to the Term Loan Commitments or the Term Loan, the percentage obtained by dividing (i) the Term Loan Exposure of such Lender, by (ii) the aggregate Term Loan Exposure of all Lenders, and~~[reserved], and

(d) with respect to all other matters and for all other matters as to a particular Lender (including the indemnification obligations arising under Section 15.7 of this Agreement), the percentage obtained by dividing (i) the Revolving Loan Exposure ~~and Term Loan Exposure~~ of such Lender, by (ii) the aggregate Revolving Loan Exposure ~~and Term Loan Exposure~~ of all Lenders, in any such case as the applicable percentage may be adjusted by assignments permitted pursuant to Section 13.1; provided, that if all of the Loans have been repaid in full and all Commitments have been terminated, Pro Rata Share under this clause shall be the percentage obtained by dividing (A) the Letter of Credit Exposure of such Lender, by (B) the Letter of Credit Exposure of all Lenders.

"Projections" means Parent's forecasted (a) balance sheets, (b) profit and loss statements, and (c) cash flow statements, all prepared on a basis consistent with Parent's historical financial statements, together with appropriate supporting details and a statement of underlying assumptions.

"Proposed ESOP Merger" means that certain merger and transfer of all of the assets in the ESOP to Parent's 401(k) plan proposed to occur on or around January 1, 2022.

"Protective Advances" has the meaning specified therefor in Section 2.3(d)(i) of this Agreement.

"Public Lender" has the meaning specified therefor in Section 17.9(c) of this Agreement.

"Purchase Price" means, with respect to any Acquisition, an amount equal to the aggregate consideration, whether cash, property or securities (including the fair market value of any Equity Interests of Parent issued in connection with such Acquisition and including the maximum amount of Earn-Outs), paid or delivered by a Loan Party or one of its Subsidiaries in connection with such Acquisition (whether paid at the closing thereof or payable thereafter and whether fixed or contingent), but excluding therefrom (a) any cash of the seller and its Affiliates used to fund any portion of such consideration, and (b) any cash or Cash Equivalents acquired in connection with such Acquisition.

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

"QFC Credit Support" has the meaning specified therefor in Section 17.15 of this Agreement.

"Qualified Equity Interests" means and refers to any Equity Interests issued by Parent (and not by one or more of its Subsidiaries) that is not a Disqualified Equity Interest.

"Real Property" means any estates or interests in real property now owned or hereafter acquired by any Loan Party or one of its Subsidiaries and the improvements thereto.

"Real Property Collateral" means the Real Property identified on Schedule R-1 to this Agreement (as such Schedule R-1 may be amended from time to time with the consent of Administrative Borrower and Agent).

"Receivable Reserves" means, as of any date of determination, those reserves that Agent deems necessary or appropriate, in its Permitted Discretion and subject to Section 2.1(c), to establish and maintain (including Landlord Reserves for books and records locations and reserves for rebates, discounts, warranty claims, and returns) with respect to the Eligible Accounts or the Maximum Revolver Amount; provided that any Receivable Reserve established by Agent shall not be duplicative of any other reserve established and currently maintained by Agent in accordance with this Agreement, or any eligibility criteria set forth in the definition of Eligible Accounts.

"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"Reference Period" has the meaning set forth in ~~the definition of EBITDA~~ Section 7.1 of this Agreement.

"Refinancing Indebtedness" means refinancings, renewals, or extensions of Indebtedness so long as:

(a) such refinancings, renewals, or extensions do not result in an increase in the principal amount of the Indebtedness so refinanced, renewed, or extended, other than by the amount of premiums paid thereon and the fees and expenses incurred in connection therewith and by the amount of unfunded commitments with respect thereto,

(b) such refinancings, renewals, or extensions do not result in a shortening of the final stated maturity or the average weighted maturity (measured as of the refinancing, renewal, or extension) of the Indebtedness so refinanced, renewed, or extended, nor are they on terms or conditions that, taken as a whole, are or could reasonably be expected to be materially adverse to the interests of the Lenders,

(c) if the Indebtedness that is refinanced, renewed, or extended was subordinated in right of payment to the Obligations, then the terms and conditions of the refinancing, renewal, or extension must include subordination terms and conditions that are at least as favorable to the Lender Group as those that were applicable to the refinanced, renewed, or extended Indebtedness,

(d) the Indebtedness that is refinanced, renewed, or extended is not recourse to any Person that is liable on account of the Obligations other than those Persons which were obligated with respect to the Indebtedness that was refinanced, renewed, or extended,

(e) if the Indebtedness that is refinanced, renewed or extended was unsecured, such refinancing, renewal or extension shall be unsecured, and

(f) if the Indebtedness that is refinanced, renewed, or extended was secured (i) such refinancing, renewal, or extension shall be secured by substantially the same or less collateral as secured such refinanced, renewed or extended Indebtedness on terms no less favorable to Agent or the Lender Group and (ii) the Liens securing such refinancing, renewal or extension shall not have a priority more senior than the Liens securing such Indebtedness that is refinanced, renewed or extended.

"Register" has the meaning set forth in Section 13.1(h) of this Agreement.

"Registered Loan" has the meaning set forth in Section 13.1(h) of this Agreement.

"Related Fund" means any Person (other than an Ineligible Institution) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course and that is administered, advised or managed by (a) a Lender, (b) an Affiliate of a Lender, or (c) an entity or an Affiliate of an entity that administers, advises or manages a Lender.

"Relevant Governmental Body," means the Board of Governors or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors or the Federal Reserve Bank of New York, or any successor thereto.

"Remedial Action" means all actions taken to (a) clean up, remove, remediate, contain, treat, monitor, assess, evaluate, or in any way address Hazardous Materials in the indoor or outdoor environment, (b) prevent or minimize a release or threatened release of Hazardous Materials so they do not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment, (c) restore or reclaim natural resources or the environment, (d) perform any pre-remedial studies, investigations, or post-remedial operation and maintenance activities, or (e) conduct any other actions with respect to Hazardous Materials required by Environmental Laws.

"Replacement Lender" has the meaning specified therefor in Section 2.13(b) of this Agreement.

"Report" has the meaning specified therefor in Section 15.16 of this Agreement.

"Required Access Agreement Deadline" has the meaning specified therefor in the definition of "Landlord Reserve".

"Required Access Agreement Location" has the meaning specified therefor in Section 5.14.

"Required Availability" means that the sum of Excess Availability plus unrestricted cash and Cash Equivalents of the Loan Parties that is in Deposit Accounts or in Securities Accounts, or any combination thereof, and is maintained by a branch office of the bank or securities intermediary located within the United States, is at least \$27,500,000.

"Required Lenders" means, at any time, Lenders having or holding more than 50% of the ~~sum of (a) the aggregate Revolving Loan Exposure of all Lenders, plus (b) the aggregate Term-Loan Exposure of all Lenders; provided~~, that (i) the Revolving Loan Exposure ~~and Term-Loan Exposure~~ of any Defaulting Lender shall be disregarded in the determination of the Required Lenders, and (ii) at any time there are two or more Lenders (who are not Affiliates of one another or Defaulting Lenders), "Required Lenders" must include at least two Lenders (who are not Affiliates of one another).

"Reserves" means, as of any date of determination, Inventory Reserves, Receivables Reserves, Bank Product Reserves and those other reserves that Agent deems necessary or appropriate, in its Permitted Discretion and subject to Section 2.1(c), to establish and maintain (including reserves with respect to (a) sums that any Loan Party or its Subsidiaries are required to pay under any Section of this Agreement or any other Loan Document (such as taxes, assessments, insurance premiums, or, in the case of leased assets, rents or other amounts payable under such leases) and has failed to pay, (b) amounts owing by any Loan Party or its Subsidiaries to any Person to the extent secured by a Lien on, or trust over, any of the Collateral (other than a Permitted Lien), which Lien or trust, in the Permitted Discretion of Agent likely would have a priority superior to the Agent's Liens (such as Liens or trusts in favor of landlords, warehousemen, carriers, mechanics, materialmen, laborers, or suppliers, or Liens or trusts for ad valorem, excise, sales, or other taxes where given priority under applicable law) in and to such item of the Collateral, and (c) reserves for up to two weeks of payroll for route truck drivers (plus any past due payroll amounts) with respect to the Borrowing Base or the Maximum Revolver Amount.

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

"Restricted Payment" means (a) any declaration or payment of any dividend or the making of any other payment or distribution, directly or indirectly, on account of Equity Interests issued by Parent or any of its Subsidiaries (including any payment in connection with any merger or consolidation involving Parent) or to the direct or indirect holders of Equity Interests issued by Parent or any of its Subsidiaries in their capacity as such (other than dividends or distributions payable in Qualified Equity Interests issued by Parent or any of its Subsidiaries), together with any payment or distribution pursuant to a "plan of division", (b) any purchase, redemption, making of any sinking fund or similar payment, or other acquisition or retirement for value (including in connection with any merger or consolidation involving Parent) any Equity Interests issued by Parent or any of its Subsidiaries, or (c) any making of any payment to retire, or to obtain the surrender of, any outstanding warrants, options, or other rights to acquire Equity Interests of Parent or any of its Subsidiaries now or hereafter outstanding.

"Revolver Commitment" means, with respect to each Revolving Lender, its Revolver Commitment, and, with respect to all Revolving Lenders, their Revolver Commitments, in each case as such Dollar amounts are set forth beside such Revolving Lender's name under the applicable heading on Schedule C-1 to this Agreement or in the Assignment and Acceptance or Increase Joinder pursuant to which such Revolving Lender became a Revolving Lender under this Agreement, as such amounts may be reduced or increased from time to time pursuant to assignments made in accordance with the provisions of Section 13.1 of this Agreement, and as such amounts may be decreased by the amount of reductions in the Revolver Commitments made in accordance with Section 2.4(c) hereof.

"Revolver Paydown" means the partial paydown of the outstanding principal balance of the Revolving Loans required to be made on the Fourth Amendment Effective Date in connection with a Disposition occurring on said date.

"Revolver Usage" means, as of any date of determination, the sum of (a) the amount of outstanding Revolving Loans (inclusive of Swing Loans and Protective Advances), *plus* (b) the amount of the Letter of Credit Usage.

"Revolving Lender" means a Lender that has a Revolving Loan Exposure or Letter of Credit Exposure.

"Revolving Loan Base Rate Margin" has the meaning set forth in the definition of Applicable Margin.

"Revolving Loan Exposure" means, with respect to any Revolving Lender, as of any date of determination (a) prior to the termination of the Revolver Commitments, the amount of such Lender's Revolver Commitment, and (b) after the termination of the Revolver Commitments, the aggregate outstanding principal amount of the Revolving Loans of such Lender.

"Revolving Loan SOFR Margin" has the meaning set forth in the definition of Applicable Margin.

"Revolving Loans" has the meaning specified therefor in Section 2.1(a) of this Agreement.

"Sanctioned Entity" means (a) a country or territory or a government of a country or territory, (b) an agency of the government of a country or territory, (c) an organization directly or indirectly controlled by a country or territory or its government, or (d) a Person resident in or determined to be resident in a country or territory, in each case of clauses (a) through (d) that is a target of Sanctions, including a target of any country sanctions program administered and enforced by OFAC.

"Sanctioned Person" means, at any time (a) any Person named on the list of Specially Designated Nationals and Blocked Persons maintained by OFAC, OFAC's consolidated Non-SDN list or any other Sanctions-related list maintained by any Governmental Authority, (b) a Person or legal entity that is a target of Sanctions, (c) any Person operating, organized or resident in a Sanctioned Entity, or (d) any Person directly or indirectly owned or controlled (individually or in the aggregate) by or acting on behalf of any such Person or Persons described in clauses (a) through (c) above.

"Sanctions" means individually and collectively, respectively, any and all economic sanctions, trade sanctions, financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes anti-terrorism laws and other sanctions laws, regulations or embargoes, including those imposed, administered or enforced from time to time by: (a) the United States of America, including those administered by OFAC, the U.S. Department of State, the U.S. Department of Commerce, or through any existing or future executive order, (b) the United Nations Security Council, (c) the European Union or any European Union member state, (d) Her Majesty's Treasury of the United Kingdom, or (e) any other Governmental Authority with jurisdiction over any member of Lender Group or any Loan Party or any of their respective Subsidiaries or Affiliates.

"S&P" has the meaning specified therefor in the definition of Cash Equivalents.

"SEC" means the United States Securities and Exchange Commission and any successor thereto.

"Securities Account" means a securities account (as that term is defined in the Code).

"Securities Act" means the Securities Act of 1933, as amended from time to time, and any successor statute.

"Settlement" has the meaning specified therefor in Section 2.3(e)(i) of this Agreement.

"Settlement Date" has the meaning specified therefor in Section 2.3(e)(i) of this Agreement.

"SOFR" means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

"SOFR Administrator" means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

"SOFR Deadline" has the meaning specified therefor in Section 2.12(b)(i) of this Agreement.

"SOFR Loan" means each portion of ~~(i) the Revolving Loans or (ii) the Term Loan, in each case~~ that bears interest at a rate determined by reference to Term SOFR (other than pursuant to clause (b) of the definition of "Base Rate").

"SOFR Margin" means the Revolving Loan SOFR Margin ~~or the Term Loan SOFR Margin, as applicable.~~

"SOFR Notice" means a written notice in the form of Exhibit L-1 to this Agreement.

"SOFR Option" has the meaning specified therefor in Section 2.12(a) of this Agreement.

"Solvent" means, with respect to any Person as of any date of determination, that (a) at fair valuations, the sum of such Person's debts (including contingent liabilities) is less than all of such Person's assets, (b) such Person is not engaged or about to engage in a business or transaction for which the remaining assets of such Person are unreasonably small in relation to the business or transaction or for which the property remaining with such Person is an unreasonably small capital, (c) such Person has not incurred and does not intend to incur, or reasonably believe that it will incur, debts beyond its ability to pay such debts as they become due (whether at maturity or otherwise) in the ordinary course of business, and (d) such Person is "solvent" or not "insolvent", as applicable within the meaning given those terms and similar terms under applicable laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5).

"Specified Acquisitions or Investments" means Acquisitions or Investments financed solely with the proceeds of substantially contemporaneous issuance by Parent of its Equity Interests, in an amount not to exceed \$10,000,000 in the aggregate during any fiscal year of the Parent.

"Specified Real Property" means any Real Property specified on Schedule S-1 to this Agreement.

"Specified Transaction" means, any Investment, prepayment of Indebtedness or Restricted Payment (or declaration of any prepayment or Restricted Payment).

"Standard Letter of Credit Practice" means, for Issuing Bank, any domestic or foreign law or letter of credit practices applicable in the city in which Issuing Bank issued the applicable Letter of Credit or, for its branch or correspondent, such laws and practices applicable in the city in which it has advised, confirmed or negotiated such Letter of Credit, as the case may be, in each case, (a) which letter of credit practices are of banks that regularly issue letters of credit in the particular city, and (b) which laws or letter of credit practices are required or permitted under ISP or UCP, as chosen in the applicable Letter of Credit.

"Subject Holder" has the meaning specified therefor in Section 2.4(e)(v) of this Agreement.

"Subordinated Indebtedness" means Indebtedness of any Loan Party the terms of which (including payment terms, interest rates, security, covenants, remedies, defaults and other material terms) are reasonably satisfactory to Agent and the Required Lenders and which has been expressly subordinated in right of payment to all Obligations (a) by the execution and delivery of a subordination agreement, in form and substance reasonably satisfactory to Agent and the Required Lenders, or (b) otherwise on terms and conditions satisfactory to Agent and the Required Lenders.

"Subsidiary" of a Person means a corporation, partnership, limited liability company, or other entity in which that Person directly or indirectly owns or controls the Equity Interests having ordinary voting power to elect a majority of the Board of Directors of such corporation, partnership, limited liability company, or other entity.

"Supermajority Lenders" means, at any time, Revolving Lenders having or holding more than 66 2/3% of the aggregate Revolving Loan Exposure of all Revolving Lenders; provided, that (i) the Revolving Loan Exposure of any Defaulting Lender shall be disregarded in the determination of the Supermajority Lenders, and (ii) at any time there are two or more Revolving Lenders (who are not Affiliates of one another), "Supermajority Lenders" must include at least two Revolving Lenders (who are not Affiliates of one another or Defaulting Lenders).

"Supported QEC" has the meaning specified therefor in Section 17.15 of this Agreement.

"Swap Obligation" means, with respect to any Loan Party, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act.

"Swing Lender" means Wells Fargo or any other Lender that, at the request of the Administrative Borrower and with the consent of Agent agrees, in such Lender's sole discretion, to become the Swing Lender under Section 2.3(b) of this Agreement.

"Swing Loan" has the meaning specified therefor in Section 2.3(b) of this Agreement.

"Swing Loan Exposure" means, as of any date of determination with respect to any Lender, such Lender's Pro Rata Share of the Swing Loans on such date.

"Tax Lender" has the meaning specified therefor in Section 14.2(a) of this Agreement.

"Taxes" means any taxes, levies, imposts, duties, fees, withholdings (including backup withholdings), assessments or other charges of whatever nature now or hereafter imposed by any jurisdiction or by any political subdivision or taxing authority thereof or therein, and all interest, penalties or similar liabilities with respect thereto.

~~"Term Loan" has the meaning specified therefor in Section 2.2 of this Agreement.~~

~~"Term Loan Amount" means \$47,000,000.~~

~~"Term Loan Base Rate Margin" has the meaning set forth in the definition of Applicable Margin.~~

~~"Term Loan Commitment" means, with respect to each Term Loan Lender, its Term Loan Commitment, and, with respect to all Term Loan Lenders, their Term Loan Commitments, in each case as such Dollar amounts are set forth beside such Lender's name under the applicable heading on Schedule C-1 to this Agreement or in the Assignment and Acceptance pursuant to which such Lender became a Term Loan Lender under this Agreement, as such amounts may be reduced or increased from time to time pursuant to assignments made in accordance with the provisions of Section 13.1 of this Agreement.~~

~~"Term Loan Exposure" means, with respect to any Term Loan Lender, as of any date of determination (a) prior to the funding of the Term Loan, the amount of such Lender's Term Loan Commitment, and (b) after the funding of the Term Loan, the outstanding principal amount of the Term Loan held by such Lender.~~

~~"Term Loan Lender" means a Lender that has a Term Loan Commitment or that has a portion of the Term Loan.~~

~~"Term Loan SOFR Margin" has the meaning set forth in the definition of Applicable Margin~~Payoff" means the payment in full of term loan Indebtedness owing by Borrowers to Lenders immediately prior to the Fourth Amendment Effective Date.

"Term SOFR" means,

(a) for any calculation with respect to a SOFR Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the "Periodic Term SOFR Determination Day") that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day, and

(b) for any calculation with respect to a Base Rate Loan on any day, the Term SOFR Reference Rate for a tenor of one month on the day (such day, the "Base Rate Term SOFR Determination Day") that is two (2) U.S. Government Securities Business Days prior to such day, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Base Rate Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Base Rate Term SOFR Determination Day;

provided, further, that if Term SOFR determined as provided above (including pursuant to the proviso under clause (a) or clause (b) above) shall ever be less than the Floor, then Term SOFR shall be deemed to be the Floor.

"Term SOFR Administrator" means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by Agent in its reasonable discretion).

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

~~"Third Amendment Effective Date" means August 31, 2022.~~

"Trademark Security Agreement" has the meaning specified therefor in the Guaranty and Security Agreement.

"UCP" means, with respect to any Letter of Credit, the Uniform Customs and Practice for Documentary Credits 2007 Revision, International Chamber of Commerce Publication No. 600 and any version or revision thereof accepted by Issuing Bank for use.

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

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

"Unadjusted Benchmark Replacement" means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

"Unfinanced Capital Expenditures" means Capital Expenditures (a) not financed with the proceeds of any incurrence of Indebtedness (other than the incurrence of any Revolving Loans), the proceeds of any sale or issuance of Equity Interests or equity contributions, the proceeds of any asset sale (other than the sale of Inventory in the ordinary course of business) or any insurance proceeds, and (b) that are not reimbursed by a third person (excluding any Loan Party or any of its Affiliates) in the period such expenditures are made pursuant to a written agreement.

"United States" means the United States of America.

"Unused Line Fee" has the meaning specified therefor in Section 2.10(b) of this Agreement.

"U.S. Government Securities Business Day" means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association, or any successor thereto, recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities; provided, that for purposes of notice requirements in Sections 2.3(a), 2.3(c) and 2.12(b), in each case, such day is also a Business Day.

"U.S. Special Resolution Regimes" has the meaning specified therefor in Section 17.15 of this Agreement.

"Voidable Transfer" has the meaning specified therefor in Section 17.8 of this Agreement.

"Wells Fargo" means Wells Fargo Bank, National Association, a national banking association.

"Withdrawal Liability" means liability with respect 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.

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

1.2. **Accounting Terms**. All accounting terms not specifically defined herein shall be construed in accordance with GAAP; provided, that if Administrative Borrower notifies Agent that Borrowers request an amendment to any provision hereof to eliminate the effect of any Accounting Change occurring after the Closing Date or in the application thereof on the operation of such provision (or if Agent notifies Administrative Borrower 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 Accounting Change or in the application thereof, then Agent and Borrowers agree that they will negotiate in good faith amendments to the provisions of this Agreement that are directly affected by such Accounting Change with the intent of having the respective positions of the Lenders and Borrowers after such Accounting Change conform as nearly as possible to their respective positions immediately before such Accounting Change took effect and, until any such amendments have been agreed upon and agreed to by the Required Lenders, the provisions in this Agreement shall be calculated as if no such Accounting Change had occurred. When used herein, the term "financial statements" shall include the notes and schedules thereto. Whenever the term "Parent" or "Borrowers" is used in respect of a financial covenant or a related definition, it shall be understood to mean the Loan Parties and their Subsidiaries on a consolidated basis, unless the context clearly requires otherwise. Notwithstanding anything to the contrary contained herein, (a) all financial statements delivered hereunder shall be prepared, and all financial covenants contained herein shall be calculated, without giving effect to any election under the Statement of Financial Accounting Standards Board's Accounting Standards Codification Topic 825 (or any similar accounting principle) permitting a Person to value its financial liabilities or Indebtedness at the fair value thereof, and (b) the term "unqualified opinion" as used herein to refer to opinions or reports provided by accountants shall mean an opinion or report that is (i) unqualified, and (ii) does not include any explanation, supplemental comment, or other comment concerning the ability of the applicable Person to continue as a going concern or concerning the scope of the audit.

1.3. **Code.** Any terms used in this Agreement that are defined in the Code shall be construed and defined as set forth in the Code unless otherwise defined herein; provided, that to the extent that the Code is used to define any term herein and such term is defined differently in different Articles of the Code, the definition of such term contained in Article 9 of the Code shall govern.

1.4. **Construction.** Unless the context of this Agreement or any other Loan Document clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, the terms "includes" and "including" are not limiting, and the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereby," "hereunder," and similar terms in this Agreement or any other Loan Document refer to this Agreement or such other Loan Document, as the case may be, as a whole and not to any particular provision of this Agreement or such other Loan Document, as the case may be. Section, subsection, clause, schedule, and exhibit references herein are to this Agreement unless otherwise specified. Any reference in this Agreement or in any other Loan Document to any agreement, instrument, or document shall include all alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements, thereto and thereof, as applicable (subject to any restrictions on such alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements set forth herein). A Default or Event of Default shall be deemed to exist at all times during the period commencing on the date that such Default or Event of Default occurs to the date on which such Default or Event of Default is waived in writing pursuant to this Agreement or, in the case of a Default, is cured within any period of cure expressly provided for in this Agreement; and an Event of Default shall "continue" or be "continuing" until such Event of Default has been waived in writing by the Required Lenders. 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. Any reference herein or in any other Loan Document to the satisfaction, repayment, or payment in full of the Obligations shall mean (a) the payment or repayment in full in immediately available funds of (i) the principal amount of, and interest accrued and unpaid with respect to, all outstanding Loans, together with the payment of any premium applicable to the repayment of the Loans, (ii) all Lender Group Expenses that have accrued and are unpaid regardless of whether demand has been made therefor, and (iii) all fees or charges that have accrued hereunder or under any other Loan Document (including the Letter of Credit Fee and the Unused Line Fee) and are unpaid, (b) in the case of contingent reimbursement obligations with respect to Letters of Credit, providing Letter of Credit Collateralization, (c) in the case of obligations with respect to Bank Products (other than Hedge Obligations), providing Bank Product Collateralization, (d) the receipt by Agent of cash collateral in order to secure any other contingent Obligations for which a claim or demand for payment has been made on or prior to such time or in respect of matters or circumstances known to Agent or a Lender at such time that are reasonably expected to result in any loss, cost, damage, or expense (including attorneys' fees and legal expenses) payable under the Loan Documents, such cash collateral to be in such amount as Agent reasonably determines is appropriate to secure such contingent Obligations, (e) the payment or repayment in full in immediately available funds of all other outstanding Obligations (including the payment of any termination amount then applicable (or which would or could become applicable as a result of the repayment of the other Obligations) under Hedge Agreements provided by Hedge Providers) other than (i) unasserted contingent indemnification Obligations, (ii) any Bank Product Obligations (other than Hedge Obligations) that, at such time, are allowed by the applicable Bank Product Provider to remain outstanding without being required to be repaid or cash collateralized, and (iii) any Hedge Obligations that, at such time, are allowed by the applicable Hedge Provider to remain outstanding without being required to be repaid, and (f) the termination of all of the Commitments of the Lenders. Any reference herein to any Person shall be construed to include such Person's successors and assigns. Any requirement of a writing contained herein or in any other Loan Document shall be satisfied by the transmission of a Record.

1.5. **Time References.** Unless the context of this Agreement or any other Loan Document clearly requires otherwise, all references to time of day refer to Mountain standard time or Mountain daylight saving time, as in effect in Phoenix, Arizona on such day. For purposes of the computation of a period of time from a specified date to a later specified date, unless otherwise expressly provided, the word "from" means "from and including" and the words "to" and "until" each means "to and including"; provided, that with respect to a computation of fees or interest payable to Agent or any Lender, such period shall in any event consist of at least one full day.

1.6. **Schedules and Exhibits.** All of the schedules and exhibits attached to this Agreement shall be deemed incorporated herein by reference.

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

1.8. **Rates.** Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Term SOFR Reference Rate, Term SOFR or any other Benchmark, any component definition thereof or rates referred to in the definition thereof, or with respect to any alternative, successor or replacement rate thereto (including any then-current Benchmark or any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement), as it may or may not be adjusted pursuant to Section 2.12(d)(iii), will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Term SOFR Reference Rate, Term SOFR or any other Benchmark, prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. Agent and its affiliates or other related entities may engage in transactions that affect the calculation of the Term SOFR Reference Rate, Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto and such transactions may be adverse to a Borrower. Agent may select information sources or services in its reasonable discretion to ascertain the Term SOFR Reference Rate or Term SOFR, or any other Benchmark, any component definition thereof or rates referred to in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to any Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

2. LOANS AND TERMS OF PAYMENT.

2.1. Revolving Loans.

(a) Subject to the terms and conditions of this Agreement, and during the term of this Agreement, each Revolving Lender agrees (severally, not jointly or jointly and severally) to make revolving loans ("Revolving Loans") to Borrowers in an amount at any one time outstanding not to exceed *the lesser of*:

(i) such Lender's Revolver Commitment, or

(ii) such Lender's Pro Rata Share of an amount equal to the lesser of:

(A) the amount equal to (1) the Maximum Revolver Amount, less (2) the sum of (y) the Letter of Credit Usage at such time, plus (z) the principal amount of Swing Loans outstanding at such time, and

(B) the amount equal to (1) the Borrowing Base as of such date (based upon the most recent Borrowing Base Certificate delivered by Borrowers to Agent, as adjusted for Reserves established by Agent in accordance with Section 2.1(c)), less (2) the sum of (x) the Letter of Credit Usage at such time, plus (y) the principal amount of Swing Loans outstanding at such time.

(b) Amounts borrowed pursuant to this Section 2.1 may be repaid and, subject to the terms and conditions of this Agreement, reborrowed at any time during the term of this Agreement. The outstanding principal amount of the Revolving Loans, together with interest accrued and unpaid thereon, shall constitute Obligations and shall be due and payable on the Maturity Date or, if earlier, on the date on which they otherwise become due and payable pursuant to the terms of this Agreement.

(c) Anything to the contrary in this Section 2.1 notwithstanding, Agent shall have the right (but not the obligation) at any time, in the exercise of its Permitted Discretion, to establish and increase or decrease Reserves against the Borrowing Base or the Maximum Revolver Amount; provided, that Agent shall notify Borrowers at least 2 Business Days prior to the date on which any such reserve is to be established or increased (during which period Agent shall be available to discuss any such proposed Reserve with Administrative Borrower); provided further, that (A) the Borrowers may not obtain any new Revolving Loans (including Swing Loans) or Letters of Credit to the extent that such Revolving Loan (including Swing Loans) or Letter of Credit would cause an Overadvance after giving effect to the establishment or increase of such Reserve as set forth in such notice; (B) no such prior notice shall be required for changes to any Reserves resulting solely by virtue of mathematical calculations of the amount of the Reserve in accordance with the methodology of calculation set forth in this Agreement or previously utilized; and (C) no such prior notice shall be required during the continuance of any Event of Default and (D) no such prior notice shall be required with respect to any Reserve established in respect of any Lien that has priority over Agent's Liens on the Collateral. The amount of any Reserve (including the Dilution Reserve) established by Agent, and any changes to the eligibility criteria set forth in the definitions of Eligible Accounts, Eligible Inventory, and Eligible In-Transit Inventory shall have a reasonable relationship to the event, condition, other circumstance, or fact that is the basis for such reserve or change in eligibility and shall not be duplicative of any other reserve established and currently maintained or eligibility criteria.

~~2.2. **Term Loan.** Subject to the terms and conditions of this Agreement, on the Third Amendment Effective Date each Lender with a Term Loan Commitment agrees (severally, not jointly or jointly and severally) to make term loans (collectively, the "Term Loan") to Borrowers in an amount equal to the lesser of (a) such Lender's Term Loan Commitment, and (b) such Lender's Pro Rata Share of the Term Loan Amount. Commencing on October 1, 2022 and continuing on the first day of each month thereafter through and including the earlier of (i) the Maturity Date, and (ii) the date on which the Term Loan otherwise becomes due and payable pursuant to the terms of this Agreement, Borrowers shall repay the principal amount of the Term Loan in equal monthly installments in the amount of \$261,111.11. The outstanding unpaid principal balance and all accrued and unpaid interest on the Term Loan shall be due and payable on the earlier of (i) the Maturity Date, and (ii) the date on which the Term Loan otherwise becomes due and payable pursuant to the terms of this Agreement. Any principal amount of the Term Loan that is repaid or prepaid may not be reborrowed. All principal of, interest on, and other amounts payable in respect of the Term Loan shall constitute Obligations hereunder.~~

2.2. [Reserved].

2.3. **Borrowing Procedures and Settlements.**

(a) **Procedure for Borrowing Revolving Loans.** Each Borrowing shall be made by a written request by an Authorized Person delivered to Agent (which may be delivered through Agent's electronic platform or portal) and received by Agent no later than 12:00 p.m. (i) on the Business Day that is the requested Funding Date in the case of a request for a Swing Loan, (ii) on the Business Day that is one Business Day prior to the requested Funding Date in the case of a request for a Base Rate Loan, and (iii) on the U.S. Government Securities Business Day that is three U.S. Government Securities Business Days prior to the requested Funding Date in the case of a request for a SOFR Loan, specifying (A) the amount of such Borrowing, and (B) the requested Funding Date (which shall be a Business Day); provided, that Agent may, in its sole discretion, elect to accept as timely requests that are received later than 12:00 p.m. on the applicable Business Day or U.S. Government Securities Business Day, as applicable. All Borrowing requests which are not made on-line via Agent's electronic platform or portal shall be subject to (and unless Agent elects otherwise in the exercise of its sole discretion, such Borrowings shall not be made until the completion of) Agent's authentication process (with results satisfactory to Agent) prior to the funding of any such requested Revolving Loan.

(b) **Making of Swing Loans.** In the case of a Revolving Loan that is a Swing Loan and so long as any of (i) the aggregate amount of Swing Loans made since the last Settlement Date, minus all payments or other amounts applied to Swing Loans since the last Settlement Date, plus the amount of the requested Swing Loan does not exceed \$8,000,000, or (ii) Swing Lender, in its sole discretion, agrees to make a Swing Loan notwithstanding the foregoing limitation, Swing Lender shall make a Revolving Loan (any such Revolving Loan made by Swing Lender pursuant to this Section 2.3(b) being referred to as a "Swing Loan" and all such Revolving Loans being referred to as "Swing Loans") available to Borrowers on the Funding Date applicable thereto by transferring immediately available funds in the amount of such Borrowing to the Designated Account. Each Swing Loan shall be deemed to be a Revolving Loan hereunder and shall be subject to all the terms and conditions (including Section 3) applicable to other Revolving Loans, except that all payments (including interest) on any Swing Loan shall be payable to Swing Lender solely for its own account. Subject to the provisions of Section 2.3(d)(ii), Swing Lender shall not make and shall not be obligated to make any Swing Loan if Swing Lender has actual knowledge that (i) one or more of the applicable conditions precedent set forth in Section 3 will not be satisfied on the requested Funding Date for the applicable Borrowing, or (ii) the requested Borrowing would exceed the Availability on such Funding Date. Swing Lender shall not otherwise be required to determine whether the applicable conditions precedent set forth in Section 3 have been satisfied on the Funding Date applicable thereto prior to making any Swing Loan. The Swing Loans shall be secured by Agent's Liens, constitute Revolving Loans and Obligations, and bear interest at the rate applicable from time to time to Revolving Loans that are Base Rate Loans.

(c) **Making of Revolving Loans.**

(i) In the event that Swing Lender is not obligated to make a Swing Loan, then after receipt of a request for a Borrowing pursuant to Section 2.3(a)(i), Agent shall notify the Lenders by telecopy, telephone, email, or other electronic form of transmission, of the requested Borrowing; such notification to be sent on the Business Day or U.S. Government Securities Business Day, as applicable, that is (A) in the case of a Base Rate Loan, at least one Business Day prior to the requested Funding Date, or (B) in the case of a SOFR Loan, prior to 12:00 p.m. at least three U.S. Government Securities Business Days prior to the requested Funding Date. If Agent has notified the Lenders of a requested Borrowing on the Business Day that is one Business Day prior to the Funding Date, then each Lender shall make the amount of such Lender's Pro Rata Share of the requested Borrowing available to Agent in immediately available funds, to Agent's Account, not later than 11:00 a.m. on the Business Day that is the requested Funding Date. After Agent's receipt of the proceeds of such Revolving Loans from the Lenders, Agent shall make the proceeds thereof available to Borrowers on the applicable Funding Date by transferring immediately available funds equal to such proceeds received by Agent to the Designated Account; provided, that subject to the provisions of Section 2.3(d)(ii), no Lender shall have an obligation to make any Revolving Loan, if (1) one or more of the applicable conditions precedent set forth in Section 3 will not be satisfied on the requested Funding Date for the applicable Borrowing unless such condition has been waived, or (2) the requested Borrowing would exceed the Availability on such Funding Date.

(ii) Unless Agent receives notice from a Lender prior to 10:30 a.m. on the Business Day that is the requested Funding Date relative to a requested Borrowing as to which Agent has notified the Lenders of a requested Borrowing that such Lender will not make available as and when required hereunder to Agent for the account of Borrowers the amount of that Lender's Pro Rata Share of the Borrowing, Agent may assume that each Lender has made or will make such amount available to Agent in immediately available funds on the Funding Date and Agent may (but shall not be so required), in reliance upon such assumption, make available to Borrowers a corresponding amount. If, on the requested Funding Date, any Lender shall not have remitted the full amount that it is required to make available to Agent in immediately available funds and if Agent has made available to Borrowers such amount on the requested Funding Date, then such Lender shall make the amount of such Lender's Pro Rata Share of the requested Borrowing available to Agent in immediately available funds, to Agent's Account, no later than 11:00 a.m. on the Business Day that is the first Business Day after the requested Funding Date (in which case, the interest accrued on such Lender's portion of such Borrowing for the Funding Date shall be for Agent's separate account). If any Lender shall not remit the full amount that it is required to make available to Agent in immediately available funds as and when required hereby and if Agent has made available to Borrowers such amount, then that Lender shall be obligated to immediately remit such amount to Agent, together with interest at the Defaulting Lender Rate for each day until the date on which such amount is so remitted. A notice submitted by Agent to any Lender with respect to amounts owing under this Section 2.3(c)(ii) shall be conclusive, absent manifest error. If the amount that a Lender is required to remit is made available to Agent, then such payment to Agent shall constitute such Lender's Revolving Loan for all purposes of this Agreement. If such amount is not made available to Agent on the Business Day following the Funding Date, Agent will notify Administrative Borrower of such failure to fund and, upon demand by Agent, Borrowers shall pay such amount to Agent for Agent's account, together with interest thereon for each day elapsed since the date of such Borrowing, at a rate *per annum* equal to the interest rate applicable at the time to the Revolving Loans composing such Borrowing.

(d) **Protective Advances and Optional Overadvances.**

(i) Any contrary provision of this Agreement or any other Loan Document notwithstanding (but subject to Section 2.3(d)(iv)), at any time (A) after the occurrence and during the continuance of a Default or an Event of Default, or (B) that any of the other applicable conditions precedent set forth in Section 3 are not satisfied, Agent hereby is authorized by Borrowers and the Lenders, from time to time, in Agent's sole discretion, to make Revolving Loans to, or for the benefit of, Borrowers, on behalf of the Revolving Lenders, that Agent, in its Permitted Discretion, deems necessary or desirable (1) to preserve or protect the Collateral, or any portion thereof, or (2) to enhance the likelihood of repayment of the Obligations (other than the Bank Product Obligations) (the Revolving Loans described in this Section 2.3(d)(i) shall be referred to as "Protective Advances").

(ii) Any contrary provision of this Agreement or any other Loan Document notwithstanding, the Lenders hereby authorize Agent or Swing Lender, as applicable, and either Agent or Swing Lender, as applicable, may, but is not obligated to, knowingly and intentionally, continue to make Revolving Loans (including Swing Loans) to Borrowers notwithstanding that an Overadvance exists or would be created thereby, so long as (A) after giving effect to such Revolving Loans, the outstanding Revolver Usage does not exceed the Borrowing Base by more than 10% of the Borrowing Base, and (B) subject to Section 2.3(d)(iv) below, after giving effect to such Revolving Loans, the outstanding Revolver Usage (except for and excluding amounts charged to the Loan Account for interest, fees, or Lender Group Expenses) does not exceed the Maximum Revolver Amount. In the event Agent obtains actual knowledge that the Revolver Usage exceeds the amounts permitted by this Section 2.3(d), regardless of the amount of, or reason for, such excess, Agent shall notify the Lenders as soon as practicable (and prior to making any (or any additional) intentional Overadvances (except for and excluding amounts charged to the Loan Account for interest, fees, or Lender Group Expenses) unless Agent determines that prior notice would result in imminent harm to the Collateral or its value, in which case Agent may make such Overadvances and provide notice as promptly as practicable thereafter), and the Lenders with Revolver Commitments thereupon shall, together with Agent, jointly determine the terms of arrangements that shall be implemented with Borrowers intended to reduce, within a reasonable time, the outstanding principal amount of the Revolving Loans to Borrowers to an amount permitted by the preceding sentence. In such circumstances, if any Lender with a Revolver Commitment objects to the proposed terms of reduction or repayment of any Overadvance, the terms of reduction or repayment thereof shall be implemented according to the determination of the Required Lenders. The foregoing provisions are meant for the benefit of the Lenders and Agent and are not meant for the benefit of Borrowers, which shall continue to be bound by the provisions of Section 2.4(e)(i).

(iii) Each Protective Advance and each Overadvance (each, an "Extraordinary Advance") shall be deemed to be a Revolving Loan hereunder, except that no Extraordinary Advance shall be eligible to be a SOFR Loan. Prior to Settlement of any Extraordinary Advance, all payments with respect thereto, including interest thereon, shall be payable to Agent solely for its own account. Each Revolving Lender shall be obligated to settle with Agent as provided in Section 2.3(e) (or Section 2.3(g), as applicable) for the amount of such Lender's Pro Rata Share of any Extraordinary Advance. The Extraordinary Advances shall be repayable on demand, secured by Agent's Liens, constitute Obligations hereunder, and bear interest at the rate applicable from time to time to Revolving Loans that are Base Rate Loans. The provisions of this Section 2.3(d) are for the exclusive benefit of Agent, Swing Lender, and the Lenders and are not intended to benefit Borrowers (or any other Loan Party) in any way.

(iv) Notwithstanding anything contained in this Agreement or any other Loan Document to the contrary, no Extraordinary Advance may be made by Agent if such Extraordinary Advance would cause the aggregate Revolver Usage to exceed the Maximum Revolver Amount or any Lender's Pro Rata Share of the Revolver Usage to exceed such Lender's Revolver Commitments; provided that Agent may make Extraordinary Advances in excess of the foregoing limitations so long as such Extraordinary Advances that cause the aggregate Revolver Usage to exceed the Maximum Revolver Amount or a Lender's Pro Rata Share of the Revolver Usage to exceed such Lender's Revolver Commitments are for Agent's sole and separate account and not for the account of any Lender. No Lender shall have an obligation to settle with Agent for such Extraordinary Advances that cause the aggregate Revolver Usage to exceed the Maximum Revolver Amount or a Lender's Pro Rata Share of the Revolver Usage to exceed such Lender's Revolver Commitments as provided in Section 2.3(e) (or Section 2.3(g), as applicable).

(e) **Settlement.** It is agreed that each Lender's funded portion of the Revolving Loans is intended by the Lenders to equal, at all times, such Lender's Pro Rata Share of the outstanding Revolving Loans. Such agreement notwithstanding, Agent, Swing Lender, and the other Lenders agree (which agreement shall not be for the benefit of Borrowers) that in order to facilitate the administration of this Agreement and the other Loan Documents, settlement among the Lenders as to the Revolving Loans (including Swing Loans and Extraordinary Advances) shall take place on a periodic basis in accordance with the following provisions:

(i) Agent shall request settlement ("Settlement") with the Lenders on a weekly basis, or on a more frequent basis if so determined by Agent in its sole discretion (1) on behalf of Swing Lender, with respect to the outstanding Swing Loans, (2) for itself, with respect to the outstanding Extraordinary Advances, and (3) with respect to any Loan Party's or any of their Subsidiaries' payments or other amounts received, as to each by notifying the Lenders by telecopy, telephone, or other similar form of transmission, of such requested Settlement, no later than 3:00 p.m. on the Business Day immediately prior to the date of such requested Settlement (the date of such requested Settlement being the "Settlement Date"). Such notice of a Settlement Date shall include a summary statement of the amount of outstanding Revolving Loans (including Swing Loans and Extraordinary Advances) for the period since the prior Settlement Date. Subject to the terms and conditions contained herein (including Section 2.3(g)): (y) if the amount of the Revolving Loans (including Swing Loans and Extraordinary Advances) made by a Lender that is not a Defaulting Lender exceeds such Lender's Pro Rata Share of the Revolving Loans (including Swing Loans and Extraordinary Advances) as of a Settlement Date, then Agent shall, by no later than 1:00 p.m. on the Settlement Date, transfer in immediately available funds to a Deposit Account of such Lender (as such Lender may designate), an amount such that each such Lender shall, upon receipt of such amount, have as of the Settlement Date, its Pro Rata Share of the Revolving Loans (including Swing Loans and Extraordinary Advances), and (z) if the amount of the Revolving Loans (including Swing Loans and Extraordinary Advances) made by a Lender is less than such Lender's Pro Rata Share of the Revolving Loans (including Swing Loans and Extraordinary Advances) as of a Settlement Date, such Lender shall no later than 1:00 p.m. on the Settlement Date transfer in immediately available funds to Agent's Account, an amount such that each such Lender shall, upon transfer of such amount, have as of the Settlement Date, its Pro Rata Share of the Revolving Loans (including Swing Loans and Extraordinary Advances). Such amounts made available to Agent under clause (z) of the immediately preceding sentence shall be applied against the amounts of the applicable Swing Loans or Extraordinary Advances and, together with the portion of such Swing Loans or Extraordinary Advances representing Swing Lender's Pro Rata Share thereof, shall constitute Revolving Loans of such Lenders. If any such amount is not made available to Agent by any Lender on the Settlement Date applicable thereto to the extent required by the terms hereof, Agent shall be entitled to recover for its account such amount on demand from such Lender together with interest thereon at the Defaulting Lender Rate.

(ii) In determining whether a Lender's balance of the Revolving Loans (including Swing Loans and Extraordinary Advances) is less than, equal to, or greater than such Lender's Pro Rata Share of the Revolving Loans (including Swing Loans and Extraordinary Advances) as of a Settlement Date, Agent shall, as part of the relevant Settlement, apply to such balance the portion of payments actually received in good funds by Agent with respect to principal, interest, fees payable by Borrowers and allocable to the Lenders hereunder, and proceeds of Collateral.

(iii) Between Settlement Dates, Agent, to the extent Extraordinary Advances or Swing Loans are outstanding, may pay over to Agent or Swing Lender, as applicable, any payments or other amounts received by Agent, that in accordance with the terms of this Agreement would be applied to the reduction of the Revolving Loans, for application to the Extraordinary Advances or Swing Loans. Between Settlement Dates, Agent, to the extent no Extraordinary Advances or Swing Loans are outstanding, may pay over to Swing Lender any payments or other amounts received by Agent, that in accordance with the terms of this Agreement would be applied to the reduction of the Revolving Loans, for application to Swing Lender's Pro Rata Share of the Revolving Loans. If, as of any Settlement Date, payments or other amounts of the Loan Parties or their Subsidiaries received since the then immediately preceding Settlement Date have been applied to Swing Lender's Pro Rata Share of the Revolving Loans other than to Swing Loans, as provided for in the previous sentence, Swing Lender shall pay to Agent for the accounts of the Lenders, and Agent shall pay to the Lenders (other than a Defaulting Lender if Agent has implemented the provisions of Section 2.3(g)), to be applied to the outstanding Revolving Loans of such Lenders, an amount such that each such Lender shall, upon receipt of such amount, have, as of such Settlement Date, its Pro Rata Share of the Revolving Loans. During the period between Settlement Dates, Swing Lender with respect to Swing Loans, Agent with respect to Extraordinary Advances, and each Lender with respect to the Revolving Loans other than Swing Loans and Extraordinary Advances, shall be entitled to interest at the applicable rate or rates payable under this Agreement on the daily amount of funds employed by Swing Lender, Agent, or the Lenders, as applicable.

(iv) Anything in this Section 2.3(e) to the contrary notwithstanding, in the event that a Lender is a Defaulting Lender, Agent shall be entitled to refrain from remitting settlement amounts to the Defaulting Lender and, instead, shall be entitled to elect to implement the provisions set forth in Section 2.3(g).

(f) **Notation.** Consistent with Section 13.1(h), Agent, as a non-fiduciary agent for Borrowers, shall maintain a register showing the principal amount and stated interest of the Revolving Loans ~~(and portion of the Term Loan, as applicable)~~ owing to each Lender, including the Swing Loans owing to Swing Lender, and Extraordinary Advances owing to Agent, and the interests therein of each Lender, from time to time and such register shall, absent manifest error, conclusively be presumed to be correct and accurate.

(g) **Defaulting Lenders.**

(i) Notwithstanding the provisions of Section 2.4(b)(iii), Agent shall not be obligated to transfer to a Defaulting Lender any payments made by Borrowers to Agent for the Defaulting Lender's benefit or any proceeds of Collateral that would otherwise be remitted hereunder to the Defaulting Lender, and, in the absence of such transfer to the Defaulting Lender, Agent shall transfer any such payments (A) first, to Agent to the extent of any Extraordinary Advances that were made by Agent and that were required to be, but were not, paid by Defaulting Lender, (B) second, to Swing Lender to the extent of any Swing Loans that were made by Swing Lender and that were required to be, but were not, paid by the Defaulting Lender, (C) third, to Issuing Bank, to the extent of the portion of a Letter of Credit Disbursement that was required to be, but was not, paid by the Defaulting Lender, (D) fourth, to each Non-Defaulting Lender ratably in accordance with their Commitments (but, in each case, only to the extent that such Defaulting Lender's portion of a Revolving Loan (or other funding obligation) was funded by such other Non-Defaulting Lender), (E) fifth, in Agent's sole discretion, to a suspense account maintained by Agent, the proceeds of which shall be retained by Agent and may be made available to be re-advanced to or for the benefit of Borrowers (upon the request of Borrowers and subject to the conditions set forth in Section 3.2) as if such Defaulting Lender had made its portion of Revolving Loans (or other funding obligations) hereunder, and (F) sixth, from and after the date on which all other Obligations have been paid in full, to such Defaulting Lender in accordance with tier (L) of Section 2.4(b)(iii). Subject to the foregoing, Agent may hold and, in its discretion, re-lend to Borrowers for the account of such Defaulting Lender the amount of all such payments received and retained by Agent for the account of such Defaulting Lender. Solely for the purposes of voting or consenting to matters with respect to the Loan Documents (including the calculation of Pro Rata Share in connection therewith) and for the purpose of calculating the fee payable under Section 2.10(b), such Defaulting Lender shall be deemed not to be a "Lender" and such Lender's Commitment shall be deemed to be zero; provided, that the foregoing shall not apply to any of the matters governed by Section 14.1(a)(i) through (iii). The provisions of this Section 2.3(g) shall remain effective with respect to such Defaulting Lender until the earlier of (y) the date on which all of the Non-Defaulting Lenders, Agent, Issuing Bank, and Borrowers shall have waived, in writing, the application of this Section 2.3(g) to such Defaulting Lender, or (z) the date on which such Defaulting Lender makes payment of all amounts that it was obligated to fund hereunder, pays to Agent all amounts owing by Defaulting Lender in respect of the amounts that it was obligated to fund hereunder, and, if requested by Agent, provides adequate assurance of its ability to perform its future obligations hereunder (on which earlier date, so long as no Event of Default has occurred and is continuing, any remaining cash collateral held by Agent pursuant to Section 2.3(g)(ii) shall be released to Borrowers). The operation of this Section 2.3(g) shall not be construed to increase or otherwise affect the Commitment of any Lender, to relieve or excuse the performance by such Defaulting Lender or any other Lender of its duties and obligations hereunder, or to relieve or excuse the performance by any Borrower of its duties and obligations hereunder to Agent, Issuing Bank, or to the Lenders other than such Defaulting Lender. Any failure by a Defaulting Lender to fund amounts that it was obligated to fund hereunder shall constitute a material breach by such Defaulting Lender of this Agreement and shall entitle Borrowers, at their option, upon written notice to Agent, to arrange for a substitute Lender to assume the Commitment of such Defaulting Lender, such substitute Lender to be reasonably acceptable to Agent. In connection with the arrangement of such a substitute Lender, the Defaulting Lender shall have no right to refuse to be replaced hereunder, and agrees to execute and deliver a completed form of Assignment and Acceptance in favor of the substitute Lender (and agrees that it shall be deemed to have executed and delivered such document if it fails to do so) subject only to being paid its share of the outstanding Obligations (other than Bank Product Obligations, but including (1) all interest, fees, and other amounts that may be due and payable in respect thereof, and (2) an assumption of its Pro Rata Share of its participation in the Letters of Credit); provided, that any such assumption of the Commitment of such Defaulting Lender shall not be deemed to constitute a waiver of any of the Lender Groups' or Borrowers' rights or remedies against any such Defaulting Lender arising out of or in relation to such failure to fund. In the event of a direct conflict between the priority provisions of this Section 2.3(g) and any other provision contained in this Agreement or any other Loan Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of this Section 2.3(g) shall control and govern.

(ii) If any Swing Loan or Letter of Credit is outstanding at the time that a Lender becomes a Defaulting Lender then:

(A) such Defaulting Lender's Swing Loan Exposure and Letter of Credit Exposure shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Pro Rata Shares but only to the extent (x) the sum of all Non-Defaulting Lenders' Pro Rata Share of Revolver Usage plus such Defaulting Lender's Swing Loan Exposure and Letter of Credit Exposure does not exceed the total of all Non-Defaulting Lenders' Revolver Commitments and (y) the conditions set forth in Section 3.2 are satisfied at such time;

(B) if the reallocation described in clause (A) above cannot, or can only partially, be effected, Borrowers shall within one Business Day following notice by the Agent (x) first, prepay such Defaulting Lender's Swing Loan Exposure (after giving effect to any partial reallocation pursuant to clause (A) above), and (y) second, cash collateralize such Defaulting Lender's Letter of Credit Exposure (after giving effect to any partial reallocation pursuant to clause (A) above), pursuant to a cash collateral agreement to be entered into in form and substance reasonably satisfactory to the Agent, for so long as such Letter of Credit Exposure is outstanding; provided, that Borrowers shall not be obligated to cash collateralize any Defaulting Lender's Letter of Credit Exposure if such Defaulting Lender is also Issuing Bank;

(C) if Borrowers cash collateralize any portion of such Defaulting Lender's Letter of Credit Exposure pursuant to this Section 2.3(g)(ii), Borrowers shall not be required to pay any Letter of Credit Fees to Agent for the account of such Defaulting Lender pursuant to Section 2.6(b) with respect to such cash collateralized portion of such Defaulting Lender's Letter of Credit Exposure during the period such Letter of Credit Exposure is cash collateralized;

(D) to the extent the Letter of Credit Exposure of the Non-Defaulting Lenders is reallocated pursuant to this Section 2.3(g)(ii), then the Letter of Credit Fees payable to the Non-Defaulting Lenders pursuant to Section 2.6(b) shall be adjusted in accordance with such Non-Defaulting Lenders' Letter of Credit Exposure;

(E) to the extent any Defaulting Lender's Letter of Credit Exposure is neither cash collateralized nor reallocated pursuant to this Section 2.3(g)(ii), then, without prejudice to any rights or remedies of Issuing Bank or any Lender hereunder, all Letter of Credit Fees that would have otherwise been payable to such Defaulting Lender under Section 2.6(b) with respect to such portion of such Letter of Credit Exposure shall instead be payable to Issuing Bank until such portion of such Defaulting Lender's Letter of Credit Exposure is cash collateralized or reallocated;

(F) so long as any Lender is a Defaulting Lender, the Swing Lender shall not be required to make any Swing Loan and Issuing Bank shall not be required to issue, amend, or increase any Letter of Credit, in each case, to the extent (x) the Defaulting Lender's Pro Rata Share of such Swing Loans or Letter of Credit cannot be reallocated pursuant to this Section 2.3(g)(ii), or (y) the Swing Lender or Issuing Bank, as applicable, has not otherwise entered into arrangements reasonably satisfactory to the Swing Lender or Issuing Bank, as applicable, and Borrowers to eliminate the Swing Lender's or Issuing Bank's risk with respect to the Defaulting Lender's participation in Swing Loans or Letters of Credit; and

(G) Agent may release any cash collateral provided by Borrowers pursuant to this Section 2.3(g)(ii) to Issuing Bank and Issuing Bank may apply any such cash collateral to the payment of such Defaulting Lender's Pro Rata Share of any Letter of Credit Disbursement that is not reimbursed by Borrowers pursuant to Section 2.11(d). Subject to Section 17.14, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(h) **Independent Obligations.** All Revolving Loans (other than Swing Loans and Extraordinary Advances) shall be made by the Lenders contemporaneously and in accordance with their Pro Rata Shares. It is understood that (i) no Lender shall be responsible for any failure by any other Lender to perform its obligation to make any Revolving Loan (or other extension of credit) hereunder, nor shall any Commitment of any Lender be increased or decreased as a result of any failure by any other Lender to perform its obligations hereunder, and (ii) no failure by any Lender to perform its obligations hereunder shall excuse any other Lender from its obligations hereunder.

2.4. **Payments; Reductions of Commitments; Prepayments.**

(a) **Payments by Borrowers.**

(i) Except as otherwise expressly provided herein, all payments by Borrowers shall be made to Agent's Account for the account of the Lender Group and shall be made in immediately available funds, no later than 2:30 p.m. on the date specified herein; provided that, for the avoidance of doubt, any payments deposited into a Controlled Account shall be deemed not to be received by Agent on any Business Day unless immediately available funds have been credited to Agent's Account prior to 2:30 p.m. on such Business Day. Any payment received by Agent in immediately available funds in Agent's Account later than 2:30 p.m. shall be deemed to have been received (unless Agent, in its sole discretion, elects to credit it on the date received) on the following Business Day and any applicable interest or fee shall continue to accrue until such following Business Day.

(ii) Unless Agent receives notice from Borrowers prior to the date on which any payment is due to the Lenders that Borrowers will not make such payment in full as and when required, Agent may assume that Borrowers have made (or will make) such payment in full to Agent on such date in immediately available funds and Agent may (but shall not be so required), in reliance upon such assumption, distribute to each Lender on such due date an amount equal to the amount then due such Lender. If and to the extent Borrowers do not make such payment in full to Agent on the date when due, each Lender severally shall repay to Agent on demand such amount distributed to such Lender, together with interest thereon at the Defaulting Lender Rate for each day from the date such amount is distributed to such Lender until the date repaid.

(b) **Apportionment and Application.**

(i) So long as no Application Event has occurred and is continuing and except as otherwise provided herein with respect to Defaulting Lenders, all principal and interest payments received by Agent shall be apportioned ratably among the Lenders (according to the unpaid principal balance of the Obligations to which such payments relate held by each Lender) and all payments of fees and expenses received by Agent (other than fees or expenses that are for Agent's separate account or for the separate account of Issuing Bank) shall be apportioned ratably among the Lenders having a Pro Rata Share of the type of Commitment or Obligation to which a particular fee or expense relates.

(ii) Subject to Section 2.4(b)(v), Section 2.4(d)(ii), and Section 2.4(e), all payments to be made hereunder by Borrowers shall be remitted to Agent and all such payments, and all proceeds of Collateral received by Agent, shall be applied, so long as no Application Event has occurred and is continuing and except as otherwise provided herein with respect to Defaulting Lenders, to reduce the balance of the Revolving Loans outstanding and, thereafter, to Borrowers (to be wired to the Designated Account) or such other Person entitled thereto under applicable law.

(iii) At any time that an Application Event has occurred and is continuing and except as otherwise provided herein with respect to Defaulting Lenders, all payments remitted to Agent and all proceeds of Collateral received by Agent shall be applied as follows:

(A) first, to pay any Lender Group Expenses (including cost or expense reimbursements) or indemnities then due to Agent under the Loan Documents and to pay interest and principal on Extraordinary Advances that are held solely by Agent pursuant to the terms of Section 2.4(d)(iv), until paid in full,

(B) second, to pay any fees or premiums then due to Agent under the Loan Documents, until paid in full,

(C) third, to pay interest due in respect of all Protective Advances, until paid in full,

(D) fourth, to pay the principal of all Protective Advances, until paid in full,

(E) fifth, ratably, to pay any Lender Group Expenses (including cost or expense reimbursements) or indemnities then due to any of the Lenders under the Loan Documents, until paid in full,

(F) sixth, ratably, to pay any fees or premiums then due to any of the Lenders under the Loan Documents, until paid in full,

(G) seventh, to pay interest accrued in respect of the Swing Loans, until paid in full,

(H) eighth, to pay the principal of all Swing Loans, until paid in full,

(I) ninth, ratably, to pay interest accrued in respect of the Revolving Loans (other than Protective Advances and Swing Loans) ~~and the Term Loan~~, until paid in full,

(J) tenth, ratably

i. ratably, to pay the principal of all Revolving Loans (other than Protective Advances and Swing Loans) ~~and the Term Loan~~, until paid in full,

ii. to Agent, to be held by Agent, for the benefit of Issuing Bank (and for the ratable benefit of each of the Lenders that have an obligation to pay to Agent, for the account of Issuing Bank, a share of each Letter of Credit Disbursement), as cash collateral in an amount up to 105% of the Letter of Credit Usage (to the extent permitted by applicable law, such cash collateral shall be applied to the reimbursement of any Letter of Credit Disbursement as and when such disbursement occurs and, if a Letter of Credit expires undrawn, the cash collateral held by Agent in respect of such Letter of Credit shall, to the extent permitted by applicable law, be reapplied pursuant to this Section 2.4(b)(iii), beginning with tier (A) hereof),

iii. ratably, to (y) the Bank Product Providers based upon amounts then certified by each applicable Bank Product Provider to Agent (in form and substance satisfactory to Agent) to be due and payable to such Bank Product Provider on account of Bank Product Obligations, and (z) with any balance to be paid to Agent, to be held by Agent, for the ratable benefit of the Bank Product Providers, as cash collateral (which cash collateral may be released by Agent to the applicable Bank Product Provider and applied by such Bank Product Provider to the payment or reimbursement of any amounts due and payable with respect to Bank Product Obligations owed to the applicable Bank Product Provider as and when such amounts first become due and payable and, if and at such time as all such Bank Product Obligations are paid or otherwise satisfied in full, the cash collateral held by Agent in respect of such Bank Product Obligations shall be reapplied pursuant to this Section 2.4(b)(iii), beginning with tier (A) hereof,

(K) eleventh, to pay any other Obligations other than Obligations owed to Defaulting Lenders,

(L) twelfth, ratably to pay any Obligations owed to Defaulting Lenders; and

(M) thirteenth, to Borrowers (to be wired to the Designated Account) or such other Person entitled thereto under

applicable law.

(iv) Notwithstanding the foregoing, no payments remitted to Agent or proceeds of Collateral shall be applied to any Excluded Swap Obligation. Agent promptly shall distribute to each Lender, pursuant to the applicable wire instructions received from each Lender in writing, such funds as it may be entitled to receive, subject to a Settlement delay as provided in Section 2.3(e).

(v) In each instance, so long as no Application Event has occurred and is continuing, Section 2.4(b)(ii) shall not apply to any payment made by Borrowers to Agent and specified by Borrowers to be for the payment of specific Obligations then due and payable (or prepayable) under any provision of this Agreement or any other Loan Document.

(vi) For purposes of Section 2.4(b)(iii), "paid in full" of a type of Obligation means payment in cash or immediately available funds of all amounts owing on account of such type of Obligation, including interest accrued after the commencement of any Insolvency Proceeding, default interest, interest on interest, and expense reimbursements, irrespective of whether any of the foregoing would be or is allowed or disallowed in whole or in part in any Insolvency Proceeding.

(vii) In the event of a direct conflict between the priority provisions of this Section 2.4 and any other provision contained in this Agreement or any other Loan Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, if the conflict relates to the provisions of Section 2.3(g) and this Section 2.4, then the provisions of Section 2.3(g) shall control and govern, and if otherwise, then the terms and provisions of this Section 2.4 shall control and govern.

~~(c) Reduction of Commitments:~~

(c) ~~(i)~~ **Reduction of Revolver Commitments.** The Revolver Commitments shall terminate on the Maturity Date or earlier termination thereof pursuant to the terms of this Agreement. Borrowers may reduce the Revolver Commitments, without premium or penalty, to an amount (which may be zero) not less than the sum of (A) the Revolver Usage as of such date, plus (B) the principal amount of all Revolving Loans not yet made as to which a request has been given by Borrowers under Section 2.3(a), plus (C) the amount of all Letters of Credit not yet issued as to which a request has been given by Borrowers pursuant to Section 2.11(a). Each such reduction shall be in an amount which is not less than \$5,000,000 (unless the Revolver Commitments are being reduced to zero and the amount of the Revolver Commitments in effect immediately prior to such reduction are less than \$5,000,000), shall be made by providing not less than ten Business Days prior written notice to Agent, and shall be irrevocable. The Revolver Commitments, once reduced, may not be increased. Each such reduction of the Revolver Commitments shall reduce the Revolver Commitments of each Lender proportionately in accordance with its ratable share thereof. In connection with any reduction in the Revolver Commitments prior to the Maturity Date, if any Loan Party or any of its Subsidiaries owns any Margin Stock, Borrowers shall deliver to Agent an updated Form U-1 (with sufficient additional originals thereof for each Lender), duly executed and delivered by the Borrowers, together with such other documentation as Agent shall reasonably request, in order to enable Agent and the Lenders to comply with any of the requirements under Regulations T, U or X of Board of Governors.

~~(ii) Term Loan Commitments. The Term Loan Commitments shall terminate upon the making of the Term Loan.~~

(d) **Optional Prepayments.**

~~(i) Revolving Loans.~~ Borrowers may prepay the principal of any Revolving Loan at any time in whole or in part, without premium or penalty.

~~(ii) Term Loan. Borrowers may, upon at least ten Business Days prior written notice to Agent, prepay the principal of the Term Loan, in whole or in part, without premium or penalty. Each prepayment made pursuant to this Section 2.4(d)(ii) shall be accompanied by the payment of accrued interest to the date of such payment on the amount prepaid. Each such prepayment shall be applied against the remaining installments of principal due on the Term Loan on a pro rata basis (for the avoidance of doubt, any amount that is due and payable on the Maturity Date shall constitute an installment).~~

(e) **Mandatory Prepayments.**

(i) **Borrowing Base.** If, at any time, (A) the Revolver Usage on such date exceeds (B) the lesser of (x) the Borrowing Base reflected in the Borrowing Base Certificate most recently delivered by Borrowers to Agent, or (y) the Maximum Revolver Amount, in all cases as adjusted for Reserves established by Agent in accordance with Section 2.1(c), then Borrowers shall immediately prepay the Obligations in accordance with Section 2.4(f)(i) in an aggregate amount equal to the amount of such excess.

(ii) **Dispositions.** Within three Business Days of the date of receipt by any Loan Party or any of its Subsidiaries of the Net Cash Proceeds of any voluntary or involuntary sale or disposition of assets of any Loan Party or any of its Subsidiaries (including Net Cash Proceeds of insurance or arising from casualty losses or condemnations and payments in lieu thereof, but excluding Net Cash Proceeds from sales or dispositions which qualify as Permitted Dispositions (other than under clauses (g), (h), (q) or (v) of the definition of Permitted Dispositions)), Borrowers shall prepay the outstanding principal amount of the Obligations in accordance with Section 2.4(f)(ii) in an amount equal to 100% of such Net Cash Proceeds received by such Person in connection with such sales or dispositions; provided, that so long as (A) no Default or Event of Default shall have occurred and is continuing or would result therefrom, (B) Borrowers shall have given Agent prior written notice of Borrowers' intention to apply such monies to the costs of replacement, substitution or restoration of the properties or assets that are the subject of such sale or disposition or casualty loss or condemnation, or the cost of purchase or construction of other assets useful in the business of such Loan Party or its Subsidiaries (in any case, other than current assets except to the extent the assets subject to the applicable Disposition were current assets), (C) the monies are held in a Deposit Account in which Agent has a perfected first-priority (subject to Permitted Liens to the extent any such Liens would have priority over the Agent's Liens pursuant to any applicable law or an agreement expressly permitted hereunder to have such senior priority) security interest, and (D) such Loan Party or its Subsidiary, as applicable, completes such replacement, restoration, purchase, or construction within 180 days after the initial receipt of such monies, then the Loan Party or such Loan Party's Subsidiary whose assets were the subject of such disposition or casualty loss or condemnation shall have the option to apply such monies to the costs of replacement, substitution or restoration or casualty loss or condemnation of the assets that are the subject of such sale or disposition or casualty loss or condemnation or the costs of purchase or construction of other assets useful in the business of such Loan Party or such Subsidiary unless and to the extent that such applicable period shall have expired without such replacement, restoration, purchase, or construction being made or completed, in which case, any amounts remaining in the Deposit Account referred to in clause (C) above shall be paid to Agent and applied in accordance with Section 2.4(f)(ii); provided, that no Loan Party nor any of its Subsidiaries shall have the right to use such Net Cash Proceeds to make such replacements, restorations, purchases, or construction in excess of \$5,000,000 in any given fiscal year. Nothing contained in this Section 2.4(e)(ii) shall permit any Loan Party or any of its Subsidiaries to sell or otherwise dispose of any assets other than in accordance with Section 6.4.

(iii) **Extraordinary Receipts.** Within three Business Days of the date of receipt by any Loan Party or any of its Subsidiaries of any Extraordinary Receipts, Borrowers shall prepay the outstanding principal amount of the Obligations in accordance with Section 2.4(f)(ii) in an amount equal to 100% of such Extraordinary Receipts, net of any reasonable expenses incurred in collecting such Extraordinary Receipts that are properly attributable to such transaction, to the extent the aggregate amount of Extraordinary Receipts received by the Loan Parties and their Subsidiaries (and not paid to Agent as a prepayment of the Obligations) exceeds \$5,000,000.

(iv) **Indebtedness.** Within three Business Days of the date of incurrence by any Loan Party or any of its Subsidiaries of any Indebtedness (other than Permitted Indebtedness), Borrowers shall prepay the outstanding principal amount of the Obligations in accordance with Section 2.4(f)(ii) in an amount equal to 100% of the Net Cash Proceeds received by such Person in connection with such incurrence. The provisions of this Section 2.4(e)(iv) shall not be deemed to be implied consent to any such incurrence otherwise prohibited by the terms of this Agreement.

(f) **Application of Payments.**

(i) Each prepayment pursuant to Section 2.4(e)(i) shall, (1) so long as no Application Event shall have occurred and be continuing, be applied, first, to the outstanding principal amount of the Revolving Loans until paid in full, and second, to cash collateralize the Letters of Credit in an amount equal to 105% of the then outstanding Letter of Credit Usage, and (2) if an Application Event shall have occurred and be continuing, be applied in the manner set forth in Section 2.4(b)(iii).

(ii) Each prepayment pursuant to Section 2.4(e)(ii), 2.4(e)(iii) or 2.4(e)(iv) shall (A) so long as no Application Event shall have occurred and be continuing, be applied, *first*, to the outstanding principal amount of the ~~Term Loan until paid in full, second, to the outstanding principal amount of the~~ Revolving Loans (without a corresponding permanent reduction in the Maximum Revolver Amount), until paid in full, and ~~third~~second, to cash collateralize the Letters of Credit in an amount equal to 105% of the then outstanding Letter of Credit Usage (without a corresponding permanent reduction in the Maximum Revolver Amount), and (B) if an Application Event shall have occurred and be continuing, be applied in the manner set forth in Section 2.4(b)(iii). ~~Each such prepayment of the Term Loan shall be applied against the remaining installments of principal of the Term Loan on a pro rata basis (for the avoidance of doubt, any amount that is due and payable on the Maturity Date shall constitute an installment).~~

2.5. **Promise to Pay; Promissory Notes.**

(a) Borrowers agree to pay the Lender Group Expenses on the earlier of (i) the first day of the month following the date on which the applicable Lender Group Expenses were first incurred, or (ii) the date on which demand therefor is made by Agent (it being acknowledged and agreed that any charging of such costs, expenses or Lender Group Expenses to the Loan Account pursuant to the provisions of Section 2.6(d) shall be deemed to constitute a demand for payment thereof for the purposes of this subclause (ii)). Borrowers promise to pay all of the Obligations (including principal, interest, premiums, if any, fees, costs, and expenses payable under the Loan Documents (including Lender Group Expenses)) in full on the Maturity Date or, if earlier, on the date on which the Obligations (other than the Bank Product Obligations) become due and payable pursuant to the terms of this Agreement. Borrowers agree that their obligations contained in the first sentence of this Section 2.5(a) shall survive payment or satisfaction in full of all other Obligations.

(b) Any Lender may request that any portion of its Commitments or the Loans made by it be evidenced by one or more promissory notes. In such event, Borrowers shall execute and deliver to such Lender the requested promissory notes payable to the order of such Lender in a form furnished by Agent and reasonably satisfactory to Borrowers. Thereafter, the portion of the Commitments and Loans evidenced by such promissory notes and interest thereon shall at all times be represented by one or more promissory notes in such form payable to the order of the payee named therein.

2.6. **Interest Rates and Letter of Credit Fee: Rates, Payments, and Calculations.**

(a) **Interest Rates.** Except as provided in Section 2.6(c) and Section 2.12(d), all Obligations (except for undrawn Letters of Credit) that have been charged to the Loan Account pursuant to the terms hereof shall bear interest as follows:

- (i) if the relevant Obligation is a SOFR Loan, at a *per annum* rate equal to Term SOFR plus the SOFR Margin, and
- (ii) otherwise, at a *per annum* rate equal to the Base Rate plus the Base Rate Margin.

(b) **Letter of Credit Fee.** Borrowers shall pay Agent (for the ratable benefit of the Revolving Lenders), a Letter of Credit fee (the "Letter of Credit Fee") (which fee shall be in addition to the fronting fees and commissions, other fees, charges and expenses set forth in Section 2.11(k)) that shall accrue at a rate equal to 1.75% *per annum* times the average amount of the Letter of Credit Usage during the immediately preceding month (or portion thereof).

(c) **Default Rate.** (i) Automatically upon the occurrence and during the continuation of an Event of Default under Section 8.4 or 8.5 and (ii) upon the occurrence and during the continuation of any other Event of Default (other than an Event of Default under Section 8.4 or 8.5), at the direction of Agent or the Required Lenders, and upon written notice by Agent to Borrowers of such direction (provided, that such notice shall not be required for any Event of Default under Section 8.1), (A) all Loans and all Obligations (except for undrawn Letters of Credit) that have been charged to the Loan Account pursuant to the terms hereof shall bear interest at a *per annum* rate equal to two percentage points above the *per annum* rate otherwise applicable thereunder, effective as of the date of the occurrence of such Event of Default, and (B) the Letter of Credit Fee shall be increased to two percentage points above the *per annum* rate otherwise applicable hereunder.

(d) **Payment.** Except to the extent provided to the contrary in Section 2.10, Section 2.11(k) or Section 2.12(a), (i) all interest and all other fees payable hereunder or under any of the other Loan Documents (other than Letter of Credit Fees) shall be due and payable, in arrears, on the first day of each month, (ii) all Letter of Credit Fees payable hereunder, and all fronting fees and all commissions, other fees, charges and expenses provided for in Section 2.11(k) shall be due and payable, in arrears, on the first Business Day of each month, and (iii) all costs and expenses payable hereunder or under any of the other Loan Documents, and all other Lender Group Expenses shall be due and payable on (x) with respect to Lender Group Expenses outstanding as of the Closing Date, the Closing Date, and (y) otherwise, the earlier of (A) the first day of the month following the date on which the applicable costs, expenses, or Lender Group Expenses were first incurred, or (B) the date on which demand therefor is made by Agent (it being acknowledged and agreed that any charging of such costs, expenses or Lender Group Expenses to the Loan Account pursuant to the provisions of the following sentence shall be deemed to constitute a demand for payment thereof for the purposes of this subclause (y)). Borrowers hereby authorize Agent, from time to time without prior notice to Borrowers, to charge to the Loan Account (A) on the first day of each month, all interest accrued during the prior month on the Revolving Loans ~~and the Term Loan~~ hereunder, (B) on the first Business Day of each month, all Letter of Credit Fees accrued or chargeable hereunder during the prior month, (C) as and when incurred or accrued, all fees and costs provided for in Section 2.10(a) or (c), (D) on the first day of each calendar month the Unused Line Fee accrued during the prior calendar month pursuant to Section 2.10(b), (E) as and when due and payable, all other fees payable hereunder or under any of the other Loan Documents, (F) on the Closing Date and thereafter as and when incurred or accrued, all other Lender Group Expenses, and (G) as and when due and payable all other payment obligations payable under any Loan Document or any Bank Product Agreement (including any amounts due and payable to the Bank Product Providers in respect of Bank Products). All amounts (including interest, fees, costs, expenses, Lender Group Expenses, or other amounts payable hereunder or under any other Loan Document or under any Bank Product Agreement) charged to the Loan Account shall thereupon constitute Revolving Loans hereunder, shall constitute Obligations hereunder, and shall initially accrue interest at the rate then applicable to Revolving Loans that are Base Rate Loans (unless and until converted into SOFR Loans in accordance with the terms of this Agreement).

(e) **Computation.** All interest and fees chargeable under the Loan Documents shall be computed on the basis of a 360 day year, in each case, for the actual number of days elapsed in the period during which the interest or fees accrue. In the event the Base Rate is changed from time to time hereafter, the rates of interest hereunder based upon the Base Rate automatically and immediately shall be increased or decreased by an amount equal to such change in the Base Rate.

(f) **Intent to Limit Charges to Maximum Lawful Rate.** In no event shall the interest rate or rates payable under this Agreement, *plus* any other amounts paid in connection herewith, exceed the highest rate permissible under any law that a court of competent jurisdiction shall, in a final determination, deem applicable. Borrowers and the Lender Group, in executing and delivering this Agreement, intend legally to agree upon the rate or rates of interest and manner of payment stated within it; provided, that anything contained herein to the contrary notwithstanding, if such rate or rates of interest or manner of payment exceeds the maximum allowable under applicable law, then, *ipso facto*, as of the date of this Agreement, Borrowers are and shall be liable only for the payment of such maximum amount as is allowed by law, and payment received from Borrowers in excess of such legal maximum, whenever received, shall be applied to reduce the principal balance of the Obligations to the extent of such excess.

(g) **Term SOFR Conforming Changes.** In connection with the use or administration of Term SOFR, Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document. Agent will promptly notify Administrative Borrower and the Lenders of the effectiveness of any Conforming Changes in connection with the use or administration of Term SOFR.

2.7. **Crediting Payments.** The receipt of any payment item by Agent shall not be required to be considered a payment on account unless such payment item is a wire transfer of immediately available funds made to Agent's Account or unless and until such payment item is honored when presented for payment. Should any payment item not be honored when presented for payment, then Borrowers shall be deemed not to have made such payment. Anything to the contrary contained herein notwithstanding, any payment item shall be deemed received by Agent only if it is received into Agent's Account on a Business Day on or before 2:30 p.m. If any payment item is received into Agent's Account on a non-Business Day or after 2:30 p.m. on a Business Day (unless Agent, in its sole discretion, elects to credit it on the date received), it shall be deemed to have been received by Agent as of the opening of business on the immediately following Business Day.

2.8. **Designated Account.** Agent is authorized to make the Revolving Loans ~~and the Term Loan~~, and Issuing Bank is authorized to issue the Letters of Credit, under this Agreement based upon telephonic or other instructions received from anyone purporting to be an Authorized Person or, without instructions, if pursuant to Section 2.6(d). Borrowers agree to establish and maintain the Designated Account with the Designated Account Bank for the purpose of receiving the proceeds of the Revolving Loans requested by Borrowers and made by Agent or the Lenders hereunder. Unless otherwise agreed by Agent and Borrowers, any Revolving Loan or Swing Loan requested by Borrowers and made by Agent or the Lenders hereunder shall be made to the Designated Account.

2.9. **Maintenance of Loan Account; Statements of Obligations.** Agent shall maintain an account on its books in the name of Borrowers (the "Loan Account") on which Borrowers will be charged with ~~the Term Loan~~, all Revolving Loans (including Extraordinary Advances and Swing Loans) made by Agent, Swing Lender, or the Lenders to Borrowers or for Borrowers' account, the Letters of Credit issued or arranged by Issuing Bank for Borrowers' account, and with all other payment Obligations hereunder or under the other Loan Documents, including, accrued interest, fees and expenses, and Lender Group Expenses. In accordance with Section 2.7, the Loan Account will be credited with all payments received by Agent from Borrowers or for Borrowers' account. Agent shall make available to Borrowers monthly statements regarding the Loan Account, including the principal amount of the ~~Term Loan and the~~ Revolving Loans, interest accrued hereunder, fees accrued or charged hereunder or under the other Loan Documents, and a summary itemization of all charges and expenses constituting Lender Group Expenses accrued hereunder or under the other Loan Documents, and each such statement, absent manifest error, shall be conclusively presumed to be correct and accurate and constitute an account stated between Borrowers and the Lender Group unless, within 30 days after Agent first makes such a statement available to Borrowers, Borrowers shall deliver to Agent written objection thereto describing the error or errors contained in such statement.

2.10. **Fees.**

(a) **Agent Fees.** Borrowers shall pay to Agent, for the account of Agent, as and when due and payable under the terms of the Fee Letter, the fees set forth in the Fee Letter.

(b) **Unused Line Fee.** Borrowers shall pay to Agent, for the ratable account of the Revolving Lenders, an unused line fee (the "**Unused Line Fee**") in an amount equal to the Applicable Unused Line Fee Percentage *per annum* times the result of (i) the aggregate amount of the Revolver Commitments, *less* (ii) the Average Revolver Usage during the immediately preceding calendar month (or portion thereof), which Unused Line Fee shall be due and payable, in arrears, on the first day of each calendar month from and after the ~~Closing~~Fourth Amendment Effective Date up to the first day of the calendar month prior to the date on which the Obligations are paid in full and on the date on which the Obligations are paid in full.

(c) **Field Examination and Other Fees.** Subject to any limitations set forth in Section 5.7(c), Borrowers shall pay to Agent, field examination, appraisal, and valuation fees and charges, as and when incurred or chargeable, as follows (i) a fee of \$1,000 per day, per examiner, *plus* reasonable, documented and out-of-pocket expenses (including reasonable travel, reasonable meals, and reasonable lodging) for each field examination of any Loan Party or its Subsidiaries performed by or on behalf of Agent, and (ii) reasonable and documented fees, charges or expenses paid or incurred by Agent if it elects to employ the services of one or more third Persons to appraise the Collateral, or any portion thereof.

2.11. **Letters of Credit.**

(a) Subject to the terms and conditions of this Agreement, upon the request of Borrowers made in accordance herewith, and prior to the Maturity Date, Issuing Bank agrees to issue a requested standby Letter of Credit or a sight commercial Letter of Credit for the account of Borrowers. By submitting a request to Issuing Bank for the issuance of a Letter of Credit, Borrowers shall be deemed to have requested that Issuing Bank issue the requested Letter of Credit. Each request for the issuance of a Letter of Credit, or the amendment or extension of any outstanding Letter of Credit, shall be (i) irrevocable and made in writing by an Authorized Person, (ii) delivered to Agent and Issuing Bank via telefacsimile or other electronic method of transmission reasonably acceptable to Agent and Issuing Bank and reasonably in advance of the requested date of issuance, amendment or extension, and (iii) subject to Issuing Bank's authentication procedures with results satisfactory to Issuing Bank. Each such request shall be in form and substance reasonably satisfactory to Agent and Issuing Bank and (i) shall specify (A) the amount of such Letter of Credit, (B) the date of issuance, amendment or extension of such Letter of Credit, (C) the proposed expiration date of such Letter of Credit, (D) the name and address of the beneficiary of the Letter of Credit, and (E) such other information (including, the conditions to drawing, and, in the case of an amendment or extension, identification of the Letter of Credit to be so amended or extended) as shall be necessary to prepare, amend or extend such Letter of Credit, and (ii) shall be accompanied by such Issuer Documents as Agent or Issuing Bank may request or require, to the extent that such requests or requirements are consistent with the Issuer Documents that Issuing Bank generally requests for Letters of Credit in similar circumstances. Issuing Bank's records of the content of any such request will be conclusive absent manifest or demonstrable error. Anything contained herein to the contrary notwithstanding, Issuing Bank may, but shall not be obligated to, issue a Letter of Credit that supports the obligations of a Loan Party or one of its Subsidiaries in respect of (x) a lease of real property, or (y) an employment contract.

(b) Issuing Bank shall have no obligation to issue a Letter of Credit if any of the following would result after giving effect to the requested issuance:

(i) the Letter of Credit Usage would exceed the Letter of Credit Sublimit, or

(ii) the Letter of Credit Usage would exceed the Maximum Revolver Amount less the outstanding amount of Revolving Loans (including Swing Loans), or

(iii) the Letter of Credit Usage would exceed the Borrowing Base at such time less the outstanding principal balance of the Revolving Loans (inclusive of Swing Loans) at such time.

(c) In the event there is a Defaulting Lender as of the date of any request for the issuance of a Letter of Credit, Issuing Bank shall not be required to issue or arrange for such Letter of Credit to the extent (i) the Defaulting Lender's Letter of Credit Exposure with respect to such Letter of Credit may not be reallocated pursuant to Section 2.3(g)(ii), or (ii) Issuing Bank has not otherwise entered into arrangements reasonably satisfactory to it and Borrowers to eliminate Issuing Bank's risk with respect to the participation in such Letter of Credit of the Defaulting Lender, which arrangements may include Borrowers cash collateralizing such Defaulting Lender's Letter of Credit Exposure in accordance with Section 2.3(g)(ii). Additionally, Issuing Bank shall have no obligation to issue or extend a Letter of Credit if (A) any order, judgment, or decree of any Governmental Authority or arbitrator shall, by its terms, purport to enjoin or restrain Issuing Bank from issuing such Letter of Credit, or any law applicable to Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over Issuing Bank shall prohibit or request that Issuing Bank refrain from the issuance of letters of credit generally or such Letter of Credit in particular, (B) the issuance of such Letter of Credit would violate one or more policies of Issuing Bank applicable to letters of credit generally, or (C) if amounts demanded to be paid under any Letter of Credit will not or may not be in United States Dollars.

(d) Any Issuing Bank (other than Wells Fargo or any of its Affiliates) shall notify Agent in writing no later than the Business Day prior to the Business Day on which such Issuing Bank issues any Letter of Credit. In addition, each Issuing Bank (other than Wells Fargo or any of its Affiliates) shall, on the first Business Day of each week, submit to Agent a report detailing the daily undrawn amount of each Letter of Credit issued by such Issuing Bank during the prior calendar week. Each Letter of Credit shall be in form and substance reasonably acceptable to Issuing Bank, including the requirement that the amounts payable thereunder must be payable in Dollars. If Issuing Bank makes a payment under a Letter of Credit, Borrowers shall pay to Agent an amount equal to the applicable Letter of Credit Disbursement on the Business Day such Letter of Credit Disbursement is made and, in the absence of such payment, the amount of the Letter of Credit Disbursement immediately and automatically shall be deemed to be a Revolving Loan hereunder (notwithstanding any failure to satisfy any condition precedent set forth in Section 3) and, initially, shall bear interest at the rate then applicable to Revolving Loans that are Base Rate Loans. If a Letter of Credit Disbursement is deemed to be a Revolving Loan hereunder, Borrowers' obligation to pay the amount of such Letter of Credit Disbursement to Issuing Bank shall be automatically converted into an obligation to pay the resulting Revolving Loan. Promptly following receipt by Agent of any payment from Borrowers pursuant to this paragraph, Agent shall distribute such payment to Issuing Bank or, to the extent that Revolving Lenders have made payments pursuant to Section 2.11(e), to reimburse Issuing Bank, then to such Revolving Lenders and Issuing Bank as their interests may appear.

(e) Promptly following receipt of a notice of a Letter of Credit Disbursement pursuant to Section 2.11(d), each Revolving Lender agrees to fund its Pro Rata Share of any Revolving Loan deemed made pursuant to Section 2.11(d) on the same terms and conditions as if Borrowers had requested the amount thereof as a Revolving Loan and Agent shall promptly pay to Issuing Bank the amounts so received by it from the Revolving Lenders. By the issuance of a Letter of Credit (or an amendment or extension of a Letter of Credit) and without any further action on the part of Issuing Bank or the Revolving Lenders, Issuing Bank shall be deemed to have granted to each Revolving Lender, and each Revolving Lender shall be deemed to have purchased, a participation in each Letter of Credit issued by Issuing Bank, in an amount equal to its Pro Rata Share of such Letter of Credit, and each such Revolving Lender agrees to pay to Agent, for the account of Issuing Bank, such Revolving Lender's Pro Rata Share of any Letter of Credit Disbursement made by Issuing Bank under the applicable Letter of Credit. In consideration and in furtherance of the foregoing, each Revolving Lender hereby absolutely and unconditionally agrees to pay to Agent, for the account of Issuing Bank, such Revolving Lender's Pro Rata Share of each Letter of Credit Disbursement made by Issuing Bank and not reimbursed by Borrowers on the date due as provided in Section 2.11(d), or of any reimbursement payment that is required to be refunded (or that Agent or Issuing Bank elects, based upon the advice of counsel, to refund) to Borrowers for any reason. Each Revolving Lender acknowledges and agrees that its obligation to deliver to Agent, for the account of Issuing Bank, an amount equal to its respective Pro Rata Share of each Letter of Credit Disbursement pursuant to this Section 2.11(e) shall be absolute and unconditional and such remittance shall be made notwithstanding the occurrence or continuation of an Event of Default or Default or the failure to satisfy any condition set forth in Section 3. If any such Revolving Lender fails to make available to Agent the amount of such Revolving Lender's Pro Rata Share of a Letter of Credit Disbursement as provided in this Section, such Revolving Lender shall be deemed to be a Defaulting Lender and Agent (for the account of Issuing Bank) shall be entitled to recover such amount on demand from such Revolving Lender together with interest thereon at the Defaulting Lender Rate until paid in full.

(f) Each Borrower agrees to indemnify, defend and hold harmless each member of the Lender Group (including Issuing Bank and its branches, Affiliates, and correspondents) and each such Person's respective directors, officers, employees, attorneys and agents (each, including Issuing Bank, a "Letter of Credit Related Person") (to the fullest extent permitted by law) from and against any and all claims, demands, suits, actions, investigations, proceedings, liabilities, fines, costs, penalties, and damages, and all reasonable and documented fees and disbursements of attorneys (limited to one primary attorney, one local attorney in each reasonably necessary jurisdiction, one specialty attorney in each reasonably necessary specialty area, and one or more additional attorney if one or more actual conflicts of interest arise), experts, or consultants and all other reasonable, documented and out-of-pocket costs and expenses actually incurred in connection therewith or in connection with the enforcement of this indemnification (as and when they are incurred and irrespective of whether suit is brought), which may be incurred by or awarded against any such Letter of Credit Related Person (other than Taxes, which shall be governed by Section 16) (the "Letter of Credit Indemnified Costs"), and which arise out of or in connection with, or as a result of:

- (i) any Letter of Credit or any pre-advice of its issuance;
- (ii) any transfer, sale, delivery, surrender or endorsement (or lack thereof) of any Drawing Document at any time(s) held by any such Letter of Credit Related Person in connection with any Letter of Credit;
- (iii) any action or proceeding arising out of, or in connection with, any Letter of Credit (whether administrative, judicial or in connection with arbitration), including any action or proceeding to compel or restrain any presentation or payment under any Letter of Credit, or for the wrongful dishonor of, or honoring a presentation under, any Letter of Credit;
- (iv) any independent undertakings issued by the beneficiary of any Letter of Credit;
- (v) any unauthorized instruction or request made to Issuing Bank in connection with any Letter of Credit or requested Letter of Credit, or any error, omission, interruption or delay in such instruction or request, whether transmitted by mail, courier, electronic transmission, SWIFT, or any other telecommunication including communications through a correspondent;
- (vi) an adviser, confirmer or other nominated person seeking to be reimbursed, indemnified or compensated;
- (vii) any third party seeking to enforce the rights of an applicant, beneficiary, nominated person, transferee, assignee of Letter of Credit proceeds or holder of an instrument or document;
- (viii) the fraud, forgery or illegal action of parties other than the Letter of Credit Related Person;
- (ix) any prohibition on payment or delay in payment of any amount payable by Issuing Bank to a beneficiary or transferee beneficiary of a Letter of Credit arising out of Anti-Corruption Laws, Anti-Money Laundering Laws, or Sanctions;
- (x) Issuing Bank's performance of the obligations of a confirming institution or entity that wrongfully dishonors a confirmation;
- (xi) any foreign language translation provided to Issuing Bank in connection with any Letter of Credit;
- (xii) any foreign law or usage as it relates to Issuing Bank's issuance of a Letter of Credit in support of a foreign guaranty including the expiration of such guaranty after the related Letter of Credit expiration date and any resulting drawing paid by Issuing Bank in connection therewith; or

(xiii) the acts or omissions, whether rightful or wrongful, of any present or future de jure or de facto governmental or regulatory authority or cause or event beyond the control of the Letter of Credit Related Person;

provided, that such indemnity shall not be available to any Letter of Credit Related Person claiming indemnification under clauses (i) through (xiii) above to the extent that such Letter of Credit Indemnified Costs (A) are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of the Letter of Credit Related Person claiming indemnity, (B) are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from a material breach of this Agreement by such Letter of Credit Related Person pursuant to proceedings initiated by any Person party to this Agreement, or (C) arise solely out of any dispute among Persons in the Lender Group that do not involve any acts or omissions of the Loan Parties or any of their Affiliates; it being understood and agreed that this clause (C) shall not exclude Letter of Credit Indemnified Costs of Agent or Issuing Bank (but shall exclude costs, expenses and charges of Lenders unless the dispute involves an act or omission of a Loan Party) relative to disputes between or among Agent and/or Issuing Bank, on the one hand, and one or more Lenders, or one or more of their Affiliates, on the other hand. Borrowers hereby agree to pay the Letter of Credit Related Person claiming indemnity on demand from time to time all amounts owing under this Section 2.11(f). If and to the extent that the obligations of Borrowers under this Section 2.11(f) are unenforceable for any reason, Borrowers agree to make the maximum contribution to the Letter of Credit Indemnified Costs permissible under applicable law. This indemnification provision shall survive termination of this Agreement and all Letters of Credit.

(g) The liability of Issuing Bank (or any other Letter of Credit Related Person) under, in connection with or arising out of any Letter of Credit (or pre-advice), regardless of the form or legal grounds of the action or proceeding, shall be limited to direct damages suffered by Borrowers that are caused directly by Issuing Bank's gross negligence or willful misconduct in (i) honoring a presentation under a Letter of Credit that on its face does not at least substantially comply with the terms and conditions of such Letter of Credit, (ii) failing to honor a presentation under a Letter of Credit that strictly complies with the terms and conditions of such Letter of Credit, or (iii) retaining Drawing Documents presented under a Letter of Credit. Borrowers' aggregate remedies against Issuing Bank and any Letter of Credit Related Person for wrongfully honoring a presentation under any Letter of Credit or wrongfully retaining honored Drawing Documents shall in no event exceed the aggregate amount paid by Borrowers to Issuing Bank in respect of the honored presentation in connection with such Letter of Credit under Section 2.11(d), plus interest at the rate then applicable to Base Rate Loans hereunder. Borrowers shall take action to avoid and mitigate the amount of any damages claimed against Issuing Bank or any other Letter of Credit Related Person, including by enforcing its rights against the beneficiaries of the Letters of Credit. Any claim by Borrowers under or in connection with any Letter of Credit shall be reduced by an amount equal to the sum of (x) the amount (if any) saved by Borrowers as a result of the breach or alleged wrongful conduct complained of, and (y) the amount (if any) of the loss that would have been avoided had Borrowers taken all reasonable steps to mitigate any loss, and in case of a claim of wrongful dishonor, by specifically and timely authorizing Issuing Bank to effect a cure.

(h) Borrowers are responsible for the final text of the Letter of Credit as issued by Issuing Bank, irrespective of any assistance Issuing Bank may provide such as drafting or recommending text or by Issuing Bank's use or refusal to use text submitted by Borrowers. Borrowers understand that the final form of any Letter of Credit may be subject to such revisions and changes as are deemed necessary or appropriate by Issuing Bank, and Borrowers hereby consent to such revisions and changes not materially different from the application executed in connection therewith. Borrowers are solely responsible for the suitability of the Letter of Credit for Borrowers' purposes. If Borrowers request Issuing Bank to issue a Letter of Credit for an affiliated or unaffiliated third party (an "Account Party"), (i) such Account Party shall have no rights against Issuing Bank; (ii) Borrowers shall be responsible for the application and obligations under this Agreement; and (iii) communications (including notices) related to the respective Letter of Credit shall be among Issuing Bank and Borrowers. Borrowers will examine the copy of the Letter of Credit and any other documents sent by Issuing Bank in connection therewith and shall promptly notify Issuing Bank (not later than three (3) Business Days following Borrowers' receipt of documents from Issuing Bank) of any non-compliance with Borrowers' instructions and of any discrepancy in any document under any presentment or other irregularity. Borrowers understand and agree that Issuing Bank is not required to extend the expiration date of any Letter of Credit for any reason. With respect to any Letter of Credit containing an "automatic amendment" to extend the expiration date of such Letter of Credit, Issuing Bank, in its sole and absolute discretion, may give notice of non-extension of such Letter of Credit and, if Borrowers do not at any time want the then current expiration date of such Letter of Credit to be extended, Borrowers will so notify Agent and Issuing Bank at least 30 calendar days before Issuing Bank is required to notify the beneficiary of such Letter of Credit or any advising bank of such non-extension pursuant to the terms of such Letter of Credit.

(i) Borrowers' reimbursement and payment obligations under this Section 2.11 are absolute, unconditional and irrevocable and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever, including:

(i) any lack of validity, enforceability or legal effect of any Letter of Credit, any Issuer Document, this Agreement, or any Loan Document, or any term or provision therein or herein;

(ii) payment against presentation of any draft, demand or claim for payment under any Drawing Document that does not comply in whole or in part with the terms of the applicable Letter of Credit or which proves to be fraudulent, forged or invalid in any respect or any statement therein being untrue or inaccurate in any respect, or which is signed, issued or presented by a Person or a transferee of such Person purporting to be a successor or transferee of the beneficiary of such Letter of Credit;

(iii) Issuing Bank or any of its branches or Affiliates being the beneficiary of any Letter of Credit;

(iv) Issuing Bank or any correspondent honoring a drawing against a Drawing Document up to the amount available under any Letter of Credit even if such Drawing Document claims an amount in excess of the amount available under the Letter of Credit;

(v) the existence of any claim, set-off, defense or other right that any Loan Party or any of its Subsidiaries may have at any time against any beneficiary or transferee beneficiary, any assignee of proceeds, Issuing Bank or any other Person;

(vi) Issuing Bank or any correspondent honoring a drawing upon receipt of an electronic presentation under a Letter of Credit requiring the same, regardless of whether the original Drawing Documents arrive at Issuing Bank's counters or are different from the electronic presentation;

(vii) any other event, circumstance or conduct whatsoever, whether or not similar to any of the foregoing that might, but for this Section 2.11(i), constitute a legal or equitable defense to or discharge of, or provide a right of set-off against, any Borrower's or any of its Subsidiaries' reimbursement and other payment obligations and liabilities, arising under, or in connection with, any Letter of Credit, whether against Issuing Bank, the beneficiary or any other Person; or

(viii) the fact that any Default or Event of Default shall have occurred and be continuing;

provided, that subject to Section 2.11(g) above, the foregoing shall not release Issuing Bank from such liability to Borrowers as may be finally determined in a final, non-appealable judgment of a court of competent jurisdiction against Issuing Bank following reimbursement or payment of the obligations and liabilities, including reimbursement and other payment obligations, of Borrowers to Issuing Bank arising under, or in connection with, this Section 2.11 or any Letter of Credit.

(j) Without limiting any other provision of this Agreement, Issuing Bank and each other Letter of Credit Related Person (if applicable) shall not be responsible to Borrowers for, and Issuing Bank's rights and remedies against Borrowers and the obligation of Borrowers to reimburse Issuing Bank for each drawing under each Letter of Credit shall not be impaired by:

(i) honor of a presentation under any Letter of Credit that on its face substantially complies with the terms and conditions of such Letter of Credit, even if the Letter of Credit requires strict compliance by the beneficiary;

(ii) honor of a presentation of any Drawing Document that appears on its face to have been signed, presented or issued (A) by any purported successor or transferee of any beneficiary or other Person required to sign, present or issue such Drawing Document or (B) under a new name of the beneficiary;

(iii) acceptance as a draft of any written or electronic demand or request for payment under a Letter of Credit, even if nonnegotiable or not in the form of a draft or notwithstanding any requirement that such draft, demand or request bear any or adequate reference to the Letter of Credit;

(iv) the identity or authority of any presenter or signer of any Drawing Document or the form, accuracy, genuineness or legal effect of any Drawing Document (other than Issuing Bank's determination that such Drawing Document appears on its face substantially to comply with the terms and conditions of the Letter of Credit);

(v) acting upon any instruction or request relative to a Letter of Credit or requested Letter of Credit that Issuing Bank in good faith believes to have been given by a Person authorized to give such instruction or request;

(vi) any errors, omissions, interruptions or delays in transmission or delivery of any message, advice or document (regardless of how sent or transmitted) or for errors in interpretation of technical terms or in translation or any delay in giving or failing to give notice to any Borrower;

(vii) any acts, omissions or fraud by, or the insolvency of, any beneficiary, any nominated person or entity or any other Person or any breach of contract between any beneficiary and any Borrower or any of the parties to the underlying transaction to which the Letter of Credit relates;

(viii) assertion or waiver of any provision of the ISP or UCP that primarily benefits an issuer of a letter of credit, including any requirement that any Drawing Document be presented to it at a particular hour or place;

(ix) payment to any presenting bank (designated or permitted by the terms of the applicable Letter of Credit) claiming that it rightfully honored or is entitled to reimbursement or indemnity under Standard Letter of Credit Practice applicable to it;

(x) acting or failing to act as required or permitted under Standard Letter of Credit Practice applicable to where Issuing Bank has issued, confirmed, advised or negotiated such Letter of Credit, as the case may be;

(xi) honor of a presentation after the expiration date of any Letter of Credit notwithstanding that a presentation was made prior to such expiration date and dishonored by Issuing Bank if subsequently Issuing Bank or any court or other finder of fact determines such presentation should have been honored;

(xii) dishonor of any presentation that does not strictly comply or that is fraudulent, forged or otherwise not entitled to honor; or

(xiii) honor of a presentation that is subsequently determined by Issuing Bank to have been made in violation of international, federal, state or local restrictions on the transaction of business with certain prohibited Persons.

(k) Borrowers shall pay promptly upon demand to Agent for the account of Issuing Bank as non-refundable fees, commissions, and charges (it being acknowledged and agreed that any charging of such fees, commissions, and charges to the Loan Account pursuant to the provisions of Section 2.6(d) shall be deemed to constitute a demand for payment thereof for the purposes of this Section 2.11(k)): (i) a fronting fee which shall be imposed by Issuing Bank equal to 0.125% *per annum* times the average amount of the Letter of Credit Usage during the immediately preceding month, plus (ii) any and all other customary commissions, fees and charges then in effect imposed by, and any and all documented expenses incurred by, Issuing Bank, or by any adviser, confirming institution or entity or other nominated person, relating to Letters of Credit, at the time of issuance of any Letter of Credit and upon the occurrence of any other activity with respect to any Letter of Credit (including transfers, assignments of proceeds, amendments, drawings, extensions or cancellations).

(l) If by reason of (x) any Change in Law, or (y) compliance by Issuing Bank or any other member of the Lender Group with any direction, request, or requirement (irrespective of whether having the force of law) of any Governmental Authority or monetary authority including, Regulation D of the Board of Governors as from time to time in effect (and any successor thereto):

(i) any reserve, deposit, or similar requirement is or shall be imposed or modified in respect of any Letter of Credit issued or caused to be issued hereunder or hereby, or any Loans or obligations to make Loans hereunder or hereby, or

(ii) there shall be imposed on Issuing Bank or any other member of the Lender Group any other condition regarding any Letter of Credit, Loans, or obligations to make Loans hereunder,

and the result of the foregoing is to increase, directly or indirectly, the cost to Issuing Bank or any other member of the Lender Group of issuing, making, participating in, or maintaining any Letter of Credit or to reduce the amount receivable in respect thereof, then, and in any such case, Agent may, at any time within a reasonable period after the additional cost is incurred or the amount received is reduced, notify Borrowers, and Borrowers shall pay within 30 days after demand therefor, such amounts as Agent may specify to be necessary to compensate Issuing Bank or any other member of the Lender Group for such additional cost or reduced receipt, together with interest on such amount from the date of such demand until payment in full thereof at the rate then applicable to Base Rate Loans hereunder; provided, that (A) Borrowers shall not be required to provide any compensation pursuant to this Section 2.11(l) for any such amounts incurred more than 180 days prior to the date on which the demand for payment of such amounts is first made to Borrowers, and (B) if an event or circumstance giving rise to such amounts is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof. The determination by Agent of any amount due pursuant to this Section 2.11(l), as set forth in a certificate setting forth the calculation thereof in reasonable detail, shall, in the absence of manifest or demonstrable error, be final and conclusive and binding on all of the parties hereto.

(m) Each standby Letter of Credit shall expire not later than the date that is 12 months after the date of the issuance of such Letter of Credit; provided, that any standby Letter of Credit may provide for the automatic extension thereof for any number of additional periods each of up to one year in duration; provided further, that with respect to any Letter of Credit which extends beyond the Maturity Date, Letter of Credit Collateralization shall be provided therefor on or before the date that is five Business Days prior to the Maturity Date. Each commercial Letter of Credit shall expire on the earlier of (i) 120 days after the date of the issuance of such commercial Letter of Credit and (ii) five Business Days prior to the Maturity Date.

(n) If (i) any Event of Default shall occur and be continuing, or (ii) Availability shall at any time be less than zero, then on the Business Day following the date when the Administrative Borrower receives notice from Agent or the Required Lenders (or, if the maturity of the Obligations has been accelerated, Revolving Lenders with Letter of Credit Exposure representing greater than 50% of the total Letter Credit Exposure) demanding Letter of Credit Collateralization pursuant to this Section 2.11(n) upon such demand, Borrowers shall provide Letter of Credit Collateralization with respect to the then existing Letter of Credit Usage. If Borrowers fail to provide Letter of Credit Collateralization as required by this Section 2.11(n), the Revolving Lenders may (and, upon direction of Agent, shall) advance, as Revolving Loans the amount of the cash collateral required pursuant to the Letter of Credit Collateralization provision so that the then existing Letter of Credit Usage is cash collateralized in accordance with the Letter of Credit Collateralization provision (whether or not the Revolver Commitments have terminated, an Overadvance exists or the conditions in Section 3 are satisfied).

(o) Unless otherwise expressly agreed by Issuing Bank and Borrowers when a Letter of Credit is issued, (i) the rules of the ISP shall apply to each standby Letter of Credit, and (ii) the rules of the UCP shall apply to each commercial Letter of Credit.

(p) Issuing Bank shall be deemed to have acted with due diligence and reasonable care if Issuing Bank's conduct is in accordance with Standard Letter of Credit Practice or in accordance with this Agreement.

(q) In the event of a direct conflict between the provisions of this Section 2.11 and any provision contained in any Issuer Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of this Section 2.11 shall control and govern.

(r) The provisions of this Section 2.11 shall survive the termination of this Agreement and the repayment in full of the Obligations with respect to any Letters of Credit that remain outstanding.

(s) At Borrowers' costs and expense, Borrowers shall execute and deliver to Issuing Bank such additional certificates, instruments and/or documents and take such additional action as may be reasonably requested by Issuing Bank to enable Issuing Bank to issue any Letter of Credit pursuant to this Agreement and related Issuer Document, to protect, exercise and/or enforce Issuing Banks' rights and interests under this Agreement or to give effect to the terms and provisions of this Agreement or any Issuer Document. Each Borrower irrevocably appoints Issuing Bank as its attorney-in-fact and authorizes Issuing Bank, without notice to Borrowers, to execute and deliver ancillary documents and letters customary in the letter of credit business that may include but are not limited to advisements, indemnities, checks, bills of exchange and issuance documents. The power of attorney granted by the Borrowers is limited solely to such actions related to the issuance, confirmation or amendment of any Letter of Credit and to ancillary documents or letters customary in the letter of credit business. This appointment is coupled with an interest.

2.12. **SOFR Option.**

(a) **Interest and Interest Payment Dates.** In lieu of having interest charged at the rate based upon the Base Rate, Borrowers shall have the option, subject to Section 2.12(b) below (the "SOFR Option") to have interest on all or a portion of ~~(x) the Revolving Loans~~ ~~or (y) the Term Loan~~ be charged (whether at the time when made (unless otherwise provided herein), upon conversion from a Base Rate Loan to a SOFR Loan, or upon continuation of a SOFR Loan as a SOFR Loan) at a rate of interest based upon Term SOFR. Interest on SOFR Loans shall be payable on the earliest of (i) the last day of the Interest Period applicable thereto; provided, that subject to the following clauses (ii) and (iii), in the case of any Interest Period greater than three months in duration, interest shall be payable at three month intervals after the commencement of the applicable Interest Period and on the last day of such Interest Period), (ii) the date on which all or any portion of the Obligations are accelerated pursuant to the terms hereof, or (iii) the date on which this Agreement is terminated pursuant to the terms hereof. On the last day of each applicable Interest Period, unless Borrowers have properly exercised the SOFR Option with respect thereto, the interest rate applicable to such SOFR Loan automatically shall convert to the rate of interest then applicable to Base Rate Loans of the same type hereunder. At any time that an Event of Default has occurred and is continuing, Borrowers no longer shall have the option to request that Revolving Loans ~~or any portion of the Term Loan~~ bear interest at a rate based upon Term SOFR.

(b) **SOFR Election.**

(i) Borrowers may, at any time and from time to time, so long as no Event of Default has occurred and is continuing, elect to exercise the SOFR Option by notifying Agent prior to 12:00 p.m. at least three U.S. Government Securities Business Days prior to the commencement of the proposed Interest Period (the "SOFR Deadline"). Notice of Borrowers' election of the SOFR Option for a permitted portion of ~~(x) the Revolving Loans~~ ~~or (y) the Term Loan~~ and an Interest Period pursuant to this Section shall be made by delivery to Agent of a SOFR Notice received by Agent before the SOFR Deadline. Promptly upon its receipt of each such SOFR Notice, Agent shall provide a notice thereof to each of the affected Lenders.

(ii) Each SOFR Notice shall be irrevocable and binding on Borrowers. In connection with each SOFR Loan, each Borrower shall indemnify, defend, and hold Agent and the Lenders harmless against any loss, cost, or expense actually incurred by Agent or any Lender as a result of (A) the payment or required assignment of any principal of any SOFR Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (B) the conversion of any SOFR Loan other than on the last day of the Interest Period applicable thereto, or (C) the failure to borrow, convert, continue or prepay any SOFR Loan on the date specified in any SOFR Notice delivered pursuant hereto (such losses, costs, or expenses, "Funding Losses").

(iii) A certificate of Agent or a Lender delivered to Borrowers setting forth in reasonable detail any amount or amounts that Agent or such Lender is entitled to receive pursuant to this Section 2.12 shall be conclusive absent manifest error. Borrowers shall pay such amount to Agent or the Lender, as applicable, within 30 days of the date of its receipt of such certificate.

(iv) Unless Agent, in its sole discretion, agrees otherwise, Borrowers shall have not more than seven SOFR Loans in effect at any given time. Borrowers may only exercise the SOFR Option for proposed SOFR Loans of at least \$1,000,000.

(c) **Conversion; Prepayment.** Borrowers may convert SOFR Loans to Base Rate Loans or prepay SOFR Loans at any time; provided, that in the event that SOFR Loans are converted or prepaid on any date that is not the last day of the Interest Period applicable thereto, including as a result of any prepayment through the required application by Agent of any payments or proceeds of Collateral in accordance with Section 2.4(b) or for any other reason, including early termination of the term of this Agreement or acceleration of all or any portion of the Obligations pursuant to the terms hereof, each Borrower shall indemnify, defend, and hold Agent and the Lenders and their Participants harmless against any and all Funding Losses in accordance with Section 2.12 (b)(ii).

(d) **Special Provisions Applicable to Term SOFR.**

(i) Term SOFR may be adjusted by Agent with respect to any Lender on a prospective basis to take into account any additional or increased costs (other than Taxes which shall be governed by Section 16), in each case, due to changes in applicable law occurring subsequent to the commencement of the then applicable Interest Period, or pursuant to any Change in Law or change in the reserve requirements imposed by the Board of Governors, which additional or increased costs would increase the cost of funding or maintaining loans bearing interest at Term SOFR. In any such event, the affected Lender shall give Borrowers and Agent notice of such a determination and adjustment and Agent promptly shall transmit the notice to each other Lender and, upon its receipt of the notice from the affected Lender, Borrowers may, by notice to such affected Lender (A) require such Lender to furnish to Borrowers a statement setting forth in reasonable detail the basis for adjusting Term SOFR and the method for determining the amount of such adjustment, or (B) repay the SOFR Loans or Base Rate Loans determined with reference to Term SOFR, in each case, of such Lender with respect to which such adjustment is made (together with any amounts due under Section 2.12(b)(ii)).

(ii) Subject to the provisions set forth in Section 2.12(d)(iii) below, in the event that any change in market conditions or any Change in Law shall at any time after the date hereof, in the reasonable opinion of any Lender, make it unlawful or impractical for such Lender to fund or maintain SOFR Loans (or Base Rate Loans determined with reference to Term SOFR) or to continue such funding or maintaining, or to determine or charge interest rates at the Term SOFR Reference Rate, Term SOFR or SOFR, such Lender shall give notice of such changed circumstances to Agent and Borrowers and Agent promptly shall transmit the notice to each other Lender and (y)(i) in the case of any SOFR Loans of such Lender that are outstanding, such SOFR Loans of such Lender will be deemed to have been converted to Base Rate Loans on the last day of the Interest Period of such SOFR Loans, if such Lender may lawfully continue to maintain such SOFR Loans, or immediately, if such Lender may not lawfully continue to maintain such SOFR Loans, and thereafter interest upon the SOFR Loans of such Lender thereafter shall accrue interest at the rate then applicable to Base Rate Loans (and if applicable, without reference to the Term SOFR component thereof) and (ii) in the case of any such Base Rate Loans of such Lender that are outstanding and that are determined with reference to Term SOFR, interest upon the Base Rate Loans of such Lender after the date specified in such Lender's notice shall accrue interest at the rate then applicable to Base Rate Loans without reference to the Term SOFR component thereof and (z) Borrowers shall not be entitled to elect the SOFR Option and Base Rate Loans shall not be determined with reference to the Term SOFR component thereof, in each case, until such Lender determines that it would no longer be unlawful or impractical to do so.

(iii) **Benchmark Replacement Setting.**

(A) **Benchmark Replacement.** Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event, Agent and Administrative Borrower may amend this Agreement to replace the then-current Benchmark with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. on the fifth (5th) Business Day after Agent has posted such proposed amendment to all affected Lenders and Administrative Borrower so long as Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders. No replacement of a Benchmark with a Benchmark Replacement pursuant to this Section 2.12(d)(iii) will occur prior to the applicable Benchmark Transition Start Date.

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

(C) **Notices; Standards for Decisions and Determinations.** Agent will promptly notify Administrative Borrower and the Lenders of (1) the implementation of any Benchmark Replacement and (2) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. Agent will notify Administrative Borrower of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 2.12(d)(iii)(D) and (y) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.12(d)(iii), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.12(d)(iii).

(D) **Unavailability of Tenor of Benchmark.** Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (1) if the then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (I) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by Agent in its reasonable discretion or (II) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (2) if a tenor that was removed pursuant to clause (1) above either (I) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (II) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(E) **Benchmark Unavailability Period.** Upon Administrative Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, (1) Administrative Borrower may revoke any pending request for a borrowing of, conversion to or continuation of SOFR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, Administrative Borrower will be deemed to have converted any such request into a request for a borrowing of or conversion to Base Rate Loans and (2) any outstanding affected SOFR Loans will be deemed to have been converted to Base Rate Loans at the end of the applicable Interest Period. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of the Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Base Rate.

(e) **No Requirement of Matched Funding.** Anything to the contrary contained herein notwithstanding, neither Agent, nor any Lender, nor any of their Participants, is required actually to match fund any Obligation as to which interest accrues at Term SOFR or the Term SOFR Reference Rate.

2.13. **Capital Requirements.**

(a) If, after the date hereof, Issuing Bank or any Lender determines that (i) any Change in Law regarding capital, liquidity or reserve requirements for banks or bank holding companies, or (ii) compliance by Issuing Bank or such Lender, or their respective parent bank holding companies, with any guideline, request or directive of any Governmental Authority regarding capital adequacy or liquidity requirements (whether or not having the force of law), has the effect of reducing the return on Issuing Bank's, such Lender's, or such holding companies' capital or liquidity as a consequence of Issuing Bank's or such Lender's commitments, Loans, participations or other obligations hereunder to a level below that which Issuing Bank, such Lender, or such holding companies could have achieved but for such Change in Law or compliance (taking into consideration Issuing Bank's, such Lender's, or such holding companies' then existing policies with respect to capital adequacy or liquidity requirements and assuming the full utilization of such entity's capital) by any amount deemed by Issuing Bank or such Lender to be material, then Issuing Bank or such Lender may notify Borrowers and Agent thereof. Following receipt of such notice, Borrowers agree to pay Issuing Bank or such Lender on demand the amount of such reduction of return of capital as and when such reduction is determined, payable within 30 days after presentation by Issuing Bank or such Lender of a statement in the amount and setting forth in reasonable detail Issuing Bank's or such Lender's calculation thereof and the assumptions upon which such calculation was based (which statement shall be deemed true and correct absent manifest error). In determining such amount, Issuing Bank or such Lender may use any reasonable averaging and attribution methods. Failure or delay on the part of Issuing Bank or any Lender to demand compensation pursuant to this Section shall not constitute a waiver of Issuing Bank's or such Lender's right to demand such compensation; provided, that Borrowers shall not be required to compensate Issuing Bank or a Lender pursuant to this Section for any reductions in return incurred more than 180 days prior to the date that Issuing Bank or such Lender notifies Borrowers of such Change in Law giving rise to such reductions and of such Lender's intention to claim compensation therefor; provided further, that if such claim arises by reason of the Change in Law that is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

(b) If Issuing Bank or any Lender requests additional or increased costs referred to in Section 2.11(l) or Section 2.12(d)(i) or amounts under Section 2.13(a) or sends a notice under Section 2.12(d)(ii) relative to changed circumstances (such Issuing Bank or Lender, an "Affected Lender"), then, at the request of Administrative Borrower, such Affected Lender shall use reasonable efforts to promptly designate a different one of its lending offices or to assign its rights and obligations hereunder to another of its offices or branches, if (i) in the reasonable judgment of such Affected Lender, such designation or assignment would eliminate or reduce amounts payable pursuant to Section 2.11(l), Section 2.12(d)(i) or Section 2.13(a), as applicable, or would eliminate the illegality or impracticality of funding or maintaining SOFR Loans (or Base Rate Loans determined with reference to Term SOFR), and (ii) in the reasonable judgment of such Affected Lender, such designation or assignment would not subject it to any material unreimbursed cost or expense and would not otherwise be materially disadvantageous to it. Borrowers agree to pay all reasonable out-of-pocket costs and expenses incurred by such Affected Lender in connection with any such designation or assignment. If, after such reasonable efforts, such Affected Lender does not so designate a different one of its lending offices or assign its rights to another of its offices or branches so as to eliminate Borrowers' obligation to pay any future amounts to such Affected Lender pursuant to Section 2.11(l), Section 2.12(d)(i) or Section 2.13(a), as applicable, or to enable Borrowers to obtain SOFR Loans (or Base Rate Loans determined with reference to Term SOFR), then Borrowers (without prejudice to any amounts then due to such Affected Lender under Section 2.11(l), Section 2.12(d)(i) or Section 2.13(a), as applicable) may, unless prior to the effective date of any such assignment the Affected Lender withdraws its request for such additional amounts under Section 2.11(l), Section 2.12(d)(i) or Section 2.13(a), as applicable, or indicates that it is no longer unlawful or impractical to fund or maintain SOFR Loans (or Base Rate Loans determined with reference to Term SOFR), may designate a different Issuing Bank or substitute a Lender or prospective Lender (other than an Ineligible Institution), in each case, reasonably acceptable to Agent to purchase the Obligations owed to such Affected Lender and such Affected Lender's commitments hereunder (a "Replacement Lender"), and if such Replacement Lender agrees to such purchase, such Affected Lender shall assign to the Replacement Lender its Obligations and commitments, and upon such purchase by the Replacement Lender, which such Replacement Lender shall be deemed to be "Issuing Bank" or a "Lender" (as the case may be) for purposes of this Agreement and such Affected Lender shall cease to be "Issuing Bank" or a "Lender" (as the case may be) for purposes of this Agreement.

(c) Notwithstanding anything herein to the contrary, the protection of Sections 2.11(l), 2.12(d), and 2.13 shall be available to Issuing Bank and each Lender (as applicable) regardless of any possible contention of the invalidity or inapplicability of the law, rule, regulation, judicial ruling, judgment, guideline, treaty or other change or condition which shall have occurred or been imposed, so long as it shall be customary for issuing banks or lenders affected thereby to comply therewith. Notwithstanding any other provision herein, neither Issuing Bank nor any Lender shall demand compensation pursuant to this Section 2.13 if it shall not at the time be the general policy or practice of Issuing Bank or such Lender (as the case may be) to demand such compensation in similar circumstances under comparable provisions of other credit agreements, if any.

2.14. **Incremental Facilities.**

(a) At any time during the period from and after the Closing Date, at the option of Borrowers (but subject to the conditions set forth in clause (b) below), the Revolver Commitments and the Maximum Revolver Amount may be increased by an amount in the aggregate for all such increases of the Revolver Commitments and the Maximum Revolver Amount not to exceed the Available Increase Amount (each such increase, an "Increase"); provided, that in no event shall the Revolver Commitments and the Maximum Revolver Amount be increased by an amount in excess of the Available Increase Amount. Agent shall invite each Lender to increase its Revolver Commitments (it being understood that no Lender shall be obligated to increase its Revolver Commitments) in connection with a proposed Increase at the interest margin proposed by Borrowers, and if sufficient Lenders do not agree to increase their Revolver Commitments in connection with such proposed Increase, then Agent or Borrowers may invite any prospective lender (other than an Ineligible Institution) who is reasonably satisfactory to Agent and Borrowers to become a Lender in connection with a proposed Increase. Any Increase shall be in an amount of at least \$5,000,000 and integral multiples of \$5,000,000 in excess thereof. In no event may the Revolver Commitments and the Maximum Revolver Amount be increased pursuant to this Section 2.14 on more than 3 occasions in the aggregate for all such Increases.

(b) Each of the following shall be conditions precedent to any Increase of the Revolver Commitments and the Maximum Revolver Amount in connection therewith:

(i) Agent or Borrowers have obtained the commitment of one or more Lenders (or other prospective lenders) reasonably satisfactory to Agent and Borrowers to provide the applicable Increase and any such Lenders (or prospective lenders), Borrowers, and Agent have signed a joinder agreement to this Agreement (an "Increase Joinder"), in form and substance reasonably satisfactory to Agent, to which such Lenders (or prospective lenders), Borrowers, and Agent are party,

(ii) each of the conditions precedent set forth in Section 3.2 are satisfied,

(iii) in connection with any Increase, if any Loan Party or any of its Subsidiaries owns or will acquire any Margin Stock, Borrowers shall deliver to Agent an updated Form U-1 (with sufficient additional originals thereof for each Lender), duly executed and delivered by the Borrowers, together with such other documentation as Agent shall reasonably request, in order to enable Agent and the Lenders to comply with any of the requirements under Regulations T, U or X of the Board of Governors,

(iv) Borrowers have delivered to Agent updated *pro forma* Projections (after giving effect to the applicable Increase) for the Loan Parties and their Subsidiaries evidencing compliance on a *pro forma* basis with Section 7 for the twelve months (on a month-by-month basis) immediately following the proposed date of the applicable Increase (calculated as if a Covenant Testing Period was in effect during the entire twelve month period ~~for any periods prior to the date on which the financial statements and Compliance Certificate for the month ended June 30, 2023 are required to be delivered hereunder~~), and

(v) The interest rate margins with respect to the Revolving Loans to be made pursuant to the increased Revolver Commitments shall be the same as the interest rate margin applicable to Revolving Loans hereunder immediately prior to the applicable Increase Date (as defined below).

(c) **[Reserved]**.

(d) Unless otherwise specifically provided herein, all references in this Agreement and any other Loan Document to Revolving Loans shall be deemed, unless the context otherwise requires, to include Revolving Loans made pursuant to the increased Revolver Commitments and Maximum Revolver Amount pursuant to this Section 2.14.

(e) Each of the Lenders having a Revolver Commitment prior to the Increase Date (the "Pre-Increase Revolver Lenders") shall assign to any Lender which is acquiring a new or additional Revolver Commitment on the Increase Date (the "Post-Increase Revolver Lenders"), and such Post-Increase Revolver Lenders shall purchase from each Pre-Increase Revolver Lender, at the principal amount thereof, such interests in the Revolving Loans and participation interests in Letters of Credit on such Increase Date as shall be necessary in order that, after giving effect to all such assignments and purchases, such Revolving Loans and participation interests in Letters of Credit will be held by Pre-Increase Revolver Lenders and Post-Increase Revolver Lenders ratably in accordance with their Pro Rata Share after giving effect to such increased Revolver Commitments.

(f) The Revolving Loans, Revolver Commitments, and Maximum Revolver Amount established pursuant to this Section 2.14 shall constitute Revolving Loans, Revolver Commitments, and Maximum Revolver Amount under, and shall be entitled to all the benefits afforded by, this Agreement and the other Loan Documents, and shall, without limiting the foregoing, benefit equally and ratably from any guarantees and the security interests created by the Loan Documents. Borrowers shall take any actions reasonably required by Agent to ensure and demonstrate that the Liens and security interests granted by the Loan Documents continue to be perfected under the Code or otherwise after giving effect to the establishment of any such new Revolver Commitments and Maximum Revolver Amount.

2.15. **Joint and Several Liability of Borrowers.**

(a) Each Borrower is accepting joint and several liability hereunder and under the other Loan Documents in consideration of the financial accommodations to be provided by the Lender Group under this Agreement, for the mutual benefit, directly and indirectly, of each Borrower and in consideration of the undertakings of the other Borrowers to accept joint and several liability for the Obligations.

(b) Each Borrower, jointly and severally, hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several liability with the other Borrowers, with respect to the payment and performance of all of the Obligations (including any Obligations arising under this Section 2.15), it being the intention of the parties hereto that all the Obligations shall be the joint and several obligations of each Borrower without preferences or distinction among them. Accordingly, each Borrower hereby waives any and all suretyship defenses that would otherwise be available to such Borrower under applicable law.

(c) If and to the extent that any Borrower shall fail to make any payment with respect to any of the Obligations as and when due, whether upon maturity, acceleration, or otherwise, or to perform any of the Obligations in accordance with the terms thereof, then in each such event the other Borrowers will make such payment with respect to, or perform, such Obligations until such time as all of the Obligations are paid in full, and without the need for demand, protest, or any other notice or formality.

(d) The Obligations of each Borrower under the provisions of this Section 2.15 constitute the absolute and unconditional, full recourse Obligations of each Borrower enforceable against each Borrower to the full extent of its properties and assets (subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditor's rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law), irrespective of the validity, regularity or enforceability of the provisions of this Agreement (other than this Section 2.15(d)) or any other circumstances whatsoever.

(e) Without limiting the generality of the foregoing and except as otherwise expressly provided in this Agreement, each Borrower hereby waives presentments, demands for performance, protests and notices, including notices of acceptance of its joint and several liability, notice of any Revolving Loans, ~~any portion of the Term Loan~~ or any Letters of Credit issued under or pursuant to this Agreement, notice of the occurrence of any Default, Event of Default, notices of nonperformance, notices of protest, notices of dishonor, notices of acceptance of this Agreement, notices of the existence, creation, or incurring of new or additional Obligations or other financial accommodations or of any demand for any payment under this Agreement, notice of any action at any time taken or omitted by Agent or Lenders under or in respect of any of the Obligations, any right to proceed against any other Borrower or any other Person, to proceed against or exhaust any security held from any other Borrower or any other Person, to protect, secure, perfect, or insure any security interest or Lien on any property subject thereto or exhaust any right to take any action against any other Borrower, any other Person, or any collateral, to pursue any other remedy in any member of the Lender Group's or any Bank Product Provider's power whatsoever, any requirement of diligence or to mitigate damages and, generally, to the extent permitted by applicable law, all demands, notices and other formalities of every kind in connection with this Agreement (except as otherwise provided in this Agreement), any right to assert against any member of the Lender Group or any Bank Product Provider, any defense (legal or equitable), set-off, counterclaim, or claim which each Borrower may now or at any time hereafter have against any other Borrower or any other party liable to any member of the Lender Group or any Bank Product Provider, any defense, set-off, counterclaim, or claim, of any kind or nature, arising directly or indirectly from the present or future lack of perfection, sufficiency, validity, or enforceability of the Obligations or any security therefor, and any right or defense arising by reason of any claim or defense based upon an election of remedies by any member of the Lender Group or any Bank Product Provider including any defense based upon an impairment or elimination of such Borrower's rights of subrogation, reimbursement, contribution, or indemnity of such Borrower against any other Borrower.

Without limiting the generality of the foregoing, each Borrower hereby assents to, and waives notice of, any extension or postponement of the time for the payment of any of the Obligations, the acceptance of any payment of any of the Obligations, the acceptance of any partial payment thereon, any waiver, consent or other action or acquiescence by Agent or Lenders at any time or times in respect of any default by any Borrower in the performance or satisfaction of any term, covenant, condition or provision of this Agreement, any and all other indulgences whatsoever by Agent or Lenders in respect of any of the Obligations, and the taking, addition, substitution or release, in whole or in part, at any time or times, of any security for any of the Obligations or the addition, substitution or release, in whole or in part, of any Borrower. Without limiting the generality of the foregoing, each Borrower assents to any other action or delay in acting or failure to act on the part of any Agent or Lender with respect to the failure by any Borrower to comply with any of its respective Obligations, including any failure strictly or diligently to assert any right or to pursue any remedy or to comply fully with applicable laws or regulations thereunder, which might, but for the provisions of this Section 2.15 afford grounds for terminating, discharging or relieving any Borrower, in whole or in part, from any of its Obligations under this Section 2.15, it being the intention of each Borrower that, so long as any of the Obligations hereunder remain unsatisfied, the Obligations of each Borrower under this Section 2.15 shall not be discharged except by performance and then only to the extent of such performance. The Obligations of each Borrower under this Section 2.15 shall not be diminished or rendered unenforceable by any winding up, reorganization, arrangement, liquidation, reconstruction or similar proceeding with respect to any other Borrower or any Agent or Lender. Each of the Borrowers waives, to the fullest extent permitted by law, the benefit of any statute of limitations affecting its liability hereunder or the enforcement hereof. Any payment by any Borrower or other circumstance which operates to toll any statute of limitations as to any Borrower shall operate to toll the statute of limitations as to each of the Borrowers. Each of the Borrowers waives any defense based on or arising out of any defense of any Borrower or any other Person, other than payment of the Obligations to the extent of such payment, based on or arising out of the disability of any Borrower or any other Person, or the validity, legality, or unenforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any Borrower other than payment of the Obligations to the extent of such payment. Agent may, at the election of the Required Lenders, foreclose upon any Collateral held by Agent by one or more judicial or nonjudicial sales or other dispositions, whether or not every aspect of any such sale is commercially reasonable or otherwise fails to comply with applicable law or may exercise any other right or remedy Agent, any other member of the Lender Group, or any Bank Product Provider may have against any Borrower or any other Person, or any security, in each case, without affecting or impairing in any way the liability of any of the Borrowers hereunder except to the extent the Obligations have been paid.

(f) Each Borrower represents and warrants to Agent and Lenders that such Borrower is currently informed of the financial condition of Borrowers and of all other circumstances which a diligent inquiry would reveal and which bear upon the risk of nonpayment of the Obligations. Each Borrower further represents and warrants to Agent and Lenders that such Borrower has read and understands the terms and conditions of the Loan Documents. Each Borrower hereby covenants that such Borrower will continue to keep informed of Borrowers' financial condition and of all other circumstances which bear upon the risk of nonpayment or nonperformance of the Obligations.

(g) The provisions of this Section 2.15 are made for the benefit of Agent, each member of the Lender Group, each Bank Product Provider, and their respective successors and assigns, and may be enforced by it or them from time to time against any or all Borrowers as often as occasion therefor may arise and without requirement on the part of Agent, any member of the Lender Group, any Bank Product Provider, or any of their successors or assigns first to marshal any of its or their claims or to exercise any of its or their rights against any Borrower or to exhaust any remedies available to it or them against any Borrower or to resort to any other source or means of obtaining payment of any of the Obligations hereunder or to elect any other remedy. The provisions of this Section 2.15 shall remain in effect until all of the Obligations shall have been paid in full or otherwise fully satisfied. If at any time, any payment, or any part thereof, made in respect of any of the Obligations, is rescinded or must otherwise be restored or returned by Agent or any Lender upon the insolvency, bankruptcy or reorganization of any Borrower, or otherwise, the provisions of this Section 2.15 will forthwith be reinstated in effect, as though such payment had not been made.

(h) Each Borrower hereby agrees that it will not enforce any of its rights that arise from the existence, payment, performance or enforcement of the provisions of this Section 2.15, including rights of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of Agent, any other member of the Lender Group, or any Bank Product Provider against any Borrower, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including the right to take or receive from any Borrower, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security solely on account of such claim, remedy or right, unless and until such time as all of the Obligations have been paid in full in cash. Any claim which any Borrower may have against any other Borrower with respect to any payments to any Agent or any member of the Lender Group hereunder or under any of the Bank Product Agreements are hereby expressly made subordinate and junior in right of payment, without limitation as to any increases in the Obligations arising hereunder or thereunder, to the prior payment in full in cash of the Obligations and, in the event of any insolvency, bankruptcy, receivership, liquidation, reorganization or other similar proceeding under the laws of any jurisdiction relating to any Borrower, its debts or its assets, whether voluntary or involuntary, all such Obligations shall be paid in full in cash before any payment or distribution of any character, whether in cash, securities or other property, shall be made to any other Borrower therefor. If any amount shall be paid to any Borrower in violation of the immediately preceding sentence, such amount shall be held in trust for the benefit of Agent, for the benefit of the Lender Group and the Bank Product Providers, and shall forthwith be paid to Agent to be credited and applied to the Obligations and all other amounts payable under this Agreement, whether matured or unmatured, in accordance with the terms of this Agreement, or to be held as Collateral for any Obligations or other amounts payable under this Agreement thereafter arising. Notwithstanding anything to the contrary contained in this Agreement, no Borrower may exercise any rights of subrogation, contribution, indemnity, reimbursement or other similar rights against, and may not proceed or seek recourse against or with respect to any property or asset of, any other Borrower (the "Foreclosed Borrower"), including after payment in full of the Obligations, if all or any portion of the Obligations have been satisfied in connection with an exercise of remedies in respect of the Equity Interests of such Foreclosed Borrower whether pursuant to this Agreement or otherwise.

(i) Each of the Borrowers hereby acknowledges and affirms that it understands that to the extent the Obligations are secured by Real Property located in California, the Borrowers shall be liable for the full amount of the liability hereunder notwithstanding the foreclosure on such Real Property by trustee sale or any other reason impairing such Borrower's right to proceed against any other Loan Party. In accordance with Section 2856 of the California Civil Code or any similar laws of any other applicable jurisdiction, each of the Borrowers hereby waives until such time as the Obligations have been paid in full:

(i) all rights of subrogation, reimbursement, indemnification, and contribution and any other rights and defenses that are or may become available to the Borrowers by reason of Sections 2787 to 2855, inclusive, 2899, and 3433 of the California Civil Code or any similar laws of any other applicable jurisdiction;

(ii) all rights and defenses that the Borrowers may have because the Obligations are secured by Real Property located in California, meaning, among other things, that: (A) Agent, the other members of the Lender Group, and the Bank Product Providers may collect from the Borrowers without first foreclosing on any real or personal property collateral pledged by any Loan Party, and (B) if Agent, on behalf of the Lender Group, forecloses on any Real Property Collateral pledged by any Loan Party, (1) the amount of the Obligations may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and (2) the Lender Group may collect from the Loan Parties even if, by foreclosing on the Real Property Collateral, Agent or the other members of the Lender Group have destroyed or impaired any right the Borrowers may have to collect from any other Loan Party, it being understood that this is an unconditional and irrevocable waiver of any rights and defenses the Borrowers may have because the Obligations are secured by Real Property (including any rights or defenses based upon Sections 580a, 580d, or 726 of the California Code of Civil Procedure or any similar laws of any other applicable jurisdiction); and

(iii) all rights and defenses arising out of an election of remedies by Agent, the other members of the Lender Group, and the Bank Product Providers, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for the Obligations, has destroyed the Borrowers' rights of subrogation and reimbursement against any other Loan Party by the operation of Section 580d of the California Code of Civil Procedure or any similar laws of any other applicable jurisdiction or otherwise.

3. **CONDITIONS; TERM OF AGREEMENT.**

3.1. **Conditions Precedent to the Initial Extension of Credit.** The obligation of each Lender to make the initial extensions of credit provided for hereunder is subject to the fulfillment, to the satisfaction of Agent and each Lender, or to the waiver pursuant to Section 14.1, of each of the conditions precedent set forth on Schedule 3.1 to this Agreement (the making of such initial extensions of credit by a Lender being conclusively deemed to be its satisfaction or waiver of the conditions precedent).

3.2. **Conditions Precedent to all Extensions of Credit.** The obligation of the Lender Group (or any member thereof) to make any Revolving Loans hereunder (or to extend any other credit hereunder) at any time shall be subject to the following conditions precedent:

(a) the representations and warranties of each Loan Party or its Subsidiaries contained in this Agreement or in the other Loan Documents shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) on and as of the date of such extension of credit, as though made on and as of such date (except to the extent that such representations and warranties relate solely to an earlier date, in which case such representations and warranties shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of such earlier date); and

(b) no Default or Event of Default shall have occurred and be continuing on the date of such extension of credit, nor shall either result from the making thereof.

3.3. **Maturity.** The Commitments shall continue in full force and effect for a term ending on the Maturity Date (unless terminated earlier in accordance with the terms hereof).

3.4. **Effect of Maturity.** On the Maturity Date, all commitments of the Lender Group to provide additional credit hereunder shall automatically be terminated and all of the Obligations (other than Hedge Obligations) immediately shall become due and payable without notice or demand and Borrowers shall be required to repay all of the Obligations (other than Hedge Obligations) in full. No termination of the obligations of the Lender Group (other than payment in full of the Obligations and termination of the Commitments) shall relieve or discharge any Loan Party of its duties, obligations, or covenants hereunder or under any other Loan Document and Agent's Liens in the Collateral shall continue to secure the Obligations and shall remain in effect until all Obligations have been paid in full. When all of the Obligations have been paid in full, Agent will, at Borrowers' sole expense, execute and deliver any termination statements, lien releases, discharges of security interests, and other similar discharge or release documents (and, if applicable, in recordable form) as are reasonably necessary to release, as of record, Agent's Liens and all notices of security interests and liens previously filed by Agent.

3.5. **Early Termination by Borrowers.** Borrowers have the option, at any time upon ten Business Days prior written notice to Agent, to repay all of the Obligations in full and terminate the Commitments. The foregoing notwithstanding, (a) Borrowers may rescind termination notices relative to proposed payments in full of the Obligations with the proceeds of third party Indebtedness if the closing for such issuance or incurrence does not happen on or before the date of the proposed termination (in which case, a new notice shall be required to be sent in connection with any subsequent termination), and (b) Borrowers may extend the date of termination at any time with the consent of Agent (which consent shall not be unreasonably withheld or delayed).

3.6. **Conditions Subsequent.** The obligation of the Lender Group (or any member thereof) to continue to make Revolving Loans (or otherwise extend credit hereunder) is subject to the fulfillment, on or before the date applicable thereto, of the conditions subsequent set forth on Schedule 3.6 to this Agreement (the failure by Borrowers to so perform or cause to be performed such conditions subsequent as and when required by the terms thereof (unless such date is extended, in writing, by Agent, which Agent may do without obtaining the consent of the other members of the Lender Group), shall constitute an Event of Default).

4. REPRESENTATIONS AND WARRANTIES.

In order to induce the Lender Group to enter into this Agreement, each Borrower makes the following representations and warranties to the Lender Group which shall be true, correct, and complete, in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof), as of the Closing Date, and shall be true, correct, and complete, in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof), as of the date of the making of each Revolving Loan (or other extension of credit) made thereafter, as though made on and as of the date of such Revolving Loan (or other extension of credit) (except to the extent that such representations and warranties relate solely to an earlier date, in which case such representations and warranties shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of such earlier date), and such representations and warranties shall survive the execution and delivery of this Agreement:

4.1. **Due Organization and Qualification; Subsidiaries.**

(a) Each Loan Party and each of its Subsidiaries (i) is duly organized and existing and (to the extent the concept is applicable in such jurisdiction) in good standing under the laws of the jurisdiction of its organization, (ii) is qualified to do business in any state in which the nature of its business or the ownership or leasing of its properties makes such qualification necessary or reasonably desirable, (iii) has all requisite power and authority to own and operate its properties, and to carry on its business as now conducted and as proposed to be conducted, and (iv) has all requisite power and authority to enter into the Loan Documents to which it is a party and to carry out the transactions contemplated thereby, except, in each case under clauses (ii) and (iii) above, where the failure to do so, or so possess, individually or in the aggregate would not reasonably be expected to result in a Material Adverse Effect.

(b) Set forth on Schedule 4.1(b) to this Agreement (as such Schedule may be updated from time to time to reflect changes resulting from transactions permitted under this Agreement) is a complete and accurate description of the authorized Equity Interests of each Loan Party, by class, and, as of the Closing Date, a description of the number of shares of each such class that are issued and outstanding.

(c) Set forth on Schedule 4.1(c) to this Agreement (as such Schedule may be updated from time to time to reflect changes resulting from transactions permitted under this Agreement), is a complete and accurate list of the Loan Parties' direct and indirect Subsidiaries, showing: (i) the number of shares of each class of common and preferred Equity Interests authorized for each of such Subsidiaries, and (ii) the number and the percentage of the outstanding shares of each such class owned directly or indirectly by each Loan Party. All of the outstanding Equity Interests of each such Subsidiary has been validly issued and is fully paid and non-assessable.

(d) Except as set forth on Schedule 4.1(d) to this Agreement, there are no subscriptions, options, warrants, or calls relating to any shares of any Loan Party's or any of its Subsidiaries' Equity Interests, including any right of conversion or exchange under any outstanding security or other instrument. No Loan Party is subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire any shares of its Equity Interests or any security convertible into or exchangeable for any of its Equity Interests.

4.2. **Due Authorization; No Conflict.**

(a) As to each Loan Party, the execution, delivery, and performance by such Loan Party of the Loan Documents to which it is a party have been duly authorized by all necessary action on the part of such Loan Party.

(b) As to each Loan Party, the execution, delivery, and performance by such Loan Party of the Loan Documents to which it is a party do not and will not (i) violate any material provision of federal, state, or local law or regulation applicable to any Loan Party or its Subsidiaries, the Governing Documents of any Loan Party or its Subsidiaries, or any order, judgment, or decree of any court or other Governmental Authority binding on any Loan Party or its Subsidiaries, (ii) conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any material agreement of any Loan Party or its Subsidiaries where any such conflict, breach or default could individually or in the aggregate reasonably be expected to have a Material Adverse Effect, (iii) result in or require the creation or imposition of any Lien of any nature whatsoever upon any assets of any Loan Party, other than Permitted Liens, or (iv) require any approval of any holder of Equity Interests of a Loan Party or any approval or consent of any Person under any material agreement of any Loan Party, other than consents or approvals that have been obtained and that are still in force and effect and except, in the case of material agreements, for consents or approvals, the failure to obtain could not individually or in the aggregate reasonably be expected to cause a Material Adverse Effect.

4.3. **Governmental Consents.** The execution, delivery, and performance by each Loan Party of the Loan Documents to which such Loan Party is a party and the consummation of the transactions contemplated by the Loan Documents do not and will not require any registration with, consent, or approval of, or notice to, or other action with or by, any Governmental Authority, other than registrations, consents, approvals, notices, or other actions that have been obtained and that are still in force and effect and except for filings and recordings with respect to the Collateral to be made, or otherwise delivered to Agent for filing or recordation, as of the Closing Date.

4.4. **Binding Obligations; Perfected Liens.**

(a) Each Loan Document has been duly executed and delivered by each Loan Party that is a party thereto and is the legally valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its respective terms, except as enforcement may be limited by equitable principles or by bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or limiting creditors' rights generally.

(b) Agent's Liens are validly created, perfected (other than (i) in respect of motor vehicles that are subject to a certificate of title, (ii) money, (iii) letter-of-credit rights (other than supporting obligations), (iv) commercial tort claims (other than those that, by the terms of the Guaranty and Security Agreement, are required to be perfected), and (v) any Deposit Accounts and Securities Accounts not subject to a Control Agreement as permitted by Section 7(k)(iv) of the Guaranty and Security Agreement, and subject only to the filing of financing statements, the recordation of the Copyright Security Agreement, and the recordation of the Mortgages, in each case, in the appropriate filing offices), and first priority Liens, subject only to Permitted Liens that would have priority over the Agent's Liens pursuant to any applicable law or an agreement expressly permitted hereunder to have such senior priority.

4.5. **Title to Assets; No Encumbrances.** Each of the Loan Parties and its Subsidiaries has (a) insurable legal title to (in the case of fee interests in Real Property), (b) valid leasehold interests in (in the case of leasehold interests in real or personal property), and (c) good and marketable title to (in the case of all other personal property), all of their respective material assets reflected in their most recent financial statements delivered pursuant to **Section 5.1**, in each case except for (i) assets disposed of since the date of such financial statements to the extent permitted hereby and (ii) Permitted Liens. All of such assets are free and clear of Liens except for Permitted Liens. As of the Closing Date, the fair market value of the Real Properties located at (x) 805 S. Saturn Ave., Idaho Falls, ID 83402 and (y) 2030 Creek Dr. Rapid City, SD 57703 do not exceed \$600,000 in the aggregate. As of the Closing Date, the trademark "SUPERIOR" (0696503) is not material to, or necessary in the conduct of, the business of any Loan Party or its Subsidiaries and the fair market value of such trademark does not exceed \$500,000.

4.6. **Litigation.**

(a) There are no actions, suits, or proceedings pending or, to the knowledge of any Borrower, after due inquiry, threatened in writing against a Loan Party or any of its Subsidiaries that either individually or in the aggregate could reasonably be expected to result in liabilities of any Loan Party or any of its Subsidiaries individually or in the aggregate in excess of \$5,000,000.

(b) **Schedule 4.6(b)** to this Agreement sets forth a complete and accurate description of each of the actions, suits, or proceedings with asserted liabilities in excess of, or that could reasonably be expected to result in liabilities in excess of, \$1,000,000 that, as of the Closing Date, is pending or, to the knowledge of any Borrower, after due inquiry, threatened against a Loan Party or any of its Subsidiaries.

4.7. **Compliance with Laws.** No Loan Party nor any of its Subsidiaries (a) is in violation of any applicable laws, rules, regulations, executive orders, or codes (including Environmental Laws or the terms and conditions of any permits) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, or (b) is subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

4.8. **No Material Adverse Effect.** All historical financial statements relating to the Loan Parties and their Subsidiaries that have been delivered by Borrowers to Agent have been prepared in accordance with GAAP (except, in the case of unaudited financial statements, for the lack of footnotes and being subject to year-end audit adjustments) and present fairly in all material respects, the Loan Parties' and their Subsidiaries' consolidated financial condition as of the date thereof and results of operations for the period then ended. Since June 30, 2020, no event, circumstance, or change has occurred that has or could reasonably be expected to result in a Material Adverse Effect, other than the continued impact of the Covid-19 pandemic on the Loan Parties' operations as reflected by the Projections delivered to Agent on February 26, 2021.

4.9. **Solvency.**

(a) Each Loan Party is Solvent.

(b) No transfer of property is being made by any Loan Party and no obligation is being incurred by any Loan Party in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of such Loan Party.

4.10. **Employee Benefits.**

(a) Except as set forth on Schedule 4.10(a), no Loan Party, none of their Subsidiaries, nor any of their ERISA Affiliates (i) maintains or contributes to any Pension Plan or Multiemployer Plan or (ii) has any obligation to provide post-termination or retirement health or welfare benefits other than coverage required by applicable law (*e.g.*, unsubsidized COBRA) as of the date of this Agreement or at any time during the preceding six (6) years.

(b) Each Loan Party and each of the ERISA Affiliates has complied in all material respects with ERISA, the IRC and all applicable laws regarding each Employee Benefit Plan.

(c) Each Employee Benefit Plan is, and has been, complies with, and has been maintained in all material respects with ERISA, the IRC, all applicable laws and the terms of each such Employee Benefit Plan.

(d) Each Employee Benefit Plan that is intended to qualify under Section 401(a) of the IRC has received a favorable determination letter from the Internal Revenue Service or is entitled to rely on an opinion letter provided under a volume submitted program. To the best knowledge of each Loan Party and the ERISA Affiliates after due inquiry, nothing has occurred which would prevent, or cause the loss of, such qualification.

(e) No liability to the PBGC (other than for the payment of current premiums which are not past due) by any Loan Party or ERISA Affiliate has been incurred or is expected by any Loan Party or ERISA Affiliate to be incurred with respect to any Pension Plan. No property of any Loan Party is subject to any lien imposed pursuant to the IRC or ERISA with respect to any Pension Plan.

(f) As of the most recent valuation date for each Pension Plan, the funding target attainment percentage (as defined in IRC Section 430(d)(2)) is at least 80%, no Loan Party or ERISA Affiliate knows of any reason that such percentage could reasonably be expected to drop below 80%. Except as set forth on Schedule 4.10(f), in each case which could not reasonably be expected to result in a Material Adverse Effect, individually or in the aggregate, the present value of all accumulated benefit obligations of all underfunded Pension Plans (based on the assumptions used for financial reporting purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the property of all such underfunded Pension Plans. No Loan Party or ERISA Affiliate has incurred any liability to the PBGC except for the payment of premiums, and no premium payments are due and unpaid. Each Loan Party and ERISA Affiliate has met all applicable requirements under the IRC and ERISA, and no application for a waiver of the minimum funding standards or an extension of any amortization period has been made with respect to any Employee Benefit Plan.

(g) No Loan Party has any obligation to pay or accrue any nonqualified deferred compensation within the meaning of IRC Section 409A.

(h) There are no pending or, to the knowledge of each Loan Party, threatened claims, actions or lawsuits, or action by any claimant or Governmental Authority, with respect to any Employee Benefit Plan (other than routine claims for benefits). There has been no prohibited transaction or violation of the fiduciary responsibility rules in any material respect with respect to any Employee Benefit Plan.

(i) No Notification Event exists, is reasonably expected to occur, or has occurred in the past six (6) years, except for any Notification Event triggered by the Proposed ESOP Merger.

(j) No Loan Party or ERISA Affiliate has provided any security under Section 436 of the IRC.

(k) At all times during its existence, the ESOP has been an "employee stock ownership plan" within the meaning of Section 4975(e)(7) of the IRC and has been qualified under Section 401(a) of the IRC. Further, the ESOP has been duly established in accordance with and under applicable law and at all times during its existence the ESOT has been a tax-exempt trust under Section 501(a) of the IRC. Except as would not reasonably be expected to result in a Material Adverse Effect, the terms of the ESOT Trust Agreement have at all times during the existence of the ESOT and the ESOP complied with, and have been operated in accordance with, all applicable laws, including the IRC and ERISA. All ESOP Loans have been paid in full. At all times during its existence, the ESOT has been a duly established and validly existing trust, and the ESOT Trustee has had all of the requisite powers and authority to execute and deliver all agreements and documents with respect to the ESOP.

(l) Notwithstanding that the Loan Parties maintain and contribute to Employee Benefit Plans, no Loan Party or any Subsidiary thereof is an entity deemed to hold "plan assets" (within the meaning of the Plan Asset Regulations).

4.11. **Environmental Condition.** Except as set forth on Schedule 4.11 to this Agreement or as specifically identified in any environmental report commissioned by a Loan Party or any of its Subsidiaries to Agent (or commissioned by Agent or any Lender) in connection with any Loan, (a) to each Borrower's actual knowledge, no Loan Party's nor any of its Subsidiaries' Real Properties or any formerly owned, leased, used or operated real property, has ever been used by a Loan Party or its Subsidiaries for the disposal of, or to produce, store, handle, treat, release, or transport, any Hazardous Materials, where such disposal, production, storage, handling, treatment, release or transport was in violation, of, or non-compliance with, any applicable Environmental Law which, in each case, remains uncured, (b) to each Borrower's actual knowledge, no Loan Party's nor any of its Subsidiaries' Real Properties has ever been designated or identified in any manner pursuant to any Environmental Law as a Hazardous Materials disposal site or been the subject of a release of Hazardous Materials by any Loan Party or any of its Subsidiaries or any Person acting for any Loan Party or any of its Subsidiaries for which any Loan Party is reasonably likely to have liability under applicable Environmental Laws, (c) no Loan Party nor any of its Subsidiaries has received written notice that a Lien arising under any Environmental Law has attached to any revenues or to any Real Property owned by a Loan Party or its Subsidiaries which Lien remains in effect, and (d) except as disclosed to Agent in writing prior to the Closing Date, no Loan Party nor any of its Subsidiaries nor any of their respective facilities, Real Properties, or operations is currently subject to any Environmental Action or outstanding written order, consent decree, or settlement agreement with any Person relating to any Environmental Law or Environmental Liability which, in each case under clauses (a) through (d) above (but solely with respect to Real Property that is not Real Property Collateral in the case of clause (c) above) individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

4.12. **Complete Disclosure.** All factual information taken as a whole (other than forward-looking information and projections and information of a general economic nature and general information about Borrowers' industry) furnished by a Loan Party (or by Administrative Borrower on behalf of any other Loan Party) or its Subsidiaries in writing to Agent or any Lender (including all information contained in the Schedules hereto or in the other Loan Documents) for purposes of or in connection with this Agreement or the other Loan Documents, and all other such factual information taken as a whole (other than forward-looking information and projections and information of a general economic nature and general information about Borrowers' industry) hereafter furnished by any Loan Party (or by Administrative Borrower on behalf of any other Loan Party) or its Subsidiaries in writing to Agent or any Lender will be, true and accurate, in all material respects, on the date as of which such information is dated or certified and not incomplete by omitting to state any fact necessary to make such information (taken as a whole) not misleading in any material respect at such time in light of the circumstances under which such information was provided. The Projections delivered to Agent on February 26, 2021 represent, and as of the date on which any other Projections are delivered to Agent, such additional Projections represent, Borrowers' good faith estimate, on the date such Projections are delivered, of the Loan Parties' and their Subsidiaries' future performance for the periods covered thereby based upon assumptions believed by Borrowers to be reasonable at the time of the delivery thereof to Agent (it being understood that such Projections are subject to significant uncertainties and contingencies, many of which are beyond the control of the Loan Parties and their Subsidiaries, and no assurances can be given that such Projections will be realized, and although reflecting Borrowers' good faith estimate, projections or forecasts based on methods and assumptions which Borrowers believed to be reasonable at the time such Projections were prepared, are not to be viewed as facts, and that actual results during the period or periods covered by the Projections may differ materially from projected or estimated results). As of the Closing Date, the information included in the Beneficial Ownership Certification is true and correct in all respects.

4.13. **Patriot Act.** To the extent applicable, each Loan Party is in compliance, in all material respects, with the (a) Trading with the Enemy Act, as amended, 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, and (b) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001, as amended) (the "**Patriot Act**").

4.14. **Indebtedness.** Set forth on **Schedule 4.14** to this Agreement is a true and complete list, in all material respects, of all Indebtedness of each Loan Party and each of its Subsidiaries outstanding immediately prior to the Closing Date that is to remain outstanding immediately after giving effect to the closing hereunder on the Closing Date and such Schedule accurately sets forth, in all material respects, the aggregate principal amount of such Indebtedness as of the Closing Date.

4.15. **Payment of Taxes.** All Tax returns and reports of each Loan Party and its Subsidiaries required to be filed by any of them have been timely filed, and all Taxes shown on such Tax returns to be due and payable and all other Taxes upon a Loan Party and its Subsidiaries and upon their respective assets, income, businesses and franchises that are due and payable have been paid when due and payable, other than Taxes not in excess of \$2,500,000 in the aggregate. Each Loan Party and each of its Subsidiaries have made adequate provision in accordance with GAAP for all material Taxes not yet due and payable. No Borrower knows of any proposed Tax assessment against a Loan Party or any of its Subsidiaries that is not being actively contested by such Loan Party or such Subsidiary diligently, in good faith, and by appropriate proceedings; **provided**, that such reserves or other appropriate provisions, if any, as shall be required in conformity with GAAP shall have been made or provided therefor.

4.16. **Margin Stock.** Neither any Loan Party nor any of its Subsidiaries owns any Margin Stock or is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No part of the proceeds of the Loans made to Borrowers will be used to purchase or carry any Margin Stock or to extend credit to others for the purpose of purchasing or carrying any Margin Stock or for any purpose that violates the provisions of Regulation T, U or X of the Board of Governors. Neither any Loan Party nor any of its Subsidiaries expects to acquire any Margin Stock.

4.17. **Governmental Regulation.** No Loan Party nor any of its Subsidiaries is subject to regulation under the Federal Power Act or the Investment Company Act of 1940 or under any other federal or state statute or regulation which may limit its ability to incur Indebtedness or which may otherwise render all or any portion of the Obligations unenforceable. No Loan Party nor any of its Subsidiaries is a "registered investment company" or a company "controlled" by a "registered investment company" or a "principal underwriter" of a "registered investment company" as such terms are defined in the Investment Company Act of 1940.

4.18. **OEAC; Sanctions; Anti-Corruption Laws; Anti-Money Laundering Laws.** No Loan Party or any of its Subsidiaries is in violation of any Sanctions. No Loan Party nor any of its Subsidiaries nor, to the knowledge of such Loan Party, any director, officer, employee, agent or Affiliate of such Loan Party or such Subsidiary (a) is a Sanctioned Person or a Sanctioned Entity, (b) has any assets located in Sanctioned Entities, or (c) derives revenues from investments in, or transactions with Sanctioned Persons or Sanctioned Entities. Each of the Loan Parties and its Subsidiaries has implemented and maintains in effect policies and procedures reasonably designed to ensure compliance with Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. Each of the Loan Parties and its Subsidiaries, and to the knowledge of each such Loan Party, each director, officer, employee, agent and Affiliate of each such Loan Party and each such Subsidiary, is in compliance with all Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. No proceeds of any Loan made or Letter of Credit issued hereunder will be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Entity, or otherwise used in any manner that would result in a violation of any Sanction, Anti-Corruption Law or Anti-Money Laundering Law by any Person (including any Lender, Bank Product Provider, or other individual or entity participating in any transaction).

4.19. **Employee and Labor Matters.** There is (i) no unfair labor practice complaint pending or, to the knowledge of any Loan Party, threatened against any Loan Party or its Subsidiaries before any Governmental Authority and no grievance or arbitration proceeding pending or, to the knowledge of any Borrower, threatened against any Loan Party or its Subsidiaries which arises out of or under any collective bargaining agreement and that could reasonably be expected to result in a material liability, (ii) no strike, labor dispute, slowdown, stoppage or similar action or grievance pending or threatened against any Loan Party or its Subsidiaries that could reasonably be expected to result in a material liability, or (iii) to the knowledge of any Loan Party, after due inquiry, no union representation question existing with respect to the employees of any Loan Party or its Subsidiaries and no union organizing activity taking place with respect to any of the employees of any Loan Party or its Subsidiaries. None of any Loan Party or its Subsidiaries has incurred any liability or obligation under the Worker Adjustment and Retraining Notification Act or similar state law, which remains unpaid or unsatisfied to the extent that such would, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. The hours worked and payments made to employees of each Loan Party and its Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable legal requirements, except to the extent such violations could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. All material payments due from any Loan Party or its Subsidiaries 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 Borrowers, except where the failure to do so could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

4.20. **Material Contracts.** Set forth on Schedule 4.20 (as such Schedule may be updated from time to time in accordance herewith) is a reasonably detailed description of the Material Contracts of each Loan Party and its Subsidiaries as of the Closing Date; provided, that Borrowers may amend Schedule 4.20 to add additional Material Contracts so long as such amendment occurs by written notice to Agent on the date that Parent provides the Compliance Certificate. The Loan Parties are not in breach or in default of or under any Material Contract which could reasonably be expected to result in a Material Adverse Effect and have not received any written notice of the intention of any other Person party thereto to terminate any Material Contract prior to the end of its current term.

4.21. **Leases.** Each Loan Party and its Subsidiaries enjoy peaceful and undisturbed possession under all leases material to their business and to which they are parties or under which they are operating, and, subject to Permitted Protests, all of such material leases are valid and subsisting and no Loan Party has received written notice asserting a material default by the applicable Loan Party or its Subsidiaries which remains uncured.

4.22. **Eligible Accounts.** As to each Account that is identified by Borrowers as an Eligible Account in a Borrowing Base Certificate submitted to Agent, such Account is (a) a bona fide existing payment obligation of the applicable Account Debtor created by the sale and delivery of Inventory or the rendition of services to such Account Debtor in the ordinary course of a Borrower's business, (b) owed to a Borrower without any known defenses, disputes, offsets, counterclaims, or rights of return or cancellation, and (c) not excluded as ineligible by virtue of one or more of the excluding criteria (other than any Agent-discretionary criteria) set forth in the definition of Eligible Accounts.

4.23. **Eligible Inventory.** As to each item of Inventory that is identified by Borrowers as Eligible Finished Goods Inventory, Eligible In-Transit Inventory, or Eligible Raw Materials Inventory in a Borrowing Base Certificate submitted to Agent, such Inventory is (a) of good and merchantable quality, free in all material respects from known defects, and (b) not excluded as ineligible by virtue of one or more of the excluding criteria (other than any Agent-discretionary criteria) set forth in the definition of Eligible Inventory (in the case of Eligible In-Transit Inventory, after giving effect to any exclusions therefrom specified in the definition of Eligible In-Transit Inventory).

4.24. **[Reserved].**

4.25. **Location of Inventory.** Except as set forth in Schedule 4.25, the Inventory of Borrowers and their Subsidiaries is not stored with a bailee, warehouseman, or similar party and is located only at, or in-transit between, the locations identified on Schedule 4.25 to this Agreement (as such Schedule may be updated pursuant to Section 5.14).

4.26. **Inventory Records.** Each Loan Party keeps correct and accurate, in all material respects, records itemizing and describing the type, quality, and quantity of its and its Subsidiaries' Inventory and the book value thereof.

4.27. **[Reserved].**

4.28. **[Reserved].**

4.29. **Hedge Agreements.** On each date that any Hedge Agreement is executed by any Hedge Provider, Borrower and each other Loan Party satisfy all eligibility, suitability and other requirements under the Commodity Exchange Act (7 U.S.C. § 1, et seq., as in effect from time to time) and the Commodity Futures Trading Commission regulations.

4.30. **Adverse Agreements, Etc.** No Loan Party or any of its Subsidiaries is a party to any Contractual Obligation or subject to any restriction or limitation in any Governing Document or any judgment, order, regulation, ruling or other requirement of a court or other Governmental Authority, which (either individually or in the aggregate) has, or in the future could reasonably be expected (either individually or in the aggregate) to have, a Material Adverse Effect.

4.31. **Permits, Etc.** Each Loan Party has, and is in compliance with, all permits, licenses, authorizations, approvals, entitlements and accreditations required for such Person lawfully to own, lease, manage or operate, or to acquire, each business and Real Property currently owned, leased, managed or operated, or to be acquired, by such Person, except to the extent the failure to have or be in compliance therewith could not reasonably be expected to have 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, is reasonably likely to result in the suspension, revocation, impairment, forfeiture or non-renewal of any such permit, license, authorization, approval, entitlement or accreditation, and there is currently no pending or overtly threatened claim that any thereof is not in full force and effect, in each case which suspension, revocation, impairment, forfeiture, non-renewal or failure to be in full force and effect could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.32. **Insurance.** Each Loan Party maintains the insurance and required services and financial assurance as required by law and as required by Section 5.6. Schedule 4.32 sets forth a list of all insurance maintained by each Loan Party on the Closing Date.

4.33. **Customers and Suppliers.** There exists no actual or, to the knowledge of any Borrower, threatened termination, cancellation or limitation of, or modification to or change in, the business relationship between (a) 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 (b) any Loan Party, on the one hand, and any supplier 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, and, to the knowledge of any Borrower, 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, in each case which termination, cancellation, limitation, modification or change could individually or in the aggregate reasonably be expected to have a Material Adverse Effect.

5. **AFFIRMATIVE COVENANTS.**

Each Borrower covenants and agrees that, until the termination of all of the Commitments and payment in full of the Obligations:

5.1. **Financial Statements, Reports, Certificates.** Borrowers (a) will deliver to Agent, with copies to each Lender, each of the financial statements, reports, and other items set forth on Schedule 5.1 to this Agreement no later than the times specified therein, (b) agree that no Subsidiary of a Loan Party will have a fiscal year different from that of Parent, (c) agree to maintain a system of accounting that enables Borrowers to produce financial statements in accordance with GAAP, and (d) agree that they will, and will cause each other Loan Party to, (i) keep a reporting system that shows all additions, sales, claims, returns, and allowances with respect to their and their Subsidiaries' sales, and (ii) maintain their billing systems and practices substantially as in effect as of the Closing Date and shall only make material modifications thereto with notice to, and with the consent of, Agent (such consent not to be unreasonably withheld, conditioned or delayed). Documents required to be delivered pursuant to this Section 5.1 may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which such documents are filed for public availability on the SEC's Electronic Data Gathering and Retrieval system (EDGAR) or (ii) on which such documents are posted on Borrowers' behalf on an Internet or intranet website, if any, to which each Lender and Agent have access (whether a commercial, third-party website or whether made available by Agent).

5.2. **Reporting.** Borrowers (a) will deliver to Agent (and if so requested by Agent, with copies for each Lender) each of the reports set forth on Schedule 5.2 to this Agreement at the times specified therein, and (b) agree to use commercially reasonable efforts in cooperation with Agent to facilitate and implement a system of electronic collateral reporting in order to provide electronic reporting of each of the items set forth on such Schedule. Borrowers and Agent hereby agree that the delivery of the Borrowing Base Certificate through the Agent's electronic platform or portal, subject to Agent's authentication process, by such other electronic method as may be approved by Agent from time to time in its sole discretion, or by such other electronic input of information necessary to calculate the Borrowing Bases as may be approved by Agent from time to time in its sole discretion, shall in each case be deemed to satisfy the obligation of Borrowers to deliver such Borrowing Base Certificate, with the same legal effect as if such Borrowing Base Certificate had been manually executed by Borrowers and delivered to Agent.

5.3. **Existence.** Except as otherwise permitted under Section 6.3 or Section 6.4, each Loan Party will, and will cause each of its Subsidiaries to, at all times preserve and keep in full force and effect such Person's valid existence and good standing in its jurisdiction of organization and, except as could not reasonably be expected to result in a Material Adverse Effect (i) good standing with respect to all other jurisdictions in which it is qualified to do business and (ii) any rights, franchises, permits, licenses, accreditations, authorizations, or other approvals material to their businesses.

5.4. **Maintenance of Properties and Intellectual Property.** Each Loan Party will, and will cause each of its Subsidiaries to, maintain and preserve all of its assets that are necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear, tear, casualty, and condemnation and Permitted Dispositions excepted and except where failure to do so could not reasonably be expected to result in a Material Adverse Effect. The Loan Parties shall maintain, defend and preserve the Farmer Trademark and its value, usefulness, merchantability and marketability in a manner consistent with past practices, and shall not sell, assign, transfer, encumber or license the Farmer Trademark to any Person (other than Liens created pursuant to the Loan Documents) without the prior written consent of the Required Lenders.

5.5. **Taxes.** Each Loan Party will, and will cause each of its Subsidiaries to, pay in full before delinquency or before the expiration of any extension period all Taxes imposed, levied, or assessed against it, or any of its assets or in respect of any of its income, businesses, or franchises, other than Taxes not in excess of \$2,500,000 outstanding at any time.

5.6. **Insurance.**

(a) Each Loan Party will, and will cause each of its Subsidiaries to, at Borrowers' expense, maintain insurance respecting each of each Loan Party's and its Subsidiaries' assets wherever located, covering liabilities, losses or damages as are customarily are insured against by other Persons engaged in same or similar businesses and similarly situated and located, including, without limitation, flood insurance with respect to Real Property located in a flood zone. All such policies of insurance shall be with financially sound and reputable insurance companies acceptable to Agent (it being agreed that, as of the Closing Date, the Loan Parties' existing insurance providers as set forth in the certificates of insurance delivered to Agent on or about the Closing Date shall be deemed to be acceptable to Agent) and in such amounts as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated and located and, in any event, in amount, adequacy, and scope reasonably satisfactory to Agent (it being agreed that the amount, adequacy, and scope of the policies of insurance of Borrowers in effect as of the Closing Date are acceptable to Agent). Subject to, and in accordance with, Schedule 3.6, all property insurance policies are to be made payable to Agent for the benefit of Agent and the Lenders, as their interests may appear, in case of loss, pursuant to a standard lender's loss payable endorsement with a standard non-contributory "lender" or "secured party" clause and are to contain such other provisions as Agent may reasonably require to fully protect the Lenders' interest in the Collateral and to any payments to be made under such policies. Subject to, and in accordance with, Schedule 3.6, all certificates of property and general liability insurance are to be delivered to Agent, with the lender's loss payable and additional insured endorsements in favor of Agent and shall provide for not less than thirty days (ten days in the case of non-payment) prior written notice to Agent of the exercise of any right of cancellation. If any Loan Party or its Subsidiaries fails to maintain such insurance, Agent may arrange for such insurance, but at Borrowers' expense and without any responsibility on Agent's part for obtaining the insurance, the solvency of the insurance companies, the adequacy of the coverage, or the collection of claims. Upon the occurrence and during the continuance of an Event of Default, the Agent shall have the right, in the name of the Lenders or any Loan Party, to file claims under any insurance policies, to receive, receipt and give acquittance for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies. The Agent agrees to promptly notify the Administrative Borrower of any claims filed by it pursuant to the immediately preceding sentence.

(b) Borrowers shall give Agent prompt notice of any loss exceeding \$2,500,000 covered by the casualty or business interruption insurance of any Loan Party or its Subsidiaries. Upon the occurrence and during the continuance of an Event of Default, Agent shall have the sole right to file claims under any property and general liability insurance policies in respect of the Collateral, to receive, receipt and give acquittance for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies.

(c) If at any time the area in which any Real Property that is subject to a Mortgage is located is designated as laying within any "special flood hazard area" in any Flood Insurance Rate Map published by the Federal Emergency Management Agency (or any successor agency), obtain flood insurance in such total amount and on terms that are satisfactory to Agent and all Lenders from time to time, and otherwise comply with the Flood Laws or as is otherwise satisfactory to Agent and all Lenders.

5.7. **Inspection.**

(a) Each Loan Party will, and will cause each of its Subsidiaries to, permit Agent, any Lender, and each of their respective duly authorized representatives or agents to visit any of its Real Properties or other properties and inspect any of its assets or books and records, to examine and make copies of its books and records, and to discuss its affairs, finances, and accounts with, and to be advised as to the same by, its officers and employees (provided, that an authorized representative of a Borrower shall be allowed to be present) at such reasonable times and intervals as Agent or any Lender, as applicable, may designate and, so long as no Default or Event of Default has occurred and is continuing, with reasonable prior notice to Borrowers and during regular business hours, at Borrowers' expense, subject to the limitations set forth below in Section 5.7(c).

(b) Each Loan Party will, and will cause each of its Subsidiaries to, permit Agent and each of its duly authorized representatives or agents to conduct field examinations, appraisals or valuations at such reasonable times and intervals as Agent may designate, at Borrowers' expense, subject to the limitations set forth below in Section 5.7(c).

(c) So long as no Event of Default shall have occurred and be continuing during a calendar year, Borrowers shall not be obligated to reimburse Agent for more than (i) one (1) field examination in such calendar year (increasing to two (2) field examinations if an Increased Reporting Event has occurred during such calendar year), (ii) one (1) inventory appraisal in such calendar year (increasing to two (2) inventory appraisals if an Increased Reporting Event has occurred during such calendar year), in each case, except for field examinations and appraisals conducted in connection with a proposed Permitted Acquisition (whether or not consummated), and (iii) one (1) appraisal in such calendar year of each Real Property that constitutes Real Property Collateral.

5.8. **Compliance with Laws.** Each Loan Party will, and will cause each of its Subsidiaries to, comply with the requirements of all applicable laws, rules, regulations, and orders of any Governmental Authority, including Environmental Laws, other than laws, rules, regulations, and orders the non-compliance with which, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

5.9. **Environmental.** Each Loan Party will, and will cause each of its Subsidiaries to,

(a) Keep any Real Property or other property owned by any Loan Party or its Subsidiaries free of any Environmental Liens or post bonds or other financial assurances sufficient to satisfy the obligations or liability evidenced by such Environmental Liens,

(b) Comply, in all material respects, with Environmental Laws and promptly provide to Agent documentation of such compliance which Agent reasonably requests,

(c) Promptly notify Agent of any release, of which any Loan Party or its Subsidiaries has actual knowledge, of a Hazardous Material in any quantity which requires reporting under Environmental Laws from or onto any Real Property or other property owned by any Loan Party or its Subsidiaries and, if required by Environmental Laws, take any Remedial Actions required to come into compliance, in all material respects, with applicable Environmental Law, and

(d) Promptly, but in any event within five Business Days of its receipt thereof, provide Agent with written notice of any of the following: (i) notice that an Environmental Lien has been filed against any of the real or personal property of a Loan Party or its Subsidiaries, (ii) commencement of any Environmental Action or written notice that an Environmental Action will be filed against a Loan Party or its Subsidiaries, (iii) written notice of a violation, citation, or other administrative order from a Governmental Authority and (iv) any material Environmental Liabilities imposed or sought to be imposed on any Loan Party or its Subsidiaries.

5.10. **Disclosure Updates.** Each Loan Party will, promptly and in no event later than five Business Days after obtaining knowledge thereof, notify Agent if any written information, exhibit, or report furnished to Agent or the Lenders contained, at the time it was furnished, any untrue statement of a material fact or omitted to state any material fact necessary to make the statements contained therein not misleading in light of the circumstances in which made. The foregoing to the contrary notwithstanding, any notification pursuant to the foregoing provision will not cure or remedy the effect of the prior untrue statement of a material fact or omission of any material fact nor shall any such notification have the effect of amending or modifying this Agreement or any of the Schedules hereto.

5.11. **Formation of Subsidiaries.** Each Loan Party will, at the time that any Loan Party forms any direct or indirect Subsidiary or acquires any direct or indirect Subsidiary after the Closing Date, within ten days of such event (or such later date as permitted by Agent in its sole discretion) (a) cause such new Subsidiary (i) if Administrative Borrower requests, subject to the consent of Agent, that such Subsidiary be joined as a Borrower hereunder, to provide to Agent a Joinder to this Agreement, and (ii) to provide to Agent a joinder to the Guaranty and Security Agreement, in each case, together with such other security agreements, as well as appropriate financing statements (and with respect to all property subject to a Mortgage, fixture filings), all in form and substance reasonably satisfactory to Agent (including being sufficient to grant Agent a first priority Lien (subject to Permitted Liens) in and to the assets of such newly formed or acquired Subsidiary), (b) provide, or cause the applicable Loan Party to provide, to Agent a pledge agreement (or an addendum to the Guaranty and Security Agreement) and appropriate certificates and powers or financing statements, pledging all of the direct or beneficial ownership interest in such new Subsidiary in form and substance reasonably satisfactory to Agent, (c) to the extent that an Additional Real Property Collateral Event exists, deliver one or more Mortgages creating on the real property of such Subsidiary a perfected, first priority Lien (except to the extent of Permitted Liens that would have priority over the Agent's Liens pursuant to applicable law or an agreement expressly permitted hereunder to have such senior priority) on such real property and (ii) such other real property deliverables as may be reasonably required by Agent with respect to each such real property with a fair market value exceeding \$1,000,000, and (d) provide to Agent all other documentation, including the Governing Documents of such Subsidiary, Beneficial Ownership Certification and one or more opinions of counsel reasonably satisfactory to Agent, which, in its opinion, is appropriate with respect to the execution and delivery of the applicable documentation referred to above (including policies of title insurance, flood certification documentation or other documentation with respect to all Real Property owned in fee and subject to a Mortgage). Any document, agreement, or instrument executed or issued pursuant to this Section 5.11 shall constitute a Loan Document.

5.12. **Further Assurances.** Each Loan Party will, and will cause each of the other Loan Parties to, at any time upon the reasonable request of Agent, execute or deliver to Agent any and all financing statements, fixture filings, security agreements, pledges, assignments, Mortgages, deeds of trust, opinions of counsel, and all other documents, in each case in form and substance reasonably acceptable to Agent (the "Additional Documents"), that Agent may reasonably request in form and substance reasonably satisfactory to Agent, to create, perfect, and continue perfected or to better perfect Agent's Liens in all of the assets of each of the Loan Parties (whether now owned or hereafter arising or acquired, tangible or intangible, real or personal) (other than any assets expressly excluded from the Collateral (as defined in the Guaranty and Security Agreement) pursuant to the final paragraph of Section 3 of the Guaranty and Security Agreement), to create and perfect Liens in favor of Agent in any Real Property that constitutes Real Property Collateral, and in order to fully consummate all of the transactions contemplated hereby and under the other Loan Documents. Notwithstanding the foregoing, in no event shall any Loan Party be required to provide real property deliverables, other than Mortgages, for any real property that constitutes Real Property Collateral to the extent that such real property has a fair market value less than \$1,000,000. To the maximum extent permitted by applicable law, if any Borrower or any other Loan Party refuses or fails to execute or deliver any reasonably requested Additional Documents which such Loan Party is required to provide pursuant to the terms and conditions of the Loan Documents within a reasonable period of time not to exceed 10 Business Days following the request to do so (or such later date as Agent may agree in writing), each Borrower and each other Loan Party hereby authorizes Agent to execute any such Additional Documents in the applicable Loan Party's name and authorizes Agent to file such executed Additional Documents in any appropriate filing office. In furtherance of, and not in limitation of, the foregoing, each Loan Party shall take such actions as Agent may reasonably request from time to time to ensure that the Obligations are guaranteed by the Guarantors and are secured by substantially all of the assets of the Loan Parties, including all of the outstanding capital Equity Interests of each Borrower (other than Parent) and their respective Subsidiaries (in each case, other than with respect to any assets expressly excluded from the Collateral (as defined in the Guaranty and Security Agreement) pursuant to the final paragraph of Section 3 of the Guaranty and Security Agreement). Notwithstanding anything to the contrary contained herein (including Section 5.11 hereof and this Section 5.12) or in any other Loan Document, (x) Agent shall not accept delivery of any Mortgage from any Loan Party unless each of the Lenders has received 45 days prior written notice thereof and Agent has received confirmation from each Lender that such Lender has completed its flood insurance diligence, has received copies of all flood insurance documentation and has confirmed that flood insurance compliance has been completed as required by the Flood Laws or as otherwise satisfactory to such Lender and (y) Agent shall not accept delivery of any joinder to any Loan Document with respect to any Subsidiary of any Loan Party that is not a Loan Party, if such Subsidiary that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation unless such Subsidiary has delivered a Beneficial Ownership Certification in relation to such Subsidiary and Agent has completed its Patriot Act searches, OFAC/PEP searches and customary individual background checks for such Subsidiary, the results of which shall be satisfactory to Agent.

5.13. **Material Contracts.** Contemporaneously with the delivery of each Compliance Certificate pursuant to Section 5.1, Borrowers will provide Agent with copies of (a) each Material Contract entered into since the delivery of the previous Compliance Certificate, and (b) each material amendment or modification of any Material Contract entered into since the delivery of the previous Compliance Certificate.

5.14. **Location of Inventory; Chief Executive Office.** Each Loan Party will, and will cause each of its Subsidiaries to, keep (a) their Inventory only at the locations identified on Schedule 4.25 to this Agreement (provided that Borrowers may amend Schedule 4.25 to this Agreement so long as such amendment occurs by written notice to Agent not less than ten days prior to the date on which such Inventory is moved to such new location and so long as Agent has consented to such amendment and such new location is within the continental United States), and (b) their respective chief executive offices only at the locations identified on Schedule 7 to the Guaranty and Security Agreement. Each Loan Party will, and will cause each of its Subsidiaries to, use their commercially reasonable efforts to obtain Collateral Access Agreements for each of the locations identified on Schedule 7 to the Guaranty and Security Agreement and Schedule 4.25 to this Agreement as holding books and records of any Loan Party, or \$75,000 or more of Inventory, equipment and/or machinery, in the aggregate (each such location being herein defined as a "Required Access Agreement Location").

5.15. **OFAC; Sanctions; Anti-Corruption Laws; Anti-Money Laundering Laws.** Each Loan Party will, and will cause each of its Subsidiaries to, comply with all applicable Sanctions, and comply in all material respects with all Anti-Corruption Laws and Anti-Money Laundering Laws. Each of the Loan Parties and its Subsidiaries shall implement and maintain in effect policies and procedures reasonably designed to ensure compliance by the Loan Parties and their Subsidiaries and their respective directors, officers, employees, agents and Affiliates with Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws.

5.16. **Compliance with ERISA and the IRC.** In addition to and without limiting the generality of Section 5.8, each Loan Party will, and will cause each of its Subsidiaries to, (a) comply in all material respects with applicable provisions of ERISA and the IRC with respect to all Employee Benefit Plans, including the ESOP, (b) without the prior written consent of Agent and the Required Lenders, not take any action or fail to take action the result of which could result in a Notification Event or a Loan Party or ERISA Affiliate incurring a material liability to the PBGC or to Pension Plan or a Multiemployer Plan (other than to pay contributions or premiums payable in the ordinary course), (c) allow any facts or circumstances to exist with respect to one or more Employee Benefit Plans that, in the aggregate, reasonably could be expected to result in a Material Adverse Effect, (d) not participate in any prohibited transaction that could result in other than a *de minimis* civil penalty excise tax, fiduciary liability or correction obligation under ERISA or the IRC, (e) operate each Employee Benefit Plan in such a manner that will not incur any material tax liability under the IRC (including Section 4980B of the IRC), and (e) furnish to Agent upon Agent's written request such additional information about any Employee Benefit Plan for which any Loan Party or ERISA Affiliate could reasonably expect to incur any material liability. With respect to each Pension Plan, the Loan Parties and the ERISA Affiliates shall (i) satisfy in full and in a timely manner, without incurring any late payment or underpayment charge or penalty and without giving rise to any Lien, all of the contribution and funding requirements of the IRC and of ERISA, and (ii) pay, or cause to be paid, to the PBGC in a timely manner, without incurring any late payment or underpayment charge or penalty, all premiums required pursuant to ERISA. Each Loan Party will notify Agent in writing, promptly after such Loan Party obtains knowledge of the occurrence of any Notification Event.

6. **NEGATIVE COVENANTS.**

Each Borrower covenants and agrees that, until the termination of all of the Commitments and the payment in full of the Obligations:

6.1. **Indebtedness.** Each Loan Party will not, and will not permit any of its Subsidiaries to, create, incur, assume, suffer to exist, guarantee, or otherwise become or remain, directly or indirectly, liable with respect to any Indebtedness, except for Permitted Indebtedness.

6.2. **Liens.** Each Loan Party will not, and will not permit any of its Subsidiaries to, create, incur, assume, or suffer to exist, directly or indirectly, any Lien on or with respect to any of its assets, of any kind, whether now owned or hereafter acquired, or any income or profits therefrom, except for Permitted Liens. Notwithstanding anything to the contrary contained in any Loan Document, without the prior written consent of the Required Lenders, (a) no intellectual property that is material to, or necessary in the conduct of, the business of any Loan Party or its Subsidiaries (including the Farmer Trademarks) shall be subject to any Lien other than Liens described in clauses (a), (l) and (r) of the definition of Permitted Lien and (b) no Real Property Collateral shall be subject to any Lien other than Liens described in clauses (a), (b), (k) and (r) of the definition of Permitted Lien.

6.3. **Restrictions on Fundamental Changes.** Each Loan Party will not, and will not permit any of its Subsidiaries to,

(a) Other than in order to consummate a Permitted Acquisition, enter into any merger, consolidation, reorganization, statutory division or recapitalization, or reclassify its Equity Interests, except for (i) any merger between Loan Parties; provided, that Parent must be the surviving entity of any such merger to which it is a party, (ii) any merger between a Loan Party and a Subsidiary of such Loan Party that is not a Loan Party so long as such Loan Party is the surviving entity of any such merger, and (iii) any merger between Subsidiaries of any Loan Party that are not Loan Parties,

(b) liquidate, wind up, or dissolve itself (or suffer any liquidation or dissolution), except for (i) the liquidation or dissolution of non-operating Subsidiaries of any Loan Party with nominal assets and nominal liabilities, (ii) the liquidation or dissolution of a Loan Party (other than any Borrower) or any of its wholly-owned Subsidiaries so long as all of the assets (including any interest in any Equity Interests) of such liquidating or dissolving Loan Party or Subsidiary are transferred to a Loan Party that is not liquidating or dissolving, or (iii) the liquidation or dissolution of a Subsidiary of any Loan Party that is not a Loan Party (other than any such Subsidiary the Equity Interests of which (or any portion thereof) is subject to a Lien in favor of Agent) so long as all of the assets of such liquidating or dissolving Subsidiary are transferred to a Subsidiary of a Loan Party that is not liquidating or dissolving,

(c) suspend or cease operating a substantial portion of its or their business, except as permitted pursuant to clauses (a) or (b) above or in connection with a transaction permitted under Section 6.4, or

(d) change its classification/status for U.S. federal income tax purposes.

6.4. **Disposal of Assets.** Other than Permitted Dispositions or transactions expressly permitted by Sections 6.3 or 6.9, each Loan Party will not make any Disposition, whether in one transaction or a series of related transactions, of all or any part of its business, property or assets, whether now owned or hereafter acquired (or agree to do any of the foregoing), or permit any of its Subsidiaries to do any of the foregoing. Notwithstanding anything to the contrary contained in any Loan Document, without the prior written consent of the Required Lenders, Parent and its Subsidiaries shall not convey, sell, lease, license, assign, transfer, or otherwise dispose of (x) any intellectual property that is material to, or necessary in the conduct of, the business of any Loan Party or its Subsidiaries (including the Farmer Trademarks) except as permitted by clause (d) of the definition of Permitted Disposition or (y) any fee owned Real Property except as permitted by clauses (g), (h), (o) and (p) of the definition of Permitted Disposition.

6.5. **Nature of Business.** Each Loan Party will not, and will not permit any of its Subsidiaries to, make any material change in the nature of its or their business as described in Schedule 6.5 to this Agreement or acquire any properties or assets that are not reasonably related to the conduct of such business activities; provided, that the foregoing shall not prevent any Loan Party and its Subsidiaries from engaging in any business that is reasonably related or ancillary to its or their business.

6.6. **Prepayments and Amendments.** Each Loan Party will not, and will not permit any of its Subsidiaries to,

(a) Except in connection with Refinancing Indebtedness permitted by Section 6.1,

(i) optionally prepay, redeem, defease, purchase, or otherwise acquire any Indebtedness of any Loan Party or its Subsidiaries, other than (A) the Obligations in accordance with this Agreement, (B) Hedge Obligations, (C) Permitted Intercompany Advances, or (D) other Indebtedness so long as the Payment Conditions are satisfied, or

(ii) make any payment on account of Indebtedness that has been contractually subordinated in right of payment to the Obligations if such payment is not permitted at such time under the subordination terms and conditions, or

(b) Directly or indirectly, amend, modify, or change any of the terms or provisions of:

(i) any agreement, instrument, document, indenture, or other writing evidencing or concerning Permitted Indebtedness other than (A) the Obligations in accordance with this Agreement, (B) Hedge Obligations, (C) Permitted Intercompany Advances, and (D) Indebtedness permitted under clauses (c), (h), (j), (k), (v) and (w) of the definition of Permitted Indebtedness if the effect thereof, either individually or in the aggregate, could not reasonably be expected to be materially adverse to the interests of the Lenders, or

(ii) the Governing Documents of any Loan Party or any of its Subsidiaries if the effect thereof, either individually or in the aggregate, could reasonably be expected to be materially adverse to the interests of the Lenders.

6.7. **Restricted Payments.** Each Loan Party will not, and will not permit any of its Subsidiaries to, make any Restricted Payment; provided, that so long as it is permitted by law,

(a) so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom, Parent may make distributions to former employees, officers, or directors of Parent (or any spouses, ex-spouses, or estates of any of the foregoing) on account of redemptions of Equity Interests of Parent held by such Persons (including any stock subscription or shareholder agreement); provided, that the aggregate amount of such redemptions made by Parent during the term of this Agreement plus the amount of Indebtedness outstanding under clause (l) of the definition of Permitted Indebtedness, does not exceed \$1,000,000 in any calendar year,

(b) so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom, Parent may make distributions to former employees, officers, or directors of Parent (or any spouses, ex-spouses, or estates of any of the foregoing), solely in the form of forgiveness of Indebtedness of such Persons owing to Parent on account of repurchases of the Equity Interests of Parent held by such Persons; provided, that such Indebtedness was incurred by such Persons solely to acquire Equity Interests of Parent,

(c) Restricted Payments made to a Loan Party, or

(d) other Restricted Payments so long as the Payment Conditions are satisfied.

6.8. **Accounting Methods.** Each Loan Party will not, and will not permit any of its Subsidiaries to, modify or change its fiscal year or its method of accounting (other than as may be required to conform to GAAP).

6.9. **Investments.** Each Loan Party will not, and will not permit any of its Subsidiaries to, directly or indirectly, make or acquire any Investment or incur any liabilities (including contingent obligations) for or in connection with any Investment except for Permitted Investments. Notwithstanding anything to the contrary contained in any Loan Document, without the prior written consent of the Required Lenders, no Investment consisting of (x) any intellectual property that is material to, or necessary in the conduct of, the business of any Loan Party or its Subsidiaries (including the Farmer Trademarks) or (y) any fee owned Real Property shall be made.

6.10. **Transactions with Affiliates.** Each Loan Party will not, and will not permit any of its Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction with any Affiliate of any Loan Party or any of its Subsidiaries except for:

(a) transactions (other than the payment of management, consulting, monitoring, or advisory fees) between such Loan Party or its Subsidiaries, on the one hand, and any Affiliate of such Loan Party or its Subsidiaries, on the other hand, so long as such transactions are no less favorable, taken as a whole, to such Loan Party or its Subsidiaries, as applicable, than would be obtained in an arm's length transaction with a non-Affiliate,

(b) any indemnity provided for the benefit of directors (or comparable managers) of a Loan Party or one of its Subsidiaries so long as it has been approved by such Loan Party's or such Subsidiary's board of directors (or comparable governing body) in accordance with applicable law,

(c) the payment of reasonable compensation, severance, or employee benefit arrangements to employees, officers, and outside directors of a Loan Party or one of its Subsidiaries in the ordinary course of business and consistent with industry practice so long as it has been approved by such Loan Party's or such Subsidiary's board of directors (or comparable governing body) in accordance with applicable law,

(d) (i) transactions solely among the Loan Parties, and (ii) transactions solely among Subsidiaries of Loan Parties that are not Loan Parties,

(e) transactions permitted by Section 6.3, Section 6.7, or Section 6.9,

(f) agreements for the non-exclusive licensing of intellectual property, or distribution of products, in each case, among the Loan Parties and their Subsidiaries for the purpose of the counterparty thereof operating its business, and agreements for the assignment of intellectual property from any Loan Party or any of its Subsidiaries to any Loan Party.

6.11. **Use of Proceeds.** Each Loan Party will not, and will not permit any of its Subsidiaries to, use the proceeds of any Loan made hereunder for any purpose other than (a) on the Closing Date, (i) to repay, in full, the outstanding principal, accrued interest, and accrued fees and expenses owing under or in connection with the Existing Credit Facility, and (ii) to pay the fees, costs, and expenses incurred in connection with this Agreement, the other Loan Documents, and the transactions contemplated hereby and thereby, in each case, as set forth in the Flow of Funds Agreement, and ~~(b) on the Third Amendment Effective Date and with respect to the proceeds of the Term Loan, to repay, in full, the outstanding principal, accrued interest, accrued premium, and accrued fees and expenses owing under or in connection with the Prior Term Loan Documents, and (c)~~ thereafter, consistent with the terms and conditions hereof, for their lawful and permitted purposes; provided that (x) no part of the proceeds of the Loans will be used to purchase or carry any such Margin Stock or to extend credit to others for the purpose of purchasing or carrying any such Margin Stock or for any purpose that violates the provisions of Regulation T, U or X of the Board of Governors, (y) no part of the proceeds of any Loan or Letter of Credit will be used, directly or, to the knowledge of any Loan Party after due care and inquiry, indirectly, to make any payments to a Sanctioned Entity or a Sanctioned Person, to fund any investments, loans or contributions in, or otherwise make such proceeds available to, a Sanctioned Entity or a Sanctioned Person, to fund any operations, activities or business of a Sanctioned Entity or a Sanctioned Person, or in any other manner that would result in a violation of Sanctions by any Person, and (z) that no part of the proceeds of any Loan or Letter of Credit will be used, directly or, to the knowledge of any Loan Party after due care and inquiry, indirectly, in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Sanctions, Anti-Corruption Laws or Anti-Money Laundering Laws.

6.12. **Limitation on Issuance of Equity Interests.** Except for the issuance or sale of Qualified Equity Interests by Parent, each Loan Party will not, and will not permit any of its Subsidiaries to, issue or sell any of its Equity Interests.

6.13. **Inventory with Bailees.** Each Borrower will not, and will not permit any of its Subsidiaries to, store its Inventory at any time with a bailee, warehouseman, or similar party except as set forth on Schedule 4.25 (as such Schedule may be amended in accordance with Section 5.14).

6.14. **Employee Benefits.** Each Borrower will not, and will not permit any of its Subsidiaries to:

(a) terminate, or permit any ERISA Affiliate to terminate, any Pension Plan in a manner, or take any other action with respect to any Plan, which could reasonably be expected to result in any material liability of any Loan Party or ERISA Affiliate to the PBGC;

(b) fail to make, or permit any ERISA Affiliate to fail to make, full payment when due of all amounts which, under the provisions of any Employee Benefit Plan (including a Multiemployer Plan), agreement relating thereto or applicable Law, any Loan Party or ERISA Affiliate is required to pay if such failure could reasonably be expected to have a Material Adverse Effect;

(c) permit to exist, or allow any ERISA Affiliate to permit to exist, any violation of the Pension Funding Rules with respect to any Pension Plan or Multiemployer Plan which exceeds \$1,000,000 individually or in the aggregate;

(d) acquire, or permit any ERISA Affiliate to acquire, an interest in any Person that causes such Person to become an ERISA Affiliate with respect to a Loan Party or with respect to any ERISA Affiliate if such Person sponsors, maintains, or contributes to, or at any time in the six-year period preceding such acquisition has sponsored, maintained, or contributed to, (i) any Pension or (ii) any Multiemployer Plan;

(e) contribute to or assume an obligation to contribute to, or permit any ERISA Affiliate to contribute to or assume an obligation to contribute to, any Multiemployer Plan not set forth on Schedule 4.10(a);

(f) fail to comply with all applicable laws (except where such failure, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect), including ERISA and the IRC with respect to any Employee Benefit Plan, including the ESOP or permit any Employee Benefit Plan, including the ESOP, that is intended to be qualified under Section 401(a) of the IRC to not be so qualified;

(g) permit to exist any prohibited transaction with respect to an Employee Benefit Plan or permit to exist any event, act, or omission with respect to an Employee Benefit that could reasonably be expected to give rise to an excise tax, lien, fine, penalty, or damage that could reasonably be expected to have a Material Adverse Effect; or

(h) amend, or permit any ERISA Affiliate to amend, a Pension Plan resulting in a material increase in current liability such that a Loan Party or ERISA Affiliate is required to provide security to such Pension Plan under the IRC.

6.15. **Limitations on Dividends and Other Payment Restrictions Affecting Subsidiaries.** The Loan Parties will not, and will not permit any of their Subsidiaries to create or otherwise cause, incur, assume, suffer or permit to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Subsidiary of any Loan Party (i) to pay dividends or to make any other distribution on any shares of Equity Interests of such Subsidiary owned by any Loan Party or any of its Subsidiaries, (ii) to pay or prepay or to subordinate any Indebtedness owed to any Loan Party or any of its Subsidiaries, (iii) to make loans or advances to any Loan Party or any of its Subsidiaries or (iv) to transfer any of its property or assets to any Loan Party or any of its Subsidiaries, or permit any of its Subsidiaries to do any of the foregoing; provided, however, that nothing in any of clauses (i) through (iv) of this Section 6.15 shall prohibit or restrict compliance with:

(a) this Agreement and the other Loan Documents;

(b) any agreement in effect on the date of this Agreement and described on Schedule 6.15 or any extension, replacement or continuation of any such agreement; provided, that, any such encumbrance or restriction contained in such extended, replaced or continued agreement is no less favorable to Agent and the Lenders than the encumbrance or restriction under or pursuant to the agreement so extended, replaced or continued or under any documents relating to joint ventures of any Loan Party or any Subsidiary to the extent that such joint ventures are not prohibited hereunder;

(c) any applicable law, rule or regulation (including, without limitation, applicable currency control laws and applicable state corporate statutes restricting the payment of dividends in certain circumstances);

(d) in the case of clause (iv) above, (1) customary restrictions on the subletting, assignment or transfer of any specified property or asset set forth in a lease, license, asset sale agreement or similar contract for the conveyance of such property or asset and (2) any instrument or other document evidencing a Permitted Lien (or the Indebtedness secured thereby) from restricting on customary terms the transfer of any property or assets subject thereto;

(e) customary restrictions on dispositions of real property interests in reciprocal easement agreements;

(f) customary restrictions in agreements for the sale of assets on the transfer or encumbrance of such assets during an interim period prior to the closing of the sale of such assets; or

(g) customary restrictions in contracts that prohibit the assignment of such contract.

6.16. **Limitations on Negative Pledges.** The Loan Parties will not, and will not permit any of their Subsidiaries to enter into, incur or permit to exist, or permit any Subsidiary to enter into, incur or permit to exist, directly or indirectly, any agreement, instrument, deed, lease or other arrangement that prohibits, restricts or imposes any condition upon the ability of any Loan Party or any Subsidiary of any Loan Party to create, incur or permit to exist any Lien upon any of its property or revenues, whether now owned or hereafter acquired, or that requires the grant of any security for an obligation if security is granted for another obligation, except the following: (a) this Agreement and the other Loan Documents, (b) restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by Section 6.1 of this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness, (c) any customary restrictions and conditions contained in agreements relating to the sale or other disposition of assets or of a Subsidiary pending such sale or other disposition; provided that such restrictions and conditions apply only to the assets or Subsidiary to be sold or disposed of and such sale or disposition is permitted hereunder, and (d) customary provisions in leases restricting the assignment or sublet thereof.

6.17. **Investment Company Act.** No Loan Party shall engage in any business, enter into any transaction, use any securities or take any other action or permit any of its Subsidiaries to do any of the foregoing, that would cause it or any of its Subsidiaries to become subject to the registration requirements of the Investment Company Act of 1940, as amended, by virtue of being an "investment company" or a company "controlled" by an "investment company" not entitled to an exemption within the meaning of such Act.

6.18. **Negative Pledge.** Each Loan Party will not, and will not permit any of its Subsidiaries to, permit any person other than Agent to obtain directly or indirectly any Lien (that is not a Permitted Lien under clause (b), (c), (g), (k) or (t) of the definition thereof) over the Real Property of any Loan Party. Agent shall have the right, in its sole and absolute discretion, to cause the Negative Pledge Agreements to be recorded in the applicable real estate recording offices at any time.

7. FINANCIAL COVENANT.

Each of Parent and each other Borrower covenants and agrees that, ~~(a) at any time prior to the date on which the financial statements and Compliance Certificate for the month ended June 30, 2023 are required to be delivered hereunder~~ until the termination of all of the Commitments and the payment in full of the Obligations, Parent and the other Borrowers will maintain a Fixed Charge Coverage Ratio, calculated for each ~~12-month period~~ Reference Period (as defined below) ending on the first day of any Covenant Testing Period and the last day of each fiscal month occurring until the end of any Covenant Testing Period (including the last day thereof), in each case of at least ~~1.00 to 1.00~~, and ~~(b) commencing on the date on which the financial statements and Compliance Certificate for the month ended June 30, 2023 are required to be delivered hereunder, until the termination of all of the Commitments and the payment in full of the Obligations, Parent and the other Borrowers will maintain a Fixed Charge Coverage Ratio, calculated for each 12-month period ending on the last day of each fiscal month, in each case of at least 1.00 to 1.00;~~ the amount set forth in the table below for the applicable trailing period set forth in the table below (each, a "Reference Period");

<u>Reference Period</u>	<u>Minimum Fixed Charge Coverage Ratio</u>
<u>Trailing one fiscal month period ending May 31, 2023</u>	<u>1.00 to 1.00</u>
<u>Trailing two fiscal month period ending June 30, 2023</u>	<u>1.00 to 1.00</u>
<u>Trailing three fiscal month period ending July 31, 2023</u>	<u>1.00 to 1.00</u>
<u>Trailing four fiscal month period ending August 31, 2023</u>	<u>1.00 to 1.00</u>
<u>Trailing five fiscal month period ending September 30, 2023</u>	<u>1.00 to 1.00</u>
<u>Trailing six fiscal month period ending October 31, 2023</u>	<u>1.00 to 1.00</u>
<u>Trailing seven fiscal month period ending November 30, 2023</u>	<u>1.00 to 1.00</u>
<u>Trailing eight fiscal month period ending December 31, 2023</u>	<u>1.00 to 1.00</u>
<u>Trailing nine fiscal month period ending January 31, 2024</u>	<u>1.00 to 1.00</u>
<u>Trailing ten fiscal month period ending February 29, 2024</u>	<u>1.00 to 1.00</u>
<u>Trailing eleven fiscal month period ending March 31, 2023</u>	<u>1.00 to 1.00</u>
<u>Trailing twelve fiscal month period ending April 30, 2024 and the trailing twelve fiscal month period ending on the last day of each fiscal month thereafter</u>	<u>1.00 to 1.00</u>

8. EVENTS OF DEFAULT.

Any one or more of the following events shall constitute an event of default (each, an "Event of Default") under this Agreement:

8.1. **Payments.** If Borrowers fail to pay when due and payable, or when declared due and payable, (a) all or any portion of the Obligations consisting of interest, fees, or charges due the Lender Group, reimbursement of Lender Group Expenses, or other amounts (other than any portion thereof constituting principal) constituting Obligations (including any portion thereof that accrues after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding), and such failure continues for a period of three Business Days, (b) all or any portion of the principal of the Loans, or (c) any amount payable to Issuing Bank in reimbursement of any drawing under a Letter of Credit;

8.2. **Covenants.** If any Loan Party or any of its Subsidiaries:

(a) fails to perform or observe any covenant or other agreement contained in any of (i) Sections 3.6, 5.1, 5.2, 5.3 (solely if any Borrower is not in good standing in its jurisdiction of organization), 5.5, 5.6, 5.7 (solely if any Borrower refuses to allow Agent or its representatives or agents to visit any Borrower's properties, inspect its assets or books or records, examine and make copies of its books and records, or discuss Borrowers' affairs, finances, and accounts with officers and employees of any Borrower), 5.10 or 5.15 of this Agreement, (ii) Section 6 of this Agreement, (iii) Section 7 of this Agreement, or (iv) Sections 7(c), 7(g) (other than Section 7(g)(v)), 7(h), 7(i), or any of 7(k) through 7(n) of the Guaranty and Security Agreement;

(b) fails to perform or observe any covenant or other agreement contained in any of Sections 5.3 (other than if any Borrower is not in good standing in its jurisdiction of organization), 5.4, 5.11, 5.12 and 5.14 of this Agreement or Section 7(g)(v) of the Guaranty and Security Agreement and such failure continues for a period of fifteen days after the earlier of (i) the date on which such failure shall first become known to any officer of any Borrower, or (ii) the date on which written notice thereof is given to Borrowers by Agent; or

(c) fails to perform or observe any covenant or other agreement contained in this Agreement, or in any of the other Loan Documents, in each case, other than any such covenant or agreement that is the subject of another provision of this Section 8 (in which event such other provision of this Section 8 shall govern), and such failure continues for a period of thirty days after the earlier of (i) the date on which such failure shall first become known to any officer of any Borrower, or (ii) the date on which written notice thereof is given to Borrowers by Agent;

8.3. **Judgments.** If one or more judgments, orders, or awards for the payment of money involving an aggregate amount of \$10,000,000, or more (except to the extent fully covered (other than to the extent of customary deductibles) by insurance pursuant to which the insurer has not denied coverage) is entered or filed against a Loan Party or any of its Subsidiaries, or with respect to any of their respective assets, and either (a) there is a period of thirty consecutive days at any time after the entry of any such judgment, order, or award during which (i) the same is not discharged, satisfied, vacated, or bonded pending appeal, or (ii) a stay of enforcement thereof is not in effect, or (b) enforcement proceedings are commenced upon such judgment, order, or award;

8.4. **Voluntary Bankruptcy, etc.** If an Insolvency Proceeding is commenced by a Loan Party or any of its Subsidiaries;

8.5. **Involuntary Bankruptcy, etc.** If an Insolvency Proceeding is commenced against a Loan Party or any of its Subsidiaries and any of the following events occur: (a) such Loan Party or such Subsidiary consents to the institution of such Insolvency Proceeding against it, (b) the petition commencing the Insolvency Proceeding is not timely controverted, (c) the petition commencing the Insolvency Proceeding is not dismissed within sixty calendar days of the date of the filing thereof, (d) an interim trustee is appointed to take possession of all or any substantial portion of the properties or assets of, or to operate all or any substantial portion of the business of, such Loan Party or its Subsidiary, or (e) an order for relief shall have been issued or entered therein;

8.6. **Default Under Other Agreements.** If there is (a) a default in one or more agreements to which a Loan Party or any of its Subsidiaries is a party with one or more third Persons relative to a Loan Party's or any of its Subsidiaries' Indebtedness involving an aggregate amount of \$10,000,000 or more, and such default (i) occurs at the final maturity of the obligations thereunder, or (ii) results in a right by such third Person, irrespective of whether exercised, to accelerate the maturity of such Loan Party's or its Subsidiary's obligations thereunder, or (b) a default in or an involuntary early termination of one or more Hedge Agreements to which a Loan Party or any of its Subsidiaries is a party;

8.7. **Representations, etc.** If any warranty, representation, certificate, statement, or Record made herein or in any other Loan Document or delivered in writing to Agent or any Lender in connection with this Agreement or any other Loan Document proves to be untrue in any material respect (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of the date of issuance or making or deemed making thereof;

8.8. **Guaranty.** If the obligation of any Guarantor under the guaranty contained in the Guaranty and Security Agreement is limited or terminated by operation of law or by such Guarantor (other than in accordance with the terms of this Agreement) or if any Guarantor repudiates or revokes or purports to repudiate or revoke any such guaranty;

8.9. **Security Documents.** Except as permitted by the terms of this Agreement or any other Loan Document, if the Guaranty and Security Agreement or any other Loan Document that purports to create a Lien, shall, for any reason (other than solely as the result of an action or failure to act on the part of Agent based upon receipt of timely and accurate information from the Loan Parties), fail or cease to create a valid and perfected and first priority Lien on the Collateral covered thereby (except to the extent of Permitted Liens that would have priority over the Agent's Liens pursuant to applicable law or an agreement expressly permitted hereunder to have such senior priority);

8.10. **Loan Documents.** The validity or enforceability of any Loan Document shall at any time for any reason (other than solely as the result of an action or failure to act on the part of Agent based upon receipt of timely and accurate information from the Loan Parties) be declared to be null and void, or a proceeding shall be commenced by a Loan Party or its Subsidiaries, or by any Governmental Authority having jurisdiction over a Loan Party or its Subsidiaries, seeking to establish the invalidity or unenforceability thereof, or a Loan Party or its Subsidiaries shall deny that such Loan Party or its Subsidiaries has any liability or obligation purported to be created under any Loan Document;

8.11. **Change of Control.** A Change of Control shall occur;

8.12. **ERISA and Employee Benefits.** The occurrence of a Notification Event, which could reasonably be expected to result in liability in excess of \$10,000,000, either individually or in the aggregate, or any Loan Party or ERISA Affiliate completely or partially withdraws from one or more Multiemployer Plans and incurs Withdrawal Liability in excess of \$5,000,000 in the aggregate, or fails to make any Withdrawal Liability payment when due; or the ESOP fails to qualify as an "employee stock ownership plan" within the meaning of Section 4975(e)(7) of the IRC that is qualified under Section 401(a) of the IRC;

8.13. **Proceedings.** The indictment of any Loan Party under any criminal statute, or commencement of criminal or civil proceedings against any Loan Party thereof pursuant to which statute or proceedings the penalties or remedies sought include forfeiture to any Governmental Authority of any material portion of the Collateral; or

8.14. **Subordinated Indebtedness.** (i) There shall occur and be continuing any "Event of Default" (or any comparable term) under and as defined in the documents evidencing or governing any Subordinated Indebtedness, (ii) any of the Obligations for any reason shall cease to be "Senior Loan Obligations" (or any comparable term) under and as defined in the documents evidencing or governing any Subordinated Indebtedness, (iii) any Indebtedness other than the Obligations shall constitute "Senior Loan Obligations" (or any comparable term) under and as defined in the documents evidencing or governing any Subordinated Indebtedness, (iv) any holder of Subordinated Indebtedness shall fail to perform or comply with any of the subordination provisions of the documents evidencing or governing such Subordinated Indebtedness, or (v) the subordination provisions of the documents evidencing or governing any Subordinated Indebtedness shall, in whole or in part, terminate, cease to be effective or cease to be legally valid, binding and enforceable against any holder of the applicable Subordinated Indebtedness.

9. **RIGHTS AND REMEDIES.**

9.1. **Rights and Remedies.** Upon the occurrence and during the continuation of an Event of Default, Agent may, and, at the instruction of the Required Lenders, shall, in addition to any other rights or remedies provided for hereunder or under any other Loan Document or by applicable law, do any one or more of the following:

(a) by written notice to Borrowers, (i) declare the principal of, and any and all accrued and unpaid interest and fees in respect of, the Loans and all other Obligations (other than the Bank Product Obligations), whether evidenced by this Agreement or by any of the other Loan Documents to be immediately due and payable, whereupon the same shall become and be immediately due and payable and Borrowers shall be obligated to repay all of such Obligations in full, without presentment, demand, protest, or further notice or other requirements of any kind, all of which are hereby expressly waived by each Borrower, and (ii) direct Borrowers to provide (and Borrowers agree that upon receipt of such notice Borrowers will provide) Letter of Credit Collateralization to Agent to be held as security for Borrowers' reimbursement obligations for drawings that may subsequently occur under issued and outstanding Letters of Credit;

(b) by written notice to Borrowers, declare the Commitments terminated, whereupon the Commitments shall immediately be terminated together with (i) any obligation of any Revolving Lender to make Revolving Loans, (ii) the obligation of the Swing Lender to make Swing Loans, and (iii) the obligation of Issuing Bank to issue Letters of Credit; and

(c) exercise all other rights and remedies available to Agent or the Lenders under the Loan Documents, under applicable law, or in equity.

The foregoing to the contrary notwithstanding, upon the occurrence of any Event of Default described in Section 8.4 or Section 8.5, in addition to the remedies set forth above, without any notice to Borrowers or any other Person or any act by the Lender Group, the Commitments shall automatically terminate and the Obligations (other than the Bank Product Obligations), inclusive of the principal of, and any and all accrued and unpaid interest and fees in respect of, the Loans and all other Obligations (other than the Bank Product Obligations), whether evidenced by this Agreement or by any of the other Loan Documents, shall automatically become and be immediately due and payable and Borrowers shall automatically be obligated to repay all of such Obligations in full (including Borrowers being obligated to provide (and Borrowers agree that they will provide) (1) Letter of Credit Collateralization to Agent to be held as security for Borrowers' reimbursement obligations in respect of drawings that may subsequently occur under issued and outstanding Letters of Credit and (2) Bank Product Collateralization to be held as security for Borrowers' or their Subsidiaries' obligations in respect of outstanding Bank Products), without presentment, demand, protest, or notice or other requirements of any kind, all of which are expressly waived by Borrowers.

9.2. **Remedies Cumulative.** The rights and remedies of the Lender Group under this Agreement, the other Loan Documents, and all other agreements shall be cumulative. The Lender Group shall have all other rights and remedies not inconsistent herewith as provided under the Code, by law, or in equity. No exercise by the Lender Group of one right or remedy shall be deemed an election, and no waiver by the Lender Group of any Default or Event of Default shall be deemed a continuing waiver. No delay by the Lender Group shall constitute a waiver, election, or acquiescence by it.

10. **WAIVERS; INDEMNIFICATION.**

10.1. **Demand; Protest; etc.** Each Borrower waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment, nonpayment at maturity, release, compromise, settlement, extension, or renewal of documents, instruments, chattel paper, and guarantees at any time held by the Lender Group on which any Borrower may in any way be liable.

10.2. **The Lender Group's Liability for Collateral.** Each Borrower hereby agrees that: (a) so long as Agent complies with its obligations, if any, under the Code, the Lender Group shall not in any way or manner be liable or responsible for: (i) the safekeeping of the Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof, or (iv) any act or default of any carrier, warehouseman, bailee, forwarding agency, or other Person, and (b) all risk of loss, damage, or destruction of the Collateral shall be borne by the Loan Parties, except for any thereof resulting directly from the gross negligence or willful misconduct of Agent, as determined by a court of competent jurisdiction as a final and non-appealable judgment.

10.3. **Indemnification.** Each Borrower shall pay, indemnify, defend, and hold the Agent-Related Persons, the Lender-Related Persons, the Issuing Bank, and each Participant (each, an "Indemnified Person") harmless (to the fullest extent permitted by law) from and against any and all claims, demands, suits, actions, investigations, proceedings, liabilities, fines, costs, penalties, and damages (but not any special, indirect, consequential or punitive damages), and all reasonable, documented and out-of-pocket fees and disbursements of attorneys (limited to one primary outside counsel to the Indemnified Persons taken as a whole and, if reasonably necessary, one local and specialty counsel in each relevant jurisdiction and specialty area to all Indemnified Persons, taken as a whole (and, in the event of any actual or potential conflict of interests, one additional primary outside counsel for each group of similarly-situated Indemnified Persons, and, if reasonably necessary, of one local and specialty counsel in each relevant jurisdiction and specialty area for each group of similarly-situated Indemnified Persons, taken as a whole)), experts, or consultants and all other reasonable, documented and out-of-pocket costs and expenses actually incurred in connection therewith or in connection with the enforcement of this indemnification (as and when they are incurred and irrespective of whether suit is brought), at any time asserted against, imposed upon, or incurred by any of them (a) in connection with or as a result of or related to the execution and delivery (provided, that Borrowers shall not be liable for costs and expenses (including attorneys' fees) of any Lender (other than Wells Fargo) incurred in advising, structuring, drafting, reviewing, administering or syndicating the Loan Documents), enforcement, performance, or administration (including any restructuring or workout with respect hereto) of this Agreement, any of the other Loan Documents, or the transactions contemplated hereby or thereby or the monitoring of Parent's and its Subsidiaries' compliance with the terms of the Loan Documents (provided, that the indemnification in this clause (a) shall not extend to (i) disputes solely between or among the Indemnified Persons (other than any claims against an Indemnatee in its capacity as Agent) that do not involve any acts or omissions of any Loan Party, or (ii) any claims for Taxes, which shall be governed by Section 16, other than Taxes which relate to primarily non-Tax claims), (b) with respect to any actual or prospective investigation, litigation, or proceeding related to this Agreement, any other Loan Document, the making of any Loans or issuance of any Letters of Credit hereunder, or the use of the proceeds of the Loans or the Letters of Credit provided hereunder (irrespective of whether any Indemnified Person is a party thereto), or any act, omission, event, or circumstance in any manner related thereto, and (c) in connection with or arising out of any presence or release of Hazardous Materials at, on, under, to or from any assets or properties owned, leased or operated in the course of its business by any Loan Party or any of its Subsidiaries or any Environmental Actions, Environmental Liabilities or Remedial Actions related in any way to any such assets, Real Properties or other properties of any Loan Party or any of its Subsidiaries (each and all of the foregoing, the "Indemnified Liabilities"). Notwithstanding the foregoing and the last sentence of this Section 10.3, no Borrower shall have any obligation to any Indemnified Person under this Section 10.3 with respect to any Indemnified Liability that are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnified Person. This provision shall survive the termination of this Agreement and the repayment in full of the Obligations, but with respect to any Real Property, shall not run to the benefit of any third-party purchaser of such Real Property following foreclosure or acceptance of a deed-in-lieu of foreclosure unless such third-party purchaser is controlled by, controlling or under common control with any of the Lender Group. If any Indemnified Person makes any payment to any other Indemnified Person with respect to an Indemnified Liability as to which Borrowers were required to indemnify the Indemnified Person receiving such payment, the Indemnified Person making such payment is entitled to be indemnified and reimbursed by Borrowers with respect thereto. **WITHOUT LIMITATION, THE FOREGOING INDEMNITY SHALL APPLY TO EACH INDEMNIFIED PERSON WITH RESPECT TO INDEMNIFIED LIABILITIES WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF ANY NEGLIGENT ACT OR OMISSION OF SUCH INDEMNIFIED PERSON OR OF ANY OTHER PERSON.**

11. **NOTICES.**

Unless otherwise provided in this Agreement, all notices or demands relating to this Agreement or any other Loan Document shall be in writing and (except for financial statements and other informational documents which may be sent by first-class mail, postage prepaid) shall be personally delivered or sent by registered or certified mail (postage prepaid, return receipt requested), overnight courier, electronic mail (at such email addresses as a party may designate in accordance herewith), or telefacsimile. In the case of notices or demands to any Loan Party or Agent, as the case may be, they shall be sent to the respective address set forth below:

If to any Loan Party: c/o **FARMER BROS. CO.**
1912 Farmer Brothers Drive
Northlake, Texas 76262
Attn: Legal Department
E-mail: LegalDepartment@farmerbros.com

with copies to: **MUNSCH HARDT KOFP & HARR, PC**
500 N. Akard Street, Suite 3800
Dallas, Texas 75201
Attn: Walter Buchanan, Esq.
E-mail: wbuchanan@munsch.com

If to Agent: **WELLS FARGO BANK, NATIONAL ASSOCIATION**
8601 N. Scottsdale Road, 2nd Suite 240
Scottsdale, Arizona 85253
Attn: Loan Portfolio Manager
E-mail: michael.l.gerard@wellsfargo.com

with copies to: **GOLDBERG KOHN LTD.**
55 East Monroe Street, Suite 3300
Chicago, Illinois 60603
Attn: Jessica DeBruin, Esq.
E-mail: jessica.debruin@goldbergekohn.com

Any party hereto may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other party. All notices or demands sent in accordance with this Section 11, shall be deemed received on the earlier of the date of actual receipt or three Business Days after the deposit thereof in the mail; provided, that (a) notices sent by overnight courier service shall be deemed to have been given when received, (b) notices by facsimile shall be deemed to have been given when sent (except 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) and (c) notices by electronic mail shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return email or other written acknowledgment).

12. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER; JUDICIAL REFERENCE PROVISION.

(a) THE VALIDITY OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT), THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF AND THEREOF, THE RIGHTS OF THE PARTIES HERETO AND THERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO, AND ANY CLAIMS, CONTROVERSIES OR DISPUTES ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

(b) THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, FEDERAL COURTS LOCATED IN THE COUNTY OF NEW YORK, STATE OF NEW YORK; PROVIDED, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE AGENT ELECTS TO BRING SUCH ACTION OR WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH BORROWER AND EACH MEMBER OF THE LENDER GROUP WAIVE, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 12(b).

(c) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH BORROWER AND EACH MEMBER OF THE LENDER GROUP HEREBY WAIVE THEIR RESPECTIVE RIGHTS, IF ANY, TO A JURY TRIAL OF ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS (EACH A "CLAIM"). EACH BORROWER AND EACH MEMBER OF THE LENDER GROUP REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

(d) EACH BORROWER HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF NEW YORK AND THE STATE OF NEW YORK, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENTS, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT. 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 AGENT 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.

(e) NO CLAIM MAY BE MADE BY ANY LOAN PARTY OR ANY MEMBER OF THE LENDER GROUP AGAINST EACH OTHER, OR ANY OF THEIR RESPECTIVE AFFILIATE, DIRECTOR, OFFICER, EMPLOYEE, COUNSEL, REPRESENTATIVE, AGENT, OR ATTORNEY-IN-FACT FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OR LOSSES IN RESPECT OF ANY CLAIM FOR BREACH OF CONTRACT OR ANY OTHER THEORY OF LIABILITY ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY ACT, OMISSION, OR EVENT OCCURRING IN CONNECTION THEREWITH, AND SUCH PERSON HEREBY WAIVES, RELEASES, AND AGREES NOT TO SUE UPON ANY CLAIM FOR SUCH DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN ITS FAVOR.

(f) IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CLAIM AND THE WAIVER SET FORTH IN CLAUSE (C) ABOVE IS NOT ENFORCEABLE IN SUCH PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

(i) WITH THE EXCEPTION OF THE MATTERS SPECIFIED IN SUBCLAUSE (ii) BELOW, ANY CLAIM SHALL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE. VENUE FOR THE REFERENCE PROCEEDING SHALL BE IN THE COUNTY OF LOS ANGELES, CALIFORNIA.

(ii) THE FOLLOWING MATTERS SHALL NOT BE SUBJECT TO A GENERAL REFERENCE PROCEEDING: (A) NON-JUDICIAL FORECLOSURE OF ANY SECURITY INTERESTS IN REAL OR PERSONAL PROPERTY, (B) EXERCISE OF SELF-HELP REMEDIES (INCLUDING SET-OFF OR RECOUPMENT), (C) APPOINTMENT OF A RECEIVER, AND (D) TEMPORARY, PROVISIONAL, OR ANCILLARY REMEDIES (INCLUDING WRITS OF ATTACHMENT, WRITS OF POSSESSION, TEMPORARY RESTRAINING ORDERS, OR PRELIMINARY INJUNCTIONS). THIS AGREEMENT DOES NOT LIMIT THE RIGHT OF ANY PARTY TO EXERCISE OR OPPOSE ANY OF THE RIGHTS AND REMEDIES DESCRIBED IN CLAUSES (A) - (D) AND ANY SUCH EXERCISE OR OPPOSITION DOES NOT WAIVE THE RIGHT OF ANY PARTY TO PARTICIPATE IN A REFERENCE PROCEEDING PURSUANT TO THIS AGREEMENT WITH RESPECT TO ANY OTHER MATTER.

(iii) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY SHALL HAVE THE RIGHT TO REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B). THE REFEREE SHALL BE APPOINTED TO SIT WITH ALL OF THE POWERS PROVIDED BY LAW. PENDING APPOINTMENT OF THE REFEREE, THE COURT SHALL HAVE THE POWER TO ISSUE TEMPORARY OR PROVISIONAL REMEDIES.

(iv) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE REFEREE SHALL DETERMINE THE MANNER IN WHICH THE REFERENCE PROCEEDING IS CONDUCTED INCLUDING THE TIME AND PLACE OF HEARINGS, THE ORDER OF PRESENTATION OF EVIDENCE, AND ALL OTHER QUESTIONS THAT ARISE WITH RESPECT TO THE COURSE OF THE REFERENCE PROCEEDING. ALL PROCEEDINGS AND HEARINGS CONDUCTED BEFORE THE REFEREE, EXCEPT FOR TRIAL, SHALL BE CONDUCTED WITHOUT A COURT REPORTER, EXCEPT WHEN ANY PARTY SO REQUESTS A COURT REPORTER AND A TRANSCRIPT IS ORDERED, A COURT REPORTER SHALL BE USED AND THE REFEREE SHALL BE PROVIDED A COURTESY COPY OF THE TRANSCRIPT. THE PARTY MAKING SUCH REQUEST SHALL HAVE THE OBLIGATION TO ARRANGE FOR AND PAY THE COSTS OF THE COURT REPORTER; PROVIDED, THAT SUCH COSTS, ALONG WITH THE REFEREE'S FEES, SHALL ULTIMATELY BE BORNE BY THE PARTY WHO DOES NOT PREVAIL, AS DETERMINED BY THE REFEREE.

(v) THE REFEREE MAY REQUIRE ONE OR MORE PREHEARING CONFERENCES. THE PARTIES HERETO SHALL BE ENTITLED TO DISCOVERY, AND THE REFEREE SHALL OVERSEE DISCOVERY IN ACCORDANCE WITH THE RULES OF DISCOVERY, AND SHALL ENFORCE ALL DISCOVERY ORDERS IN THE SAME MANNER AS ANY TRIAL COURT JUDGE IN PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA.

(vi) THE REFEREE SHALL APPLY THE RULES OF EVIDENCE APPLICABLE TO PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA AND SHALL DETERMINE ALL ISSUES IN ACCORDANCE WITH CALIFORNIA SUBSTANTIVE AND PROCEDURAL LAW. THE REFEREE SHALL BE EMPOWERED TO ENTER EQUITABLE AS WELL AS LEGAL RELIEF AND RULE ON ANY MOTION WHICH WOULD BE AUTHORIZED IN A TRIAL, INCLUDING MOTIONS FOR DEFAULT JUDGMENT OR SUMMARY JUDGMENT. THE REFEREE SHALL REPORT HIS OR HER DECISION, WHICH REPORT SHALL ALSO INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW. THE REFEREE SHALL ISSUE A DECISION AND PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE, SECTION 644, THE REFEREE'S DECISION SHALL BE ENTERED BY THE COURT AS A JUDGMENT IN THE SAME MANNER AS IF THE ACTION HAD BEEN TRIED BY THE COURT. THE FINAL JUDGMENT OR ORDER FROM ANY APPEALABLE DECISION OR ORDER ENTERED BY THE REFEREE SHALL BE FULLY APPEALABLE AS IF IT HAS BEEN ENTERED BY THE COURT.

(vii) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY. AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR OWN CHOICE, EACH PARTY HERETO KNOWINGLY AND VOLUNTARILY AND FOR THEIR MUTUAL BENEFIT AGREES THAT THIS REFERENCE PROVISION SHALL APPLY TO ANY DISPUTE BETWEEN THEM THAT ARISES OUT OF OR IS RELATED TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS.

13. ASSIGNMENTS AND PARTICIPATIONS; SUCCESSORS.

13.1. Assignments and Participations.

(a) (i) Subject to the conditions set forth in clause (a)(ii) below, any Lender may assign and delegate all or any portion of its rights and duties under the Loan Documents (including the Obligations owed to it and its Commitments) to one or more assignees (each, an "Assignee"), with the prior written consent (such consent not be unreasonably withheld or delayed) of:

(A) Borrowers; provided, that no consent of Borrowers shall be required (1) if a Default or Event of Default has occurred and is continuing, or (2) in connection with an assignment to a Person that is a Lender or an Affiliate (other than an Ineligible Institution) of a Lender; provided further, that Borrowers shall be deemed to have consented to a proposed assignment unless they object thereto by written notice to Agent within five Business Days after having received notice thereof; and

(B) Agent, Swing Lender, and Issuing Bank.

(ii) Assignments shall be subject to the following additional conditions:

(A) no assignment may be made to an Ineligible Institution,

(B) no assignment may be made to a Loan Party or an Affiliate of a Loan Party,

(C) the amount of the Commitments and the other rights and obligations of the assigning Lender hereunder and under the other Loan Documents subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to Agent) shall be in a minimum amount (unless waived by Agent) of \$5,000,000 (except such minimum amount shall not apply to (I) an assignment or delegation by any Lender to any other Lender, an Affiliate of any Lender, or a Related Fund of such Lender, or (II) a group of new Lenders, each of which is an Affiliate of each other or a Related Fund of such new Lender to the extent that the aggregate amount to be assigned to all such new Lenders is at least \$5,000,000),

(D) 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,

(E) the parties to each assignment shall execute and deliver to Agent an Assignment and Acceptance; provided, that Borrowers and Agent may continue to deal solely and directly with the assigning Lender in connection with the interest so assigned to an Assignee until written notice of such assignment, together with payment instructions, addresses, and related information with respect to the Assignee, have been given to Borrowers and Agent by such Lender and the Assignee,

(F) unless waived by Agent, the assigning Lender or Assignee has paid to Agent, for Agent's separate account, a processing fee in the amount of \$3,500, and

(G) the assignee, if it is not a Lender, shall deliver to Agent an Administrative Questionnaire in a form approved by Agent (the "Administrative Questionnaire").

(b) From and after the date that Agent receives the executed Assignment and Acceptance and, if applicable, payment of the required processing fee, (i) the Assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, shall be a "Lender" and shall have the rights and obligations of a Lender under the Loan Documents, and (ii) the assigning Lender shall, to the extent that rights and obligations hereunder and under the other Loan Documents have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights (except with respect to Section 10.3) and be released from any future obligations under this Agreement (and in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement and the other Loan Documents, such Lender shall cease to be a party hereto and thereto); provided, that nothing contained herein shall release any assigning Lender from obligations that survive the termination of this Agreement, including such assigning Lender's obligations under Section 15 and Section 17.9(a).

(c) By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the Assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other Loan Document furnished pursuant hereto, (ii) such assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of any Loan Party or the performance or observance by any Loan Party of any of its obligations under this Agreement or any other Loan Document furnished pursuant hereto, (iii) such Assignee confirms that it has received a copy of this Agreement, together with such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance, (iv) such Assignee will, independently and without reliance upon Agent, such assigning Lender or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement, (v) such Assignee appoints and authorizes Agent to take such actions and to exercise such powers under this Agreement and the other Loan Documents as are delegated to Agent, by the terms hereof and thereof, together with such powers as are reasonably incidental thereto, and (vi) such Assignee confirms it is not an Ineligible Institution and agrees that it will perform all of the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(d) Immediately upon Agent's receipt of the required processing fee, if applicable, and delivery of notice to the assigning Lender pursuant to Section 13.1(b), this Agreement shall be deemed to be amended to the extent, but only to the extent, necessary to reflect the addition of the Assignee and the resulting adjustment of the Commitments arising therefrom. The Commitment allocated to each Assignee shall reduce such Commitments of the assigning Lender *pro tanto*.

(e) Any Lender may at any time sell to one or more commercial banks, financial institutions, or other Persons (a "Participant") participating interests in all or any portion of its Obligations, its Commitment, and the other rights and interests of that Lender (the "Originating Lender") hereunder and under the other Loan Documents; provided, that (i) the Originating Lender shall remain a "Lender" for all purposes of this Agreement and the other Loan Documents and the Participant receiving the participating interest in the Obligations, the Commitments, and the other rights and interests of the Originating Lender hereunder shall not constitute a "Lender" hereunder or under the other Loan Documents and the Originating Lender's obligations under this Agreement shall remain unchanged, (ii) the Originating Lender shall remain solely responsible for the performance of such obligations, (iii) Borrowers, Agent, and the Lenders shall continue to deal solely and directly with the Originating Lender in connection with the Originating Lender's rights and obligations under this Agreement and the other Loan Documents, (iv) no Lender shall transfer or grant any participating interest under which the Participant has the right to approve any amendment to, or any consent or waiver with respect to, this Agreement or any other Loan Document, except to the extent such amendment to, or consent or waiver with respect to this Agreement or of any other Loan Document would (A) extend the final maturity date of the Obligations hereunder in which such Participant is participating, (B) reduce the interest rate applicable to the Obligations hereunder in which such Participant is participating, (C) release all or substantially all of the Collateral or guaranties (except to the extent expressly provided herein or in any of the Loan Documents) supporting the Obligations hereunder in which such Participant is participating, (D) postpone the payment of, or reduce the amount of, the interest or fees payable to such Participant through such Lender (other than a waiver of default interest), or (E) decrease the amount or postpone the due dates of scheduled principal repayments or prepayments or premiums payable to such Participant through such Lender, (v) no participation shall be sold to an Ineligible Institution, (vi) no participation shall be sold to a Loan Party or an Affiliate of a Loan Party, and (vii) all amounts payable by Borrowers hereunder shall be determined as if such Lender had not sold such participation, other than as set forth in Section 16 with respect to Taxes, and except that, if amounts outstanding under this Agreement are due and unpaid, or shall have been declared or shall have become due and payable upon the occurrence and during the continuance of an Event of Default, each Participant shall be deemed to have the right of set off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement. The rights of any Participant only shall be derivative through the Originating Lender with whom such Participant participates and no Participant shall have any rights under this Agreement or the other Loan Documents or any direct rights as to the other Lenders, Agent, Borrowers, the Collateral, or otherwise in respect of the Obligations. No Participant shall have the right to participate directly in the making of decisions by the Lenders among themselves.

(f) In connection with any such assignment or participation or proposed assignment or participation or any grant of a security interest in, or pledge of, its rights under and interest in this Agreement, a Lender may, subject to the provisions of Section 17.9, disclose all documents and information which it now or hereafter may have relating to any Loan Party and its Subsidiaries and their respective businesses.

(g) Any other provision in this Agreement notwithstanding, any Lender may at any time create a security interest in, or pledge, all or any portion of its rights under and interest in this Agreement to secure obligations of such Lender, including any pledge in favor of any Federal Reserve Bank in accordance with Regulation A of the Federal Reserve Bank or U.S. Treasury Regulation 31 CFR §203.24, and such Federal Reserve Bank may enforce such pledge or security interest in any manner permitted under applicable law; provided, that no such pledge shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(h) Agent (as a non-fiduciary agent on behalf of Borrowers) shall maintain, or cause to be maintained, a register (the "Register") on which it enters the name and address of each Lender as the registered owner of each Loan (and the principal amount thereof and stated interest thereon) held by such Lender (each, a "Registered Loan"). The Register is intended to cause each Loan and other obligation hereunder to be in registered form within the meaning of Section 5f.103-1(c) of the United States Treasury Regulations and Proposed Treasury Regulations Section 1.163-5(b) (or any amended or successor version) and within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code. Other than in connection with an assignment by a Lender of all or any portion of its portion of any Loan to an Affiliate of such Lender or a Related Fund of such Lender (i) a Registered Loan (and the registered note, if any, evidencing the same) may be assigned or sold in whole or in part only by registration of such assignment or sale on the Register (and each registered note shall expressly so provide) and (ii) any assignment or sale of all or part of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by registration of such assignment or sale on the Register, together with the surrender of the registered note, if any, evidencing the same duly endorsed by (or accompanied by a written instrument of assignment or sale duly executed by) the holder of such registered note, whereupon, at the request of the designated assignee(s) or transferee(s), one or more new registered notes in the same aggregate principal amount shall be issued to the designated assignee(s) or transferee(s). Prior to the registration of assignment or sale of any Registered Loan (and the registered note, if any evidencing the same), Borrowers shall treat the Person in whose name such Registered Loan (and the registered note, if any, evidencing the same) is registered as the owner thereof for the purpose of receiving all payments thereon and for all other purposes, notwithstanding notice to the contrary. In the case of any assignment by a Lender of all or any portion of its Loans to an Affiliate of such Lender or a Related Fund of such Lender, and which assignment is not recorded in the Register, the assigning Lender, on behalf of Borrowers, shall maintain a register comparable to the Register.

(i) In the event that a Lender sells participations in the Registered Loan, such Lender, as a non-fiduciary agent on behalf of Borrowers, shall maintain (or cause to be maintained) a register on which it enters the name of all participants in the Registered Loans held by it (and the principal amount (and stated interest thereon) of the portion of such Registered Loans that is subject to such participations) (the "Participant Register"). The Participant Register is intended to cause each Loan and other obligation hereunder to be in registered form within the meaning of Section 5f.103-1(c) of the United States Treasury Regulations and Proposed Treasury Regulations Section 1.163-5(b) (or any amended or successor version) and within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code. A Registered Loan (and the Registered Note, if any, evidencing the same) may be participated in whole or in part only by registration of such participation on the Participant Register (and each registered note shall expressly so provide). Any participation of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by the registration of such participation on the Participant Register. No Lender shall have any obligation to disclose all or any portion of the Participant Register (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) to any Person 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 the IRC, including under Section 5f.103-1(c) of the United States Treasury Regulations or its successor. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

(j) Agent shall make a copy of the Register (and each Lender shall make a copy of its Participant Register to the extent it has one) available for review by Borrowers from time to time as Borrowers may reasonably request.

13.2. **Successors.** This Agreement shall bind and inure to the benefit of the respective successors and assigns of each of the parties; provided, that no Borrower may assign this Agreement or any rights or duties hereunder without the Lenders' prior written consent and any prohibited assignment shall be absolutely void *ab initio*. No consent to assignment by the Lenders shall release any Borrower from its Obligations. A Lender may assign this Agreement and the other Loan Documents and its rights and duties hereunder and thereunder pursuant to Section 13.1 and, except as expressly required pursuant to Section 13.1, no consent or approval by any Borrower is required in connection with any such assignment.

14. **AMENDMENTS; WAIVERS.**

14.1. **Amendments and Waivers.**

(a) No amendment, waiver or other modification of any provision of this Agreement or any other Loan Document (other than the Fee Letter), and no consent with respect to any departure by any Borrower therefrom, shall be effective unless the same shall be in writing and signed by the Required Lenders (or by Agent at the written request of the Required Lenders) and the Loan Parties that are party thereto and then any such waiver or consent shall be effective, but only in the specific instance and for the specific purpose for which given; provided, that no such waiver, amendment, or consent shall, unless in writing and signed by all of the Lenders directly affected thereby and all of the Loan Parties that are party thereto, do any of the following:

(i) increase the amount of or extend the expiration date of any Commitment of any Lender or amend, modify, or eliminate the penultimate sentence of Section 2.4(c),

(ii) postpone or delay any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees, or other amounts due hereunder or under any other Loan Document,

(iii) reduce the principal of, or the rate of interest on, any loan or other extension of credit hereunder, or reduce any fees or other amounts payable hereunder or under any other Loan Document (except in connection with the waiver of applicability of Section 2.6(c) (which waiver shall be effective with the written consent of the Required Lenders),

(iv) amend, modify, or eliminate this Section or any provision of this Agreement providing for consent or other action by all Lenders,

(v) amend, modify, or eliminate Section 3.1,

(vi) amend, modify, or eliminate Section 15.11,

(vii) other than as permitted by Section 15.11, release or contractually subordinate Agent's Lien in and to any of the Collateral,

(viii) amend, modify, or eliminate the definitions of "Required Lenders", "Supermajority Lenders" or "Pro Rata Share",

(ix) other than in connection with a merger, liquidation, dissolution or sale of such Person expressly permitted by the terms hereof or the other Loan Documents, release any Borrower or any Guarantor from any obligation for the payment of money or consent to the assignment or transfer by any Borrower or any Guarantor of any of its rights or duties under this Agreement or the other Loan Documents,

(x) amend, modify, or eliminate any of the provisions of Section 2.4(b)(i), (ii) or (iii).

(xi) at any time that any Real Property is included in the Collateral, add, increase, renew or extend any Loan, Letter of Credit or Commitment hereunder until the completion of flood due diligence, documentation and coverage as required by the Flood Laws or as otherwise satisfactory to all Lenders, or

(xii) amend, modify, or eliminate any of the provisions of Section 13.1 with respect to assignments to, or participations with, Persons who are Loan Parties or Affiliates of a Loan Party,

(b) No amendment, waiver, modification, or consent shall amend, modify, waive, or eliminate,

(i) the definition of, or any of the terms or provisions of, the Fee Letter, without the written consent of Agent and Borrowers (and shall not require the written consent of any of the Lenders),

(ii) any provision of Section 15 pertaining to Agent, or any other rights or duties of Agent under this Agreement or the other Loan Documents, without the written consent of Agent, Borrowers, and the Required Lenders;

(c) No amendment, waiver, modification, elimination, or consent shall amend, without written consent of Agent, Borrowers and the Supermajority Lenders, modify, or eliminate the definition of Borrowing Base or any of the defined terms (including the definitions of Eligible Accounts, Eligible Finished Goods Inventory, Eligible In-Transit Inventory, Eligible Raw Material Inventory and Eligible Inventory) that are used in such definition to the extent that any such change results in more credit being made available to Borrowers based upon the Borrowing Base, but not otherwise, or the definition of Maximum Revolver Amount;

(d) No amendment, waiver, modification, elimination, or consent shall amend, modify, or waive any provision of this Agreement or the other Loan Documents pertaining to Issuing Bank, or any other rights or duties of Issuing Bank under this Agreement or the other Loan Documents, without the written consent of Issuing Bank, Agent, Borrowers, and the Required Lenders;

(e) No amendment, waiver, modification, elimination, or consent shall amend, modify, or waive any provision of this Agreement or the other Loan Documents pertaining to Swing Lender, or any other rights or duties of Swing Lender under this Agreement or the other Loan Documents, without the written consent of Swing Lender, Agent, Borrowers, and the Required Lenders; and

(f) Anything in this Section 14.1 to the contrary notwithstanding, (i) any amendment, modification, elimination, waiver, consent, termination, or release of, or with respect to, any provision of this Agreement or any other Loan Document that relates only to the relationship of the Lender Group among themselves, and that does not affect the rights or obligations of any Loan Party, shall not require consent by or the agreement of any Loan Party, (ii) any amendment, waiver, modification, elimination, or consent of or with respect to any provision of this Agreement or any other Loan Document may be entered into without the consent of, or over the objection of, any Defaulting Lender other than any of the matters governed by Section 14.1(a)(i) through (iii) that affect such Lender, (iii) any amendment contemplated by Section 2.12(d)(iii) of this Agreement in connection with a Benchmark Transition Event shall be effective as contemplated by such Section 2.12(d)(iii) hereof and (iv) any amendment contemplated by Section 2.6(g) of this Agreement in connection with the use or administration of Term SOFR shall be effective as contemplated by such Section 2.6(g).

(g) Anything in this Section 14.1 to the contrary notwithstanding, upon five Business Days prior written notice to each Lender thereof, any Mortgage may be amended, waived or otherwise modified (but not released or terminated) with the consent of Agent and the applicable Loan Party without the need to obtain the written consent of any Lender or any other Person if such amendment, modification, supplement or waiver is delivered in order (A) to comply with local applicable Law (including foreign law or regulatory requirements), (B) to cure any ambiguity, inconsistency, omission, mistake or defect, or (C) to cause such Mortgage to be consistent with this Agreement and the other Loan Documents; any amendment, waiver or modification pursuant to this paragraph shall become effective without any further action or consent of any other party to any Loan Document if the same is not objected to in writing by the Required Lenders within five Business Days following receipt of notice thereof.

14.2. **Replacement of Certain Lenders.**

(a) If (i) any action to be taken by the Lender Group or Agent hereunder requires the consent, authorization, or agreement of all Lenders or all Lenders affected thereby and if such action has received the consent, authorization, or agreement of the Required Lenders but not of all Lenders or all Lenders directly affected thereby, or (ii) any Lender makes a claim for compensation under Section 16, then Borrowers or Agent, upon at least five Business Days prior irrevocable notice, may permanently replace any Lender that failed to give its consent, authorization, or agreement (a "Non-Consenting Lender") or any Lender that made a claim for compensation (a "Tax Lender") with one or more Replacement Lenders, and the Non-Consenting Lender or Tax Lender, as applicable, shall have no right to refuse to be replaced hereunder (provided that, with respect to the replacement of a Tax Lender, the replacement of the Tax Lender with the Replacement Lender shall reduce amounts payable under Section 16). Such notice to replace the Non-Consenting Lender or Tax Lender, as applicable, shall specify an effective date for such replacement, which date shall not be later than 15 Business Days after the date such notice is given.

(b) Prior to the effective date of such replacement, the Non-Consenting Lender or Tax Lender, as applicable, and each Replacement Lender shall execute and deliver an Assignment and Acceptance, subject only to the Non-Consenting Lender or Tax Lender, as applicable, being repaid in full its share of the outstanding Obligations (without any premium or penalty of any kind whatsoever (including, without limitation, any set forth in the Fee Letter), but including (i) all interest, fees and other amounts that may be due and payable in respect thereof, (ii) an assumption of its Pro Rata Share of participations in the Letters of Credit, and (iii) Funding Losses). If the Non-Consenting Lender or Tax Lender, as applicable, shall refuse or fail to execute and deliver any such Assignment and Acceptance prior to the effective date of such replacement, Agent may, but shall not be required to, execute and deliver such Assignment and Acceptance in the name or on behalf of the Non-Consenting Lender or Tax Lender, as applicable, and irrespective of whether Agent executes and delivers such Assignment and Acceptance, the Non-Consenting Lender or Tax Lender, as applicable, shall be deemed to have executed and delivered such Assignment and Acceptance. The replacement of any Non-Consenting Lender or Tax Lender, as applicable, shall be made in accordance with the terms of Section 13.1. Until such time as one or more Replacement Lenders shall have acquired all of the Obligations, the Commitments, and the other rights and obligations of the Non-Consenting Lender or Tax Lender, as applicable, hereunder and under the other Loan Documents, the Non-Consenting Lender or Tax Lender, as applicable, shall remain obligated to make the Non-Consenting Lender's or Tax Lender's, as applicable, Pro Rata Share of Revolving Loans and to purchase a participation in each Letter of Credit, in an amount equal to its Pro Rata Share of participations in such Letters of Credit.

14.3. **No Waivers; Cumulative Remedies.** No failure by Agent or any Lender to exercise any right, remedy, or option under this Agreement or any other Loan Document, or delay by Agent or any Lender in exercising the same, will operate as a waiver thereof. No waiver by Agent or any Lender will be effective unless it is in writing, and then only to the extent specifically stated. No waiver by Agent or any Lender on any occasion shall affect or diminish Agent's and each Lender's rights thereafter to require strict performance by Borrowers of any provision of this Agreement. Agent's and each Lender's rights under this Agreement and the other Loan Documents will be cumulative and not exclusive of any other right or remedy that Agent or any Lender may have.

15. **AGENT; THE LENDER GROUP.**

15.1. **Appointment and Authorization of Agent.** Each Lender hereby designates and appoints Wells Fargo as its agent under this Agreement and the other Loan Documents and each Lender hereby irrevocably authorizes (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to designate, appoint, and authorize) Agent to execute and deliver each of the other Loan Documents on its behalf and to take such other action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to Agent by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Agent agrees to act as agent for and on behalf of the Lenders (and the Bank Product Providers) on the conditions contained in this Section 15. Any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document notwithstanding, Agent shall not have any duties or responsibilities, except those expressly set forth herein or in the other Loan Documents, nor shall Agent have or be deemed to have any fiduciary relationship with any Lender (or Bank Product Provider), and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Agent. Without limiting the generality of the foregoing, the use of the term "agent" in this Agreement or the other Loan Documents with reference to Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only a representative relationship between independent contracting parties. Each Lender hereby further authorizes (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent to act as the secured party under each of the Loan Documents that create a Lien on any item of Collateral. Except as expressly otherwise provided in this Agreement, Agent shall have and may use its sole discretion with respect to exercising or refraining from exercising any discretionary rights or taking or refraining from taking any actions that Agent expressly is entitled to take or assert under or pursuant to this Agreement and the other Loan Documents. Without limiting the generality of the foregoing, or of any other provision of the Loan Documents that provides rights or powers to Agent, Lenders agree that Agent shall have the right to exercise the following powers as long as this Agreement remains in effect: (a) maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Obligations, the Collateral, payments and proceeds of Collateral, and related matters, (b) execute or file any and all financing or similar statements or notices, amendments, renewals, supplements, documents, instruments, proofs of claim, notices and other written agreements with respect to the Loan Documents, or to take any other action with respect to any Collateral or Loan Documents which may be necessary to perfect, and maintain perfected, the security interests and Liens upon Collateral pursuant to the Loan Documents, (c) make Revolving Loans, for itself or on behalf of Lenders, as provided in the Loan Documents, (d) exclusively receive, apply, and distribute payments and proceeds of the Collateral as provided in the Loan Documents, (e) open and maintain such bank accounts and cash management arrangements as Agent deems necessary and appropriate in accordance with the Loan Documents for the foregoing purposes, (f) perform, exercise, and enforce any and all other rights and remedies of the Lender Group with respect to any Loan Party or its Subsidiaries, the Obligations, the Collateral, or otherwise related to any of same as provided in the Loan Documents, and (g) incur and pay such Lender Group Expenses as Agent may deem necessary or appropriate for the performance and fulfillment of its functions and powers pursuant to the Loan Documents.

15.2. **Delegation of Duties.** Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys in fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Agent shall not be responsible for the negligence or misconduct of any agent or attorney in fact that it selects as long as such selection was made without gross negligence or willful misconduct.

15.3. **Liability of Agent.** None of the Agent-Related Persons shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct, as determined by a court of competent jurisdiction as a final and non-appealable judgment), or (b) be responsible in any manner to any of the Lenders (or Bank Product Providers) for any recital, statement, representation or warranty made by any Loan Party or any of its Subsidiaries or Affiliates, or any officer or director thereof, contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or for any failure of any Loan Party or its Subsidiaries or any other party to any Loan Document to perform its obligations hereunder or thereunder. No Agent-Related Person shall be under any obligation to any Lenders (or Bank Product Providers) to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the books and records or properties of any Loan Party or its Subsidiaries. No Agent-Related Person shall have any liability to any Lender, and Loan Party or any of their respective Affiliates if any request for a Loan, Letter of Credit or other extension of credit was not authorized by the applicable Borrower. Agent shall not be required to take any action that, in its opinion or in the opinion of its counsel, may expose it to liability or that is contrary to any Loan Document or applicable law or regulation.

15.4. **Reliance by Agent.** Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, telefacsimile or other electronic method of transmission, telex or telephone message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent, or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to Borrowers or counsel to any Lender), independent accountants and other experts selected by Agent. Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless Agent shall first receive such advice or concurrence of the Lenders as it deems appropriate and until such instructions are received, Agent shall act, or refrain from acting, as it deems advisable. If Agent so requests, it shall first be indemnified to its reasonable satisfaction by the Lenders (and, if it so elects, the Bank Product Providers) against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Required Lenders and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Lenders (and Bank Product Providers).

15.5. **Notice of Default or Event of Default.** Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, except with respect to defaults in the payment of principal, interest, fees, and expenses required to be paid to Agent for the account of the Lenders and, except with respect to Events of Default of which Agent has actual knowledge, unless Agent shall have received written notice from a Lender or Borrowers referring to this Agreement, describing such Default or Event of Default, and stating that such notice is a "notice of default." Agent promptly will notify the Lenders of its receipt of any such notice or of any Event of Default of which Agent has actual knowledge. If any Lender obtains actual knowledge of any Event of Default, such Lender promptly shall notify the other Lenders and Agent of such Event of Default. Each Lender shall be solely responsible for giving any notices to its Participants, if any. Subject to Section 15.4, Agent shall take such action with respect to such Default or Event of Default as may be requested by the Required Lenders in accordance with Section 9; provided, that unless and until Agent has received any such request, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable.

15.6. **Credit Decision.** Each Lender (and Bank Product Provider) acknowledges that none of the Agent-Related Persons has made any representation or warranty to it, and that no act by Agent hereinafter taken, including any review of the affairs of any Loan Party and its Subsidiaries or Affiliates, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender (or Bank Product Provider). Each Lender represents (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to represent) to Agent that it has, independently and without reliance upon any Agent-Related Person and based on such due diligence, documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of each Borrower or any other Person party to a Loan Document, and all applicable bank regulatory laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to Borrowers. Each Lender also represents (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to represent) that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of each Borrower or any other Person party to a Loan Document. Except for notices, reports, and other documents expressly herein required to be furnished to the Lenders by Agent, Agent shall not have any duty or responsibility to provide any Lender (or Bank Product Provider) with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any Borrower or any other Person party to a Loan Document that may come into the possession of any of the Agent-Related Persons. Each Lender acknowledges (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that Agent does not have any duty or responsibility, either initially or on a continuing basis (except to the extent, if any, that is expressly specified herein) to provide such Lender (or Bank Product Provider) with any credit or other information with respect to any Borrower, its Affiliates or any of their respective business, legal, financial or other affairs, and irrespective of whether such information came into Agent's or its Affiliates' or representatives' possession before or after the date on which such Lender became a party to this Agreement (or such Bank Product Provider entered into a Bank Product Agreement).

15.7. **Costs and Expenses; Indemnification.** Agent may incur and pay Lender Group Expenses to the extent Agent reasonably deems necessary or appropriate for the performance and fulfillment of its functions, powers, and obligations pursuant to the Loan Documents, including court costs, attorneys' fees and expenses, fees and expenses of financial accountants, advisors, consultants, and appraisers, costs of collection by outside collection agencies, auctioneer fees and expenses, and costs of security guards or insurance premiums paid to maintain the Collateral, whether or not Borrowers are obligated to reimburse Agent or Lenders for such expenses pursuant to this Agreement or otherwise. Agent is authorized and directed to deduct and retain sufficient amounts from payments or proceeds of the Collateral received by Agent to reimburse Agent for such out-of-pocket costs and expenses prior to the distribution of any amounts to Lenders (or Bank Product Providers). In the event Agent is not reimbursed for such costs and expenses by the Loan Parties and their Subsidiaries, each Lender hereby agrees that it is and shall be obligated to pay to Agent such Lender's ratable share thereof. Whether or not the transactions contemplated hereby are consummated, each of the Lenders, on a ratable basis, shall indemnify and defend the Agent-Related Persons (to the extent not reimbursed by or on behalf of Borrowers and without limiting the obligation of Borrowers to do so) from and against any and all Indemnified Liabilities; provided, that no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities resulting solely from such Person's gross negligence or willful misconduct, as determined by a court of competent jurisdiction as a final and non-appealable judgment, nor shall any Lender be liable for the obligations of any Defaulting Lender in failing to make a Revolving Loan or other extension of credit hereunder. Without limitation of the foregoing, each Lender shall reimburse Agent upon demand for such Lender's ratable share of any costs or out of pocket expenses (including attorneys, accountants, advisors, and consultants fees and expenses) incurred by Agent in connection with the preparation, execution, delivery, administration, modification, amendment, or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement or any other Loan Document to the extent that Agent is not reimbursed for such expenses by or on behalf of Borrowers. The undertaking in this Section shall survive the payment of all Obligations hereunder and the resignation or replacement of Agent.

15.8. **Agent in Individual Capacity.** Wells Fargo and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, provide Bank Products to, acquire Equity Interests in, and generally engage in any kind of banking, trust, financial advisory, underwriting, or other business with any Loan Party and its Subsidiaries and Affiliates and any other Person party to any Loan Document as though Wells Fargo were not Agent hereunder, and, in each case, without notice to or consent of the other members of the Lender Group. The other members of the Lender Group acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, pursuant to such activities, Wells Fargo or its Affiliates may receive information regarding a Loan Party or its Affiliates or any other Person party to any Loan Documents that is subject to confidentiality obligations in favor of such Loan Party or such other Person and that prohibit the disclosure of such information to the Lenders (or Bank Product Providers), and the Lenders acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver Agent will use its reasonable best efforts to obtain), Agent shall not be under any obligation to provide such information to them. The terms "Lender" and "Lenders" include Wells Fargo in its individual capacity.

15.9. **Successor Agent.** Agent may resign as Agent upon 30 days (ten days if an Event of Default has occurred and is continuing) prior written notice to the Lenders (unless such notice is waived by the Required Lenders) and Borrowers (unless such notice is waived by Borrowers or an Event of Default has occurred and is continuing) and without any notice to the Bank Product Providers. If Agent resigns under this Agreement, the Required Lenders shall be entitled, with (so long as no Event of Default has occurred and is continuing) the consent of Borrowers (such consent not to be unreasonably withheld, delayed, or conditioned), to appoint a successor Agent for the Lenders (and the Bank Product Providers). If, at the time that Agent's resignation is effective, it is acting as Issuing Bank or the Swing Lender, such resignation shall also operate to effectuate its resignation as Issuing Bank or the Swing Lender, as applicable, and it shall automatically be relieved of any further obligation to issue Letters of Credit, or to make Swing Loans. If no successor Agent is appointed prior to the effective date of the resignation of Agent, Agent may appoint, after consulting with the Lenders and Borrowers, a successor Agent (but in any event shall not be an Ineligible Institution so long as no Event of Default has occurred and is continuing). If Agent has materially breached or failed to perform any material provision of this Agreement or of applicable law, as determined by a court of competent jurisdiction as a final and non-appealable judgment, the Required Lenders may agree in writing to remove and replace Agent with a successor Agent from among the Lenders with (so long as no Event of Default has occurred and is continuing) the consent of Borrowers (such consent not to be unreasonably withheld, delayed, or conditioned). In any such event, upon the acceptance of its appointment as successor Agent hereunder, such successor Agent shall succeed to all the rights, powers, and duties of the retiring Agent and the term "Agent" shall mean such successor Agent and the retiring Agent's appointment, powers, and duties as Agent shall be terminated. After any retiring Agent's resignation hereunder as Agent, the provisions of this Section 15 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement. If no successor Agent has accepted appointment as Agent by the date which is 30 days following a retiring Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of Agent hereunder until such time, if any, as the Lenders appoint a successor Agent as provided for above.

15.10. **Lender in Individual Capacity.** Any Lender and its respective Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, provide Bank Products to, acquire Equity Interests in and generally engage in any kind of banking, trust, financial advisory, underwriting, or other business with any Loan Party and its Subsidiaries and Affiliates and any other Person party to any Loan Documents as though such Lender were not a Lender hereunder without notice to or consent of the other members of the Lender Group (or the Bank Product Providers). The other members of the Lender Group acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, pursuant to such activities, such Lender and its respective Affiliates may receive information regarding a Loan Party or its Affiliates or any other Person party to any Loan Documents that is subject to confidentiality obligations in favor of such Loan Party or such other Person and that prohibit the disclosure of such information to the Lenders, and the Lenders acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver such Lender will use its reasonable best efforts to obtain), such Lender shall not be under any obligation to provide such information to them.

15.11. **Collateral Matters.**

(a) The Lenders hereby irrevocably authorize (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent to release any Lien on any Collateral (i) upon the termination of the Commitments and payment and satisfaction in full by the Loan Parties and their Subsidiaries of all of the Obligations, (ii) constituting property being sold or disposed of if a release is required or desirable in connection therewith and if Borrowers certify to Agent that the sale or disposition is permitted under Section 6.4 (and Agent may rely conclusively on any such certificate, without further inquiry), (iii) constituting property in which no Loan Party or any of its Subsidiaries owned any interest at the time Agent's Lien was granted nor at any time thereafter, (iv) constituting property leased or licensed to a Loan Party or its Subsidiaries under a lease or license that has expired or is terminated in a transaction permitted under this Agreement, or (v) in connection with a credit bid or purchase authorized under this Section 15.11. The Loan Parties and the Lenders hereby irrevocably authorize (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent, based upon the instruction of the Required Lenders (and subject to applicable laws and regulations in the relevant jurisdiction), to (a) consent to the sale of, credit bid, or purchase (either directly or indirectly through one or more entities) all or any portion of the Collateral at any sale thereof conducted under the provisions of the Bankruptcy Code, including Section 363 of the Bankruptcy Code, (b) credit bid or purchase (either directly or indirectly through one or more entities) all or any portion of the Collateral at any sale or other disposition thereof conducted under the provisions of the Code, including pursuant to Sections 9-610 or 9-620 of the Code, or (c) credit bid or purchase (either directly or indirectly through one or more entities) all or any portion of the Collateral at any other sale or foreclosure conducted or consented to by Agent in accordance with applicable law in any judicial action or proceeding or by the exercise of any legal or equitable remedy. In connection with any such credit bid or purchase, (i) the Obligations owed to the Lenders and the Bank Product Providers shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims being estimated for such purpose if the fixing or liquidation thereof would not impair or unduly delay the ability of Agent to credit bid or purchase at such sale or other disposition of the Collateral and, if such contingent or unliquidated claims cannot be estimated without impairing or unduly delaying the ability of Agent to credit bid at such sale or other disposition, then such claims shall be disregarded, not credit bid, and not entitled to any interest in the Collateral that is the subject of such credit bid or purchase) and the Lenders and the Bank Product Providers whose Obligations are credit bid shall be entitled to receive interests (ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid) in the Collateral that is the subject of such credit bid or purchase (or in the Equity Interests of the any entities that are used to consummate such credit bid or purchase), and (ii) Agent, based upon the instruction of the Required Lenders, may accept non-cash consideration, including debt and equity securities issued by any entities used to consummate such credit bid or purchase and in connection therewith Agent may reduce the Obligations owed to the Lenders and the Bank Product Providers (ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid) based upon the value of such non-cash consideration; provided, that Bank Product Obligations not entitled to the application set forth in Section 2.4(b)(iii)(J) shall not be entitled to be, and shall not be, credit bid, or used in the calculation of the ratable interest of the Lenders and Bank Product Providers in the Obligations which are credit bid. Except as provided above, Agent will not execute and deliver a release of any Lien on any Collateral without the prior written authorization of (y) if the release is of all or substantially all of the Collateral, all of the Lenders (without requiring the authorization of the Bank Product Providers), or (z) otherwise, the Required Lenders (without requiring the authorization of the Bank Product Providers). Upon request by Agent or Borrowers at any time, the Lenders will (and if so requested, the Bank Product Providers will) confirm in writing Agent's authority to release any such Liens on particular types or items of Collateral pursuant to this Section 15.11; provided, that (1) anything to the contrary contained in any of the Loan Documents notwithstanding, Agent shall not be required to execute any document or take any action necessary to evidence such release on terms that, in Agent's opinion, could expose Agent to liability or create any obligation or entail any consequence other than the release of such Lien without recourse, representation, or warranty, and (2) such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those expressly released) upon (or obligations of Borrowers in respect of) any and all interests retained by any Borrower, including, the proceeds of any sale, all of which shall continue to constitute part of the Collateral. Each Lender further hereby irrevocably authorizes (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to irrevocably authorize) Agent, at its option and in its sole discretion, to subordinate (by contract or otherwise) any Lien granted to or held by Agent on any property under any Loan Document (a) to the holder of any Permitted Lien on such property if such Permitted Lien secures purchase money Indebtedness (including Capitalized Lease Obligations) which constitute Permitted Indebtedness and (b) to the extent Agent has the authority under this Section 15.11 to release its Lien on such property. Notwithstanding the provisions of this Section 15.11, the Agent shall be authorized, without the consent of any Lender and without the requirement that an asset sale consisting of the sale, transfer or other disposition having occurred, to release any security interest in any building, structure or improvement located in an area determined by the Federal Emergency Management Agency to have special flood hazards.

(b) Agent shall have no obligation whatsoever to any of the Lenders (or the Bank Product Providers) (i) to verify or assure that the Collateral exists or is owned by a Loan Party or any of its Subsidiaries or is cared for, protected, or insured or has been encumbered, (ii) to verify or assure that Agent's Liens have been properly or sufficiently or lawfully created, perfected, protected, or enforced or are entitled to any particular priority, (iii) to verify or assure that any particular items of Collateral meet the eligibility criteria applicable in respect thereof, (iv) to impose, maintain, increase, reduce, implement, or eliminate any particular reserve hereunder or to determine whether the amount of any reserve is appropriate or not, or (v) to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to Agent pursuant to any of the Loan Documents, it being understood and agreed that in respect of the Collateral, or any act, omission, or event related thereto, subject to the terms and conditions contained herein, Agent may act in any manner it may deem appropriate, in its sole discretion given Agent's own interest in the Collateral in its capacity as one of the Lenders and that Agent shall have no other duty or liability whatsoever to any Lender (or Bank Product Provider) as to any of the foregoing, except as otherwise expressly provided herein.

15.12. **Restrictions on Actions by Lenders; Sharing of Payments.**

(a) Each of the Lenders agrees that it shall not, without the express written consent of Agent, and that it shall, to the extent it is lawfully entitled to do so, upon the written request of Agent, set off against the Obligations, any amounts owing by such Lender to any Loan Party or its Subsidiaries or any deposit accounts of any Loan Party or its Subsidiaries now or hereafter maintained with such Lender. Each of the Lenders further agrees that it shall not, unless specifically requested to do so in writing by Agent, take or cause to be taken any action, including, the commencement of any legal or equitable proceedings to enforce any Loan Document against any Borrower or any Guarantor or to foreclose any Lien on, or otherwise enforce any security interest in, any of the Collateral.

(b) If, at any time or times any Lender shall receive (i) by payment, foreclosure, setoff, or otherwise, any proceeds of Collateral or any payments with respect to the Obligations, except for any such proceeds or payments received by such Lender from Agent pursuant to the terms of this Agreement, or (ii) payments from Agent in excess of such Lender's Pro Rata Share of all such distributions by Agent, such Lender promptly shall (A) turn the same over to Agent, in kind, and with such endorsements as may be required to negotiate the same to Agent, or in immediately available funds, as applicable, for the account of all of the Lenders and for application to the Obligations in accordance with the applicable provisions of this Agreement, or (B) purchase, without recourse or warranty, an undivided interest and participation in the Obligations owed to the other Lenders so that such excess payment received shall be applied ratably as among the Lenders in accordance with their Pro Rata Shares; provided, that to the extent that such excess payment received by the purchasing party is thereafter recovered from it, those purchases of participations shall be rescinded in whole or in part, as applicable, and the applicable portion of the purchase price paid therefor shall be returned to such purchasing party, but without interest except to the extent that such purchasing party is required to pay interest in connection with the recovery of the excess payment.

15.13. **Agency for Perfection.** Agent hereby appoints each other Lender (and each Bank Product Provider) as its agent (and each Lender hereby accepts (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to accept) such appointment) for the purpose of perfecting Agent's Liens in assets which, in accordance with Article 8 or Article 9, as applicable, of the Code can be perfected by possession or control. Should any Lender obtain possession or control of any such Collateral, such Lender shall notify Agent thereof, and, promptly upon Agent's request therefor shall deliver possession or control of such Collateral to Agent or in accordance with Agent's instructions.

15.14. **Payments by Agent to the Lenders.** All payments to be made by Agent to the Lenders (or Bank Product Providers) shall be made by bank wire transfer of immediately available funds pursuant to such wire transfer instructions as each party may designate for itself by written notice to Agent. Concurrently with each such payment, Agent shall identify whether such payment (or any portion thereof) represents principal, premium, fees, or interest of the Obligations.

15.15. **Concerning the Collateral and Related Loan Documents.** Each member of the Lender Group authorizes and directs Agent to enter into this Agreement and the other Loan Documents. Each member of the Lender Group agrees (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to agree) that any action taken by Agent in accordance with the terms of this Agreement or the other Loan Documents relating to the Collateral and the exercise by Agent 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 Lenders (and such Bank Product Provider).

15.16. **Field Examination Reports; Confidentiality; Disclaimers by Lenders; Other Reports and Information.** By becoming a party to this Agreement, each Lender:

(a) is deemed to have requested that Agent furnish such Lender, promptly after it becomes available, a copy of each field examination report respecting any Loan Party or its Subsidiaries (each, a "Report") prepared by or at the request of Agent, and Agent shall so furnish each Lender with such Reports,

(b) expressly agrees and acknowledges that Agent does not (i) make any representation or warranty as to the accuracy of any Report, and (ii) shall not be liable for any information contained in any Report,

(c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that Agent or other party performing any field examination will inspect only specific information regarding the Loan Parties and their Subsidiaries and will rely significantly upon Borrowers' and their Subsidiaries' books and records, as well as on representations of Borrowers' personnel,

(d) agrees to keep all Reports and other material, non-public information regarding the Loan Parties and their Subsidiaries and their operations, assets, and existing and contemplated business plans in a confidential manner in accordance with Section 17.9, and

(e) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold Agent and any other Lender preparing a Report harmless from any action the indemnifying Lender may take or fail to take or any conclusion the indemnifying Lender may reach or draw from any Report in connection with any loans or other credit accommodations that the indemnifying Lender has made or may make to Borrowers, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a loan or loans of Borrowers, and (ii) to pay and protect, and indemnify, defend and hold Agent, and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including, attorneys' fees and costs) incurred by Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

In addition to the foregoing, (x) any Lender may from time to time request of Agent in writing that Agent provide to such Lender a copy of any report or document provided by any Loan Party or its Subsidiaries to Agent that has not been contemporaneously provided by such Loan Party or such Subsidiary to such Lender, and, upon receipt of such request, Agent promptly shall provide a copy of same to such Lender, (y) to the extent that Agent is entitled, under any provision of the Loan Documents, to request additional reports or information from any Loan Party or its Subsidiaries, any Lender may, from time to time, reasonably request Agent to exercise such right as specified in such Lender's notice to Agent, whereupon Agent promptly shall request of Borrowers the additional reports or information reasonably specified by such Lender, and, upon receipt thereof from such Loan Party or such Subsidiary, Agent promptly shall provide a copy of same to such Lender, and (z) any time that Agent renders to Borrowers a statement regarding the Loan Account, Agent shall send a copy of such statement to each Lender.

15.17. **Several Obligations; No Liability.** Notwithstanding that certain of the Loan Documents now or hereafter may have been or will be executed only by or in favor of Agent in its capacity as such, and not by or in favor of the Lenders, any and all obligations on the part of Agent (if any) to make any credit available hereunder shall constitute the several (and not joint) obligations of the respective Lenders on a ratable basis, according to their respective Commitments, to make an amount of such credit not to exceed, in principal amount, at any one time outstanding, the amount of their respective Commitments. Nothing contained herein shall confer upon any Lender any interest in, or subject any Lender to any liability for, or in respect of, the business, assets, profits, losses, or liabilities of any other Lender. Each Lender shall be solely responsible for notifying its Participants of any matters relating to the Loan Documents to the extent any such notice may be required, and no Lender shall have any obligation, duty, or liability to any Participant of any other Lender. Except as provided in Section 15.7, no member of the Lender Group shall have any liability for the acts of any other member of the Lender Group. No Lender shall be responsible to any Borrower or any other Person for any failure by any other Lender (or Bank Product Provider) to fulfill its obligations to make credit available hereunder, nor to advance for such Lender (or Bank Product Provider) or on its behalf, nor to take any other action on behalf of such Lender (or Bank Product Provider) hereunder or in connection with the financing contemplated herein.

15.18. **Subordination Agreement.** Each Lender hereby irrevocably appoints, designates and authorizes the Agent to enter into any subordination agreement governing Subordinated Indebtedness on its behalf and to take such action on its behalf under the provisions thereof. Each Lender further agrees to be bound by the terms, conditions and provisions of any such subordination agreement and agrees that it shall not take any action that is prohibited by or inconsistent with the terms of any such subordination agreement. Each Lender hereby agrees that no further consent or approval on the part of any Lender is or will be required in connection with the performance by Agent of the terms, conditions and provisions contained in any such subordination agreement.

16. **WITHHOLDING TAXES.**

16.1. **Payments.** All payments made by any Loan Party under any Loan Document will be made free and clear of, and without deduction or withholding for, any Taxes, except as otherwise required by applicable law, and in the event any deduction or withholding of Taxes is required, the applicable Loan Party shall make the requisite withholding, promptly pay over to the applicable Governmental Authority the withheld tax, and furnish to Agent as promptly as possible after the date the payment of any such Tax is due pursuant to applicable law, certified copies of tax receipts evidencing such payment by the Loan Parties. Furthermore, if any such Tax is an Indemnified Taxes or an Indemnified Tax is so levied or imposed, the Loan Parties agree to pay the full amount of such Indemnified Taxes and such additional amounts as may be necessary so that every payment of all amounts due under this Agreement, any note, or Loan Document, including any amount paid pursuant to this Section 16.1 after withholding or deduction for or on account of any Indemnified Taxes, will not be less than the amount provided for herein. The Loan Parties will promptly pay any Other Taxes or reimburse Agent for such Other Taxes upon Agent's demand. The Loan Parties shall jointly and severally indemnify each Indemnified Person (as defined in Section 10.3) (collectively a "**Tax Indemnatee**") for the full amount of Indemnified Taxes arising in connection with this Agreement or any other Loan Document or breach thereof by any Loan Party (including any Indemnified Taxes imposed or asserted on, or attributable to, amounts payable under this Section 16) imposed on, or paid by, such Tax Indemnatee and all reasonable costs and expenses related thereto (including reasonable, documented and out-of-pocket fees and disbursements of attorneys and other tax professionals), as and when they are incurred and irrespective of whether suit is brought, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority (other than Indemnified Taxes and additional amounts that a court of competent jurisdiction finally determines to have resulted from the gross negligence or willful misconduct of such Tax Indemnatee, as determined by a court of competent jurisdiction as a final and nonappealable judgment). The obligations of the Loan Parties under this Section 16 shall survive the termination of this Agreement, the resignation and replacement of the Agent, and the repayment of the Obligations.

16.2. **Exemptions.**

(a) If a Lender or Participant is entitled to claim an exemption or reduction from United States withholding tax, such Lender or Participant agrees with and in favor of Agent, to deliver to Agent (or, in the case of a Participant, to the Lender granting the participation only) and the Administrative Borrower on behalf of all Borrowers one of the following before receiving its first payment under this Agreement and as such other times as reasonably requested by Administrative Borrower or Agent:

(i) if such Lender or Participant is entitled to claim an exemption from United States withholding tax pursuant to the portfolio interest exception, (A) a statement of the Lender or Participant, in a form reasonably acceptable to Administrative Borrower and Agent, signed under penalty of perjury, that it is not a (I) a "bank" as described in Section 881(c)(3)(A) of the IRC, (II) a 10% shareholder of any Borrower (within the meaning of Section 871(h)(3)(B) of the IRC), or (III) a controlled foreign corporation related to Borrowers within the meaning of Section 864(d)(4) of the IRC, and (B) a properly completed and executed IRS Form W-8BEN, Form W-8BEN-E or Form W-8IMY (with proper attachments as applicable);

(ii) if such Lender or Participant is entitled to claim an exemption from, or a reduction of, withholding tax under a United States tax treaty, a properly completed and executed copy of IRS Form W-8BEN or Form W-8BEN-E, as applicable;

(iii) if such Lender or Participant is entitled to claim that interest paid under this Agreement is exempt from United States withholding tax because it is effectively connected with a United States trade or business of such Lender, a properly completed and executed copy of IRS Form W-8ECI;

(iv) if such Lender or Participant is entitled to claim that interest paid under this Agreement is exempt from United States withholding tax because such Lender or Participant serves as an intermediary, a properly completed and executed copy of IRS Form W-8IMY (including a withholding statement and copies of the tax certification documentation for its beneficial owner(s) of the income paid to the intermediary, if required based on its status provided on the Form W-8IMY); or

(v) a properly completed and executed copy of any other form or forms, including IRS Form W-9, as may be required under the IRC or other laws of the United States as a condition to exemption from, or reduction of, United States withholding or backup withholding tax.

(b) Each Lender or Participant shall provide new forms upon the expiration or obsolescence of any previously delivered forms and promptly notify Agent and Administrative Borrower (or, in the case of a Participant, to the Lender granting the participation only) of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(c) If a Lender or Participant claims an exemption from withholding tax in a jurisdiction other than the United States, such Lender or such Participant agrees with and in favor of Agent and Borrowers, to deliver to Agent and Administrative Borrower (or, in the case of a Participant, to the Lender granting the participation only) any such form or forms, as may be required under the laws of such jurisdiction as a condition to exemption from, or reduction of, foreign withholding or backup withholding tax before receiving its first payment under this Agreement, but only if such Lender or such Participant is legally able to deliver such forms, or the providing of or delivery of such forms in the Lender's reasonable judgment would not subject such Lender to any material unreimbursed cost or expense or materially prejudice the legal or commercial position of such Lender (or its Affiliates); provided, further, that nothing in this Section 16.2(c) shall require a Lender or Participant to disclose any information that it deems to be confidential (including its tax returns). Each Lender and each Participant shall provide new forms upon the expiration or obsolescence of any previously delivered forms and promptly notify Agent and Administrative Borrower (or, in the case of a Participant, to the Lender granting the participation only) of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(d) If a Lender or Participant claims exemption from, or reduction of, withholding tax and such Lender or Participant sells, assigns, grants a participation in, or otherwise transfers all or part of the Obligations of Borrowers to such Lender or Participant, such Lender or Participant agrees to notify Agent and Administrative Borrower (or, in the case of a sale of a participation interest, to the Lender granting the participation only) of the percentage amount in which it is no longer the beneficial owner of Obligations of Borrowers to such Lender or Participant. To the extent of such percentage amount, Agent and Administrative Borrower will treat such Lender's or such Participant's documentation provided pursuant to Section 16.2(a) or 16.2(c) as no longer valid. With respect to such percentage amount, such Participant or Assignee may provide new documentation, pursuant to Section 16.2(a) or 16.2(c), if applicable. Borrowers agree that each Participant shall be entitled to the benefits of this Section 16 with respect to its participation in any portion of the Commitments and the Obligations so long as such Participant complies with the obligations set forth in this Section 16 with respect thereto.

(e) 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 due diligence and reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the IRC, as applicable), such Lender shall deliver to Agent (or, in the case of a Participant, to the Lender granting the participation only) at the time or times prescribed by law and at such time or times reasonably requested by Agent (or, in the case of a Participant, the Lender granting the participation) such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the IRC) and such additional documentation reasonably requested by Agent (or, in the case of a Participant, the Lender granting the participation) as may be necessary for Agent or Borrowers to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (e), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

16.3. **Reductions.**

(a) If a Lender or a Participant is subject to an applicable withholding tax, Agent (or, in the case of a Participant, the Lender granting the participation) may withhold from any payment to such Lender or such Participant an amount equivalent to the applicable withholding tax. If the forms or other documentation required by Section 16.2(a) or 16.2(c) are not delivered to Agent (or, in the case of a Participant, to the Lender granting the participation), then Agent (or, in the case of a Participant, to the Lender granting the participation) may withhold from any payment to such Lender or such Participant not providing such forms or other documentation an amount equivalent to the applicable withholding tax.

(b) If the IRS or any other Governmental Authority of the United States or other jurisdiction asserts a claim that Agent (or, in the case of a Participant, to the Lender granting the participation) did not properly withhold tax from amounts paid to or for the account of any Lender or any Participant due to a failure on the part of the Lender or any Participant (because the appropriate form was not delivered, was not properly executed, or because such Lender failed to notify Agent (or such Participant failed to notify the Lender granting the participation) of a change in circumstances which rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason) such Lender shall indemnify and hold Agent harmless (or, in the case of a Participant, such Participant shall indemnify and hold the Lender granting the participation harmless) for all amounts paid, directly or indirectly, by Agent (or, in the case of a Participant, to the Lender granting the participation), as tax or otherwise, including penalties and interest, and including any taxes imposed by any jurisdiction on the amounts payable to Agent (or, in the case of a Participant, to the Lender granting the participation only) under this Section 16, together with all costs and expenses (including attorneys' fees and expenses). The obligation of the Lenders and the Participants under this subsection shall survive the payment of all Obligations and the resignation or replacement of Agent.

16.4. **Refunds.** If Agent or a Lender determines, in its sole discretion exercised in good faith, that it has received a refund of any Indemnified Taxes to which the Loan Parties have paid additional amounts pursuant to this Section 16, so long as no Default or Event of Default has occurred and is continuing, it shall pay over such refund to the Administrative Borrower on behalf of the Loan Parties (but only to the extent of payments made, or additional amounts paid, by the Loan Parties under this Section 16 with respect to Indemnified Taxes giving rise to such a refund), net of all documented out-of-pocket expenses of Agent or such Lender and without interest (other than any interest paid by the applicable Governmental Authority with respect to such a refund); provided, that the Loan Parties, upon the request of Agent or such Lender, agrees to repay the amount paid over to the Loan Parties (plus any penalties, interest or other charges, imposed by the applicable Governmental Authority, other than such penalties, interest or other charges imposed as a result of the willful misconduct or gross negligence of Agent or Lender hereunder as finally determined by a court of competent jurisdiction) to Agent or such Lender in the event Agent or such Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything in this Agreement to the contrary, this Section 16 shall not be construed to require Agent or any Lender to make available its tax returns (or any other information which it deems confidential) to Loan Parties or any other Person or require Agent or any Lender to pay any amount to an indemnifying party pursuant to Section 16.4, the payment of which would place Agent or such Lender (or their Affiliates) in a less favorable net after-Tax position than such Person would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid.

17. **GENERAL PROVISIONS.**

17.1. **Effectiveness.** This Agreement shall be binding and deemed effective when executed by each Borrower, Agent, and each Lender whose signature is provided for on the signature pages hereof.

17.2. **Section Headings.** Headings and numbers have been set forth herein for convenience only. Unless the contrary is compelled by the context, everything contained in each Section applies equally to this entire Agreement.

17.3. **Interpretation.** Neither this Agreement nor any uncertainty or ambiguity herein shall be construed against the Lender Group or any Borrower, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to accomplish fairly the purposes and intentions of all parties hereto.

17.4. **Severability of Provisions.** Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

17.5. **Bank Product Providers.** Each Bank Product Provider in its capacity as such shall be deemed a third party beneficiary hereof and of the provisions of the other Loan Documents for purposes of any reference in a Loan Document to the parties for whom Agent is acting. Agent hereby agrees to act as agent for such Bank Product Providers and, by virtue of entering into a Bank Product Agreement, the applicable Bank Product Provider shall be automatically deemed to have appointed Agent as its agent and to have accepted the benefits of the Loan Documents. It is understood and agreed that the rights and benefits of each Bank Product Provider under the Loan Documents consist exclusively of such Bank Product Provider's being a beneficiary of the Liens and security interests (and, if applicable, guarantees) granted to Agent and the right to share in payments and collections out of the Collateral as more fully set forth herein. In addition, each Bank Product Provider, by virtue of entering into a Bank Product Agreement, shall be automatically deemed to have agreed that Agent shall have the right, but shall have no obligation, to establish, maintain, relax, or release reserves in respect of the Bank Product Obligations and that if reserves are established there is no obligation on the part of Agent to determine or insure whether the amount of any such reserve is appropriate or not. In connection with any such distribution of payments or proceeds of Collateral, Agent shall be entitled to assume no amounts are due or owing to any Bank Product Provider unless such Bank Product Provider has provided a written certification (setting forth a reasonably detailed calculation) to Agent as to the amounts that are due and owing to it and such written certification is received by Agent a reasonable period of time prior to the making of such distribution. Agent shall have no obligation to calculate the amount due and payable with respect to any Bank Products, but may rely upon the written certification of the amount due and payable from the applicable Bank Product Provider. In the absence of an updated certification, Agent shall be entitled to assume that the amount due and payable to the applicable Bank Product Provider is the amount last certified to Agent by such Bank Product Provider as being due and payable (less any distributions made to such Bank Product Provider on account thereof). Borrowers may obtain Bank Products from any Bank Product Provider, although Borrowers are not required to do so. Each Borrower acknowledges and agrees that no Bank Product Provider has committed to provide any Bank Products and that the providing of Bank Products by any Bank Product Provider is in the sole and absolute discretion of such Bank Product Provider. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, no provider or holder of any Bank Product shall have any voting or approval rights hereunder (or be deemed a Lender) solely by virtue of its status as the provider or holder of such agreements or products or the Obligations owing thereunder, nor shall the consent of any such provider or holder be required (other than in their capacities as Lenders, to the extent applicable) for any matter hereunder or under any of the other Loan Documents, including as to any matter relating to the Collateral or the release of Collateral or Guarantors.

17.6. **Debtor-Creditor Relationship.** The relationship between the Lenders and Agent, on the one hand, and the Loan Parties, on the other hand, is solely that of creditor and debtor. No member of the Lender Group has (or shall be deemed to have) any fiduciary relationship or duty to any Loan Party arising out of or in connection with the Loan Documents or the transactions contemplated thereby, and there is no agency or joint venture relationship between the members of the Lender Group, on the one hand, and the Loan Parties, on the other hand, by virtue of any Loan Document or any transaction contemplated therein.

17.7. **Counterparts; Electronic Execution.** This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Execution of any such counterpart may be by means of (a) an electronic signature that complies with the federal Electronic Signatures in Global and National Commerce Act, as in effect from time to time, state enactments of the Uniform Electronic Transactions Act, as in effect from time to time, or any other relevant and applicable electronic signatures law; (b) an original manual signature; or (c) a faxed, scanned, or photocopied manual signature. Each electronic signature or faxed, scanned, or photocopied manual signature shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. Agent reserves the right, in its discretion, to accept, deny, or condition acceptance of any electronic signature on this Agreement. Any party delivering an executed counterpart of this Agreement by faxed, scanned or photocopied manual signature shall also deliver an original manually executed counterpart, but the failure to deliver an original manually executed counterpart shall not affect the validity, enforceability and binding effect of this Agreement. The foregoing shall apply to each other Loan Document, and any notice delivered hereunder or thereunder, *mutatis mutandis*.

17.8. **Revival and Reinstatement of Obligations; Certain Waivers.** If any member of the Lender Group or any Bank Product Provider repays, refunds, restores, or returns in whole or in part, any payment or property (including any proceeds of Collateral) previously paid or transferred to such member of the Lender Group or such Bank Product Provider in full or partial satisfaction of any Obligation or on account of any other obligation of any Loan Party under any Loan Document or any Bank Product Agreement, because the payment, transfer, or the incurrence of the obligation so satisfied is asserted or declared to be void, voidable, or otherwise recoverable under any law relating to creditors' rights, including provisions of the Bankruptcy Code relating to fraudulent transfers, preferences, or other voidable or recoverable obligations or transfers (each, a "Voidable Transfer"), or because such member of the Lender Group or Bank Product Provider elects to do so on the reasonable advice of its counsel in connection with a claim that the payment, transfer, or incurrence is or may be a Voidable Transfer, then, as to any such Voidable Transfer, or the amount thereof that such member of the Lender Group or Bank Product Provider elects to repay, restore, or return (including pursuant to a settlement of any claim in respect thereof), and as to all reasonable costs, expenses, and attorneys' fees of such member of the Lender Group or Bank Product Provider related thereto, (i) the liability of the Loan Parties with respect to the amount or property paid, refunded, restored, or returned will automatically and immediately be revived, reinstated, and restored and will exist, and (ii) Agent's Liens securing such liability shall be effective, revived, and remain in full force and effect, in each case, as fully as if such Voidable Transfer had never been made. If, prior to any of the foregoing, (A) Agent's Liens shall have been released or terminated, or (B) any provision of this Agreement shall have been terminated or cancelled, Agent's Liens, or such provision of this Agreement, shall be reinstated in full force and effect and such prior release, termination, cancellation or surrender shall not diminish, release, discharge, impair or otherwise affect the obligation of any Loan Party in respect of such liability or any Collateral securing such liability. This provision shall survive the termination of this Agreement and the repayment in full of the Obligations.

17.9. **Confidentiality.**

(a) Agent and Lenders each individually (and not jointly or jointly and severally) agree that material, non-public information regarding the Loan Parties and their Subsidiaries, their operations, assets, and existing and contemplated business plans ("Confidential Information") shall be treated by Agent and the Lenders in a confidential manner, and shall not be disclosed by Agent and the Lenders to Persons who are not parties to this Agreement, except: (i) to attorneys for and other advisors, accountants, auditors, and consultants to any member of the Lender Group and to employees, directors and officers of any member of the Lender Group (the Persons in this clause (i), "Lender Group Representatives") on a "need to know" basis in connection with this Agreement and the transactions contemplated hereby and on a confidential basis, (ii) to Subsidiaries and Affiliates of any member of the Lender Group (including the Bank Product Providers); provided, that any such Subsidiary or Affiliate shall have agreed to receive such information hereunder subject to the terms of this Section 17.9, (iii) as may be required by regulatory authorities so long as such authorities are informed of the confidential nature of such information, (iv) as may be required by statute, decision, or judicial or administrative order, rule, or regulation; provided, that (x) prior to any disclosure under this clause (iv), the disclosing party agrees to provide Borrowers with prior notice thereof, to the extent that it is practicable to do so and to the extent that the disclosing party is permitted to provide such prior notice to Borrowers pursuant to the terms of the applicable statute, decision, or judicial or administrative order, rule, or regulation and (y) any disclosure under this clause (iv) shall be limited to the portion of the Confidential Information as may be required by such statute, decision, or judicial or administrative order, rule, or regulation, (v) as may be agreed to in advance in writing by Borrowers, (vi) as requested or required by any Governmental Authority pursuant to any subpoena or other legal process; provided, that (x) prior to any disclosure under this clause (vi) the disclosing party agrees to provide Borrowers with prior written notice thereof, to the extent that it is practicable to do so and to the extent that the disclosing party is permitted to provide such prior written notice to Borrowers pursuant to the terms of the subpoena or other legal process and (y) any disclosure under this clause (vi) shall be limited to the portion of the Confidential Information as may be required by such Governmental Authority pursuant to such subpoena or other legal process, (vii) as to any such information that is or becomes generally available to the public (other than as a result of prohibited disclosure by Agent or the Lenders or the Lender Group Representatives), (viii) in connection with any assignment, participation or pledge of any Lender's interest under this Agreement; provided, that prior to receipt of Confidential Information any such assignee, participant, or pledgee shall have agreed in writing to receive such Confidential Information either subject to the terms of this Section 17.9 or pursuant to confidentiality requirements substantially similar to those contained in this Section 17.9 (and such Person may disclose such Confidential Information to Persons employed or engaged by them as described in clause (i) above), (ix) in connection with any litigation or other adversary proceeding involving parties hereto which such litigation or adversary proceeding involves claims related to the rights or duties of such parties under this Agreement or the other Loan Documents; provided, that prior to any disclosure to any Person (other than any Loan Party, Agent, any Lender, any of their respective Affiliates, or their respective counsel) under this clause (ix) with respect to litigation involving any Person (other than any Borrower, Agent, any Lender, any of their respective Affiliates, or their respective counsel), the disclosing party agrees to provide Borrowers with prior written notice thereof, and (x) in connection with, and to the extent reasonably necessary for, the exercise of any secured creditor remedy under this Agreement or under any other Loan Document.

(b) Anything in this Agreement to the contrary notwithstanding, Agent may disclose information concerning the terms and conditions of this Agreement and the other Loan Documents to loan syndication and pricing reporting services or in its marketing or promotional materials, with such information to consist of deal terms and other information customarily found in such publications or marketing or promotional materials and may otherwise use the name, logos, and other insignia of any Borrower or the other Loan Parties and the Commitments provided hereunder in any "tombstone" or other advertisements, on its website or in other marketing materials of the Agent.

(c) Each Loan Party agrees that Agent may make materials or information provided by or on behalf of Borrowers hereunder (collectively, "Borrower Materials") available to the Lenders by posting the Communications on IntraLinks, SyndTrak or a substantially similar secure electronic transmission system (the "Platform"). The Platform is provided "as is" and "as available." Agent does not warrant the accuracy or completeness of the Borrower Materials, or the adequacy of the Platform and expressly disclaim liability for errors or omissions in the communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects, is made by Agent in connection with the Borrower Materials or the Platform. In no event shall Agent or any of the Agent-Related Persons have any liability to the Loan Parties, any Lender or any other Person for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of any Loan Party's or Agent's transmission of communications through the Internet, except to the extent the liability of such Person is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted from such Person's gross negligence or willful misconduct. Each Loan Party further agrees that certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Loan Parties or their securities) (each, a "Public Lender"). The Loan Parties shall be deemed to have authorized Agent and its Affiliates and the Lenders to treat Borrower Materials marked "PUBLIC" or otherwise at any time filed with the SEC as not containing any material non-public information with respect to the Loan Parties or their securities for purposes of United States federal and state securities laws. All Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated as "Public Investor" (or another similar term). Agent and its Affiliates and the Lenders shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" or that are not at any time filed with the SEC as being suitable only for posting on a portion of the Platform not marked as "Public Investor" (or such other similar term).

17.10. **Survival.** All 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 Agent, Issuing Bank, or any Lender may have had notice or knowledge of any Default or Event of 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 or unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or been terminated.

17.11. **Patriot Act; Due Diligence.** Each Lender that is subject to the requirements of the Patriot Act hereby notifies the Loan Parties that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender to identify each Loan Party in accordance with the Patriot Act. In addition, Agent and each Lender shall have the right to periodically conduct due diligence on all Loan Parties, their senior management and key principals and legal and beneficial owners. Each Loan Party agrees to cooperate in respect of the conduct of such due diligence and further agrees that the reasonable costs and charges for any such due diligence by Agent shall constitute Lender Group Expenses hereunder and be for the account of Borrowers.

17.12. **Integration.** This Agreement, together with the other Loan Documents, reflects the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof. The foregoing to the contrary notwithstanding, all Bank Product Agreements, if any, are independent agreements governed by the written provisions of such Bank Product Agreements, which will remain in full force and effect, unaffected by any repayment, prepayments, acceleration, reduction, increase, or change in the terms of any credit extended hereunder, except as otherwise expressly provided in such Bank Product Agreement.

17.13. **Parent as Agent for Borrowers.** Each Borrower hereby irrevocably appoints Parent as the borrowing agent and attorney-in-fact for all Borrowers (the "**Administrative Borrower**") which appointment shall remain in full force and effect unless and until Agent shall have received prior written notice signed by each Borrower that such appointment has been revoked and that another Borrower has been appointed Administrative Borrower. Each Borrower hereby irrevocably appoints and authorizes the Administrative Borrower (a) to provide Agent with all notices with respect to Revolving Loans and Letters of Credit obtained for the benefit of any Borrower and all other notices and instructions under this Agreement and the other Loan Documents (and any notice or instruction provided by Administrative Borrower shall be deemed to be given by Borrowers hereunder and shall bind each Borrower), (b) to receive notices and instructions from members of the Lender Group (and any notice or instruction provided by any member of the Lender Group to the Administrative Borrower in accordance with the terms hereof shall be deemed to have been given to each Borrower), and (c) to take such action as the Administrative Borrower deems appropriate on its behalf to obtain Revolving Loans and Letters of Credit and to exercise such other powers as are reasonably incidental thereto to carry out the purposes of this Agreement. It is understood that the handling of the Loan Account and Collateral in a combined fashion, as more fully set forth herein, is done solely as an accommodation to Borrowers in order to utilize the collective borrowing powers of Borrowers in the most efficient and economical manner and at their request, and that Lender Group shall not incur liability to any Borrower as a result hereof. Each Borrower expects to derive benefit, directly or indirectly, from the handling of the Loan Account and the Collateral in a combined fashion since the successful operation of each Borrower is dependent on the continued successful performance of the integrated group. To induce the Lender Group to do so, and in consideration thereof, each Borrower hereby jointly and severally agrees to indemnify each member of the Lender Group and hold each member of the Lender Group harmless against any and all liability, expense, loss or claim of damage or injury, made against the Lender Group by any Borrower or by any third party whosoever, arising from or incurred by reason of (i) the handling of the Loan Account and Collateral of Borrowers as herein provided, or (ii) the Lender Group's relying on any instructions of the Administrative Borrower, except that Borrowers will have no liability to the relevant Agent-Related Person or Lender-Related Person under this **Section 17.13** with respect to any liability that has been finally determined by a court of competent jurisdiction to have resulted solely from the gross negligence or willful misconduct of such Agent-Related Person or Lender-Related Person, as the case may be.

17.14. **Acknowledgement and Consent to Bail-In of Affected Financial Institutions.** Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and
- (b) the effects of any Bail-In Action on any such liability, including, if applicable:
 - (i) a reduction in full or in part or cancellation of any such liability;
 - (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or
 - (iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

17.15. **Acknowledgement Regarding Any Supported QFCs.** To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Hedge Agreements or any other agreement or instrument that is a QFC (such support, "**QFC Credit Support**" and each such QFC a "**Supported QFC**"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "**U.S. Special Resolution Regimes**") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States). In the event a Covered Entity that is party to a Supported QFC (each, a "**Covered Party**") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

17.16. **Erroneous Payments.**

(a) Each Lender, each Issuing Bank, each other Bank Product Provider and any other party hereto hereby severally agrees that if (i) Agent notifies (which such notice shall be conclusive absent manifest error) such Lender or Issuing Bank or any Bank Product Provider (or the Lender which is an Affiliate of a Lender, Issuing Bank or Bank Product Provider) or any other Person that has received funds from Agent or any of its Affiliates, either for its own account or on behalf of a Lender, Issuing Bank or Bank Product Provider (each such recipient, a "**Payment Recipient**") that Agent has determined in its sole discretion that any funds received by such Payment Recipient were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Payment Recipient) or (ii) any Payment Recipient receives any payment from Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, as applicable, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, as applicable, or (z) that such Payment Recipient otherwise becomes aware was transmitted or received in error or by mistake (in whole or in part) then, in each case, an error in payment shall be presumed to have been made (any such amounts specified in clauses (i) or (ii) of this **Section 17.16(a)**), whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise; individually and collectively, an "**Erroneous Payment**"), then, in each case, such Payment Recipient is deemed to have knowledge of such error at the time of its receipt of such Erroneous Payment; provided that nothing in this Section shall require Agent to provide any of the notices specified in clauses (i) or (ii) above. Each Payment Recipient agrees that it shall not assert any right or claim to any Erroneous Payment, and hereby waives any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by Agent for the return of any Erroneous Payments, including without limitation waiver of any defense based on "discharge for value" or any similar doctrine.

(b) Without limiting the immediately preceding clause (a), each Payment Recipient agrees that, in the case of clause (a)(ii) above, it shall promptly notify Agent in writing of such occurrence.

(c) In the case of either clause (a)(i) or (a)(ii) above, such Erroneous Payment shall at all times remain the property of Agent and shall be segregated by the Payment Recipient and held in trust for the benefit of Agent, and upon demand from Agent such Payment Recipient shall (or, shall cause any Person who received any portion of an Erroneous Payment on its behalf to), promptly, but in all events no later than one Business Day thereafter, return to Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made in same day funds and in the currency so received, together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to Agent at the greater of the Federal Funds Rate and a rate determined by Agent in accordance with banking industry rules on interbank compensation from time to time in effect.

(d) In the event that an Erroneous Payment (or portion thereof) is not recovered by Agent for any reason, after demand therefor by Agent in accordance with immediately preceding clause (c), from any Lender that is a Payment Recipient or an Affiliate of a Payment Recipient (such unrecovered amount as to such Lender, an "Erroneous Payment Return Deficiency"), then at the sole discretion of Agent and upon Agent's written notice to such Lender (i) such Lender shall be deemed to have made a cashless assignment of the full face amount of the portion of its Loans (but not its Commitments) with respect to which such Erroneous Payment was made (the "Erroneous Payment Impacted Loans") to Agent or, at the option of Agent, Agent's applicable lending affiliate (such assignee, the "Agent Assignee") in an amount that is equal to the Erroneous Payment Return Deficiency (or such lesser amount as Agent may specify) (such assignment of the Loans (but not Commitments) of the Erroneous Payment Impacted Loans, the "Erroneous Payment Deficiency Assignment") plus any accrued and unpaid interest on such assigned amount, without further consent or approval of any party hereto and without any payment by Agent Assignee as the assignee of such Erroneous Payment Deficiency Assignment. Without limitation of its rights hereunder, following the effectiveness of the Erroneous Payment Deficiency Assignment, Agent may make a cashless reassignment to the applicable assigning Lender of any Erroneous Payment Deficiency Assignment at any time by written notice to the applicable assigning Lender and upon such reassignment all of the Loans assigned pursuant to such Erroneous Payment Deficiency Assignment shall be reassigned to such Lender without any requirement for payment or other consideration. The parties hereto acknowledge and agree that (1) any assignment contemplated in this clause (d) shall be made without any requirement for any payment or other consideration paid by the applicable assignee or received by the assignor, (2) the provisions of this clause (d) shall govern in the event of any conflict with the terms and conditions of Section 13 and (3) Agent may reflect such assignments in the Register without further consent or action by any other Person.

(e) Each party hereto hereby agrees that (x) in the event an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, Agent (1) shall be subrogated to all the rights of such Payment Recipient and (2) is authorized to set off, net and apply any and all amounts at any time owing to such Payment Recipient under any Loan Document, or otherwise payable or distributable by Agent to such Payment Recipient from any source, against any amount due to Agent under this Section 17.16 or under the indemnification provisions of this Agreement, (y) the receipt of an Erroneous Payment by a Payment Recipient shall not for the purpose of this Agreement be treated as a payment, prepayment, repayment, discharge or other satisfaction of any Obligations owed by the Borrowers or any other Loan Party, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by Agent from the Borrowers or any other Loan Party for the purpose of making for a payment on the Obligations and (z) to the extent that an Erroneous Payment was in any way or at any time credited as payment or satisfaction of any of the Obligations, the Obligations or any part thereof that were so credited, and all rights of the Payment Recipient, as the case may be, shall be reinstated and continue in full force and effect as if such payment or satisfaction had never been received.

(f) Each party's obligations under this Section 17.16 shall survive the resignation or replacement of Agent or any transfer of right or obligations by, or the replacement of, a Lender, the termination of the Commitments or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

(g) The provisions of this Section 17.16 to the contrary notwithstanding, (i) nothing in this Section 17.16 will constitute a waiver or release of any claim of any party hereunder arising from any Payment Recipient's receipt of an Erroneous Payment and (ii) there will only be deemed to be a recovery of the Erroneous Payment to the extent that Agent has received payment from the Payment Recipient in immediately available funds the Erroneous Payment Return, whether directly from the Payment Recipient, as a result of the exercise by Agent of its rights of subrogation or set off as set forth above in clause (e) or as a result of the receipt by Agent Assignee of a payment of the outstanding principal balance of the Loans assigned to Agent Assignee pursuant to an Erroneous Payment Deficiency Assignment, but excluding any other amounts in respect thereof (it being agreed that any payments of interest, fees, expenses or other amounts (other than principal) received by Agent Assignee in respect of the Loans assigned to Agent Assignee pursuant to an Erroneous Payment Deficiency Assignment shall be the sole property of Agent Assignee and shall not constitute a recovery of the Erroneous Payment).

[Signature pages to follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

PARENT AND BORROWER:

FARMER BROS. CO., a Delaware corporation

By: _____
Name: _____
Title: _____

ADDITIONAL BORROWERS:

BOYD ASSETS CO., a Delaware corporation

By: _____
Name: _____
Title: _____

FBC FINANCE COMPANY, a California corporation

By: _____
Name: _____
Title: _____

COFFEE BEAN HOLDING CO., INC., a Delaware corporation

By: _____
Name: _____
Title: _____

COFFEE BEAN INTERNATIONAL, INC., an Oregon corporation

By: _____
Name: _____
Title: _____

CHINA MIST BRANDS, INC., a Delaware corporation

By: _____
Name: _____
Title: _____

[SIGNATURE PAGE TO CREDIT AGREEMENT]

WELLS FARGO BANK, NATIONAL ASSOCIATION, a national
banking association, as Agent and as a Lender

By: _____
Name: _____
Its Authorized Signatory

[SIGNATURE PAGE TO CREDIT AGREEMENT]

Schedule C-1

Commitments

Schedule R-1

Real Property Collateral

Schedule 5.1

ASSET PURCHASE AGREEMENT

between

TREEHOUSE FOODS, INC.,

as Buyer

and

FARMER BROS. CO.,

as Seller

Dated as of June 6, 2023

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS	1
Section 1.1 Certain Defined Terms	1
Section 1.2 Table of Definitions	14
ARTICLE II PURCHASE AND SALE	16
Section 2.1 Purchase and Sale of Assets	16
Section 2.2 Excluded Assets	17
Section 2.3 Assumed Liabilities	18
Section 2.4 Excluded Liabilities	19
Section 2.5 Consents and Waivers; Further Assurances	21
Section 2.6 Consideration	22
Section 2.7 Closing	22
Section 2.8 Post-Closing Adjustment of Purchase Price	24
Section 2.9 Purchase Price Allocation	27
Section 2.10 Transfer of Purchased Assets; Wrong Pockets	28
ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLER	28
Section 3.1 Organization and Qualification; Capitalization	28
Section 3.2 Authority	29
Section 3.3 No Conflict; Required Filings and Consents	29
Section 3.4 Title to Assets; Sufficiency of Assets	30
Section 3.5 Absence of Certain Changes or Events	31
Section 3.6 Reserved	31
Section 3.7 Compliance with Law; Permits	31
Section 3.8 Litigation	31
Section 3.9 Employee Benefit Plans	32
Section 3.10 Labor and Employment Matters	32
Section 3.11 Real Property	34
Section 3.12 Personal Property	36
Section 3.13 Intellectual Property	36
Section 3.14 IT Systems	38
Section 3.15 Business Inventory	38
Section 3.16 Taxes	38
Section 3.17 Environmental Matters	39
Section 3.18 Material Contracts	40
Section 3.19 Customers and Suppliers	42
Section 3.20 Product Liability	43
Section 3.21 Occupational Safety and Health Matters	43
Section 3.22 Warranties	43
Section 3.23 Debt	44

TABLE OF CONTENTS
(Continued)

	<u>Page</u>
Section 3.24 Affiliate Interests and Transactions	44
Section 3.25 Business Insurance	44
Section 3.26 Brokers	44
Section 3.27 International Trade Laws	44
Section 3.28 Food Safety Matters	45
Section 3.29 Privacy	47
Section 3.30 Solvency	47
Section 3.31 No Other Representations or Warranties	48
 ARTICLE IV REPRESENTATIONS AND WARRANTIES OF BUYER	 48
Section 4.1 Organization	48
Section 4.2 Authority	48
Section 4.3 No Conflict; Required Filings and Consents	49
Section 4.4 Financing	49
Section 4.5 Brokers	49
Section 4.6 Solvency	49
 ARTICLE V COVENANTS	 50
Section 5.1 Conduct of Business Prior to the Closing	50
Section 5.2 Covenants Regarding Information	52
Section 5.3 Exclusivity	53
Section 5.4 Non-Competition; Non-Solicitation	54
Section 5.5 Notification of Certain Matters	55
Section 5.6 Payment of Liabilities	55
Section 5.7 Refunds and Remittances	55
Section 5.8 Bulk Transfer Laws	55
Section 5.9 Employee Matters	55
Section 5.10 Confidentiality	58
Section 5.11 Consents	58
Section 5.12 Public Announcements	59
Section 5.13 Real Estate	59
Section 5.14 Insurance, Casualty and Condemnation	60
Section 5.15 Use of Transferred Codes	62
Section 5.16 Correspondence	62
Section 5.18 Post-Closing Access; Owned Real Property Matter	62
Section 5.19 Specified Assets	63
Section 5.20 Shared Contracts	63
Section 5.21 Repayment of Receivables	63
Section 5.22 Financial Cooperation	64
Section 5.23 Good Faith Efforts to Negotiate	64

TABLE OF CONTENTS
(Continued)

	<u>Page</u>
Section 5.24 Payoff Indebtedness	64
ARTICLE VI TAX MATTERS	65
Section 6.1 Transfer Taxes	65
Section 6.2 Preparation of Tax Returns	65
Section 6.3 Cooperation	65
Section 6.4 Withholding	66
Section 6.5 Tax Proration	66
Section 6.6 Tax Treatment	67
Section 6.7 Tax Refunds	67
ARTICLE VII CONDITIONS TO CLOSING	67
Section 7.1 General Conditions	67
Section 7.2 Conditions to Obligations of Seller	67
Section 7.3 Conditions to Obligations of Buyer	68
ARTICLE VIII INDEMNIFICATION	69
Section 8.1 Survival	69
Section 8.2 Indemnification by Seller	69
Section 8.3 Indemnification by Buyer	69
Section 8.4 Procedures	70
Section 8.5 Limitations on Indemnification	71
Section 8.6 Tax Treatment of Indemnification Payments	71
ARTICLE IX TERMINATION	72
Section 9.1 Termination	72
Section 9.2 Effect of Termination	72
ARTICLE X GENERAL PROVISIONS	73
Section 10.1 Fees and Expenses	73
Section 10.2 Amendment and Modification	73
Section 10.3 Waiver	73
Section 10.4 Notices	74
Section 10.5 Interpretation	74
Section 10.6 Entire Agreement	75
Section 10.7 No Third-Party Beneficiaries	75
Section 10.8 Governing Law	75
Section 10.9 Submission to Jurisdiction	75

TABLE OF CONTENTS
(Continued)

	<u>Page</u>
Section 10.10 Assignment; Successors	76
Section 10.11 Specific Performance	76
Section 10.12 Currency	76
Section 10.13 Severability	76
Section 10.14 Waiver of Jury Trial	76
Section 10.15 Counterparts	76
Section 10.16 Facsimile or .pdf Signature	77
Section 10.17 Time of Essence	77
Section 10.18 No Presumption Against Drafting Party	77
Section 10.19 Exhibits	77

Exhibits

Exhibit A	Owned Real Property Office Lease Term Sheet
Exhibit B	Owned Real Property Warehouse Lease Term Sheet
Exhibit C	Transition Services Agreement Term Sheet
Exhibit D	Form of Bill of Sale
Exhibit E	Form of Assumption Agreement
Exhibit F	Form of Deed
Exhibit G	Form of Assignment of Contracts
Exhibit H	Form of Co-Manufacturing Agreement
Exhibit I	Form of Seller Affidavit

ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT, dated as of June 6, 2023 (this “Agreement”), between TreeHouse Foods, Inc., a Delaware corporation, (“Buyer”), and Farmer Bros. Co., a Delaware corporation (“Seller”).

RECITALS

A. Seller is engaged in the business of the procurement, roasting, grinding and sale and distribution of coffee beans and ground coffee products currently provided by Seller and its Subsidiaries to the customers listed on Schedule 1.1(a) of the Disclosure Schedules (the “Business”);

B. Seller shall retain, and the Business shall not include, any business now, previously or hereafter conducted by Seller or any of its Subsidiaries or Affiliates other than the Business, including, without limitation, Seller’s procuring, roasting, grinding, selling, servicing and distributing coffee, tea and allied products to its customers that are not listed on Schedule 1.1(a) (the “Retained Business”);

C. Seller owns all of the Purchased Assets; and

D. Seller wishes to sell to Buyer or one or more of its designated Subsidiaries (each, a “Buyer Designee”), and Buyer wishes to purchase or cause to be purchased from Seller, the Purchased Assets relating to the Business, and in connection therewith Buyer is willing to assume certain liabilities and obligations of Seller relating thereto, all upon the terms and subject to the conditions set forth herein.

AGREEMENT

In consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, the parties agree as follows:

ARTICLE I DEFINITIONS

Section 1.1 Certain Defined Terms. For purposes of this Agreement:

“Accounting Principles” means GAAP as consistently applied by Seller in accordance with its practice; provided, that, in the event of any discrepancy or conflict between GAAP and Seller’s past practice, GAAP shall prevail and supersede Seller’s past practice.

“Action” means any claim, action, suit, inquiry, proceeding, audit or investigation by or before any Governmental Authority, or any other arbitration, mediation or similar proceeding.

“Adjustment Escrow Amount” means \$2,000,000.

“Adjustment Escrow Fund” means the Adjustment Escrow Amount deposited with the Escrow Agent, including any remaining interest or other amounts earned thereon.

“Affiliate” means, with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person.

“Ancillary Agreements” means the Bill of Sale, the Assumption Agreement, the Deed, the Assignment of Contracts, the Escrow Agreement, the Transition Services Agreement, the Owned Real Property Office Lease, the Owned Real Property Warehouse Lease, the Co-Manufacturing Agreement and all other agreements, documents and instruments required to be delivered by any party pursuant to this Agreement, and any other agreements, documents or instruments entered into at or prior to the Closing in connection with this Agreement or the transactions contemplated hereby.

“Applicable Food Safety Laws” means all applicable Laws, guidance and policies related to the development, cultivation, manufacture, production, regulatory status, import, export, packaging, packing, labeling, handling, storage, transportation, distribution, purchase, sale, advertising or marketing of food and related products, including, but not limited to, Proposition 65 and all Laws administered by FDA, FTC, USDA, CBP, and other comparable Governmental Authorities.

“Business Contract” means the Contracts forth on Schedule 1.1(b) of the Disclosure Schedules.

“Business Day” means any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by Law to be closed in Dallas, Texas, the City of New York, New York or Chicago, Illinois.

“Business Employee” means all employees of Seller who provide services primarily related to the Business, including any such employee hired in accordance with Section 5.1(i).

“Business Intellectual Property” means all Intellectual Property owned or purported to be owned (in whole or in part) by Seller that is primarily related to the Business.

“Business Inventory” means, without duplication, all (i) finished goods, works in progress, packaging and raw materials, including, without limitation, green coffee beans, primarily related to the Business, regardless of where located and (ii) raw materials that are located at the Owned Real Property.

“Business Permits” means all permits, licenses, franchises, approvals, certificates, consents, waivers, or other authorizations issued to Seller by a Governmental Authority that (i) relate to the ownership or operation of the Owned Real Property or that (ii) otherwise primarily relate to the conduct or operation of the Business as currently conducted or are used in connection with the ownership or use of the Purchased Assets, in each case including all pending applications therefor and amendments, modifications and renewals thereof, including without limitation those permits and licenses set forth on Schedule 3.7(b) of the Disclosure Schedules.

“Business Personal Property” means all fixed assets, machinery, equipment (including forklifts), furniture, furnishings, rolling stock, tools, office supplies, vehicles, computer hardware, network technology and other tangible personal property owned or leased by Seller (i) that is located at the Owned Real Property or, (ii) if not located at the Owned Real Property, that is primarily related to the Business or (iii) that is set forth on Schedule 1.1(d) of the Disclosure Schedules, in each case, other than the personal property listed on Schedule 2.2(j) of the Disclosure Schedules.

“Business Prepaid Items” means all credits, cash reserves, prepaid expenses, advance payments, security deposits, escrows and other prepaid items of Seller primarily related to the Business.

“Business Records” means all books, records, ledgers and files or other similar information of Seller (in any form or medium, including, without limitation, all information in electronic form and whether stored on discs, tapes, drives, servers or other, and including e-mail communications) that are primarily related to the Business, including all client lists, vendor lists, correspondence, mailing lists, revenue records, invoices, advertising materials, brochures, records of operation, standard forms of documents, manuals of operations or business procedures, photographs, blueprints, research files and materials, data books, Intellectual Property disclosures and information, media materials and plates, accounting records and litigation files (but excluding the organization documents, minute and stock record books and corporate seal of Seller or any records primarily related to any Excluded Asset or any Excluded Liability or otherwise not primarily related to the Business or the ownership or operation of the Owned Real Property).

“Business Rights” means all claims, causes of action, rights of recovery and rights of set-off against any Person that are primarily related to the Business, the Purchased Assets or the Assumed Liabilities (other than Receivables), including: (i) all rights under any Business Contract arising on or after the Closing, including all rights to receive payment for products sold and services rendered thereunder, to receive goods and services thereunder, to assert claims and to take other rightful actions in respect of breaches, defaults and other violations thereof; (ii) all rights under or in respect of any Business Intellectual Property, including all rights to sue and recover damages for past, present and future infringement, dilution, misappropriation, violation, unlawful imitation or breach thereof, and all rights of priority and protection of interests therein under the laws of any jurisdiction; and (iii) all rights under all guarantees, warranties, indemnities and insurance policies to the extent primarily arising from or primarily related to the Business, the Purchased Assets or the Assumed Liabilities, provided, that the Business Rights shall not include the claims asserted by Seller to date in the Owned Real Property Matter or that relate to claims asserted by Seller to date in the Owned Real Property Matter, but shall include any claims that may be asserted against the counterparty in the Owned Real Property Matter with respect to any structural deficiencies or other warranty claims Seller may have with respect to the Owned Real Property that do not relate to claims asserted by Seller to date in the Owned Real Property Matter.

“Business Service Provider” means any current individual non-employee service provider of Seller that provides services primarily to the Business as of the Closing Date.

“Buyer Material Adverse Effect” means any event, change, circumstance, occurrence, effect, result or state of facts that, individually or in the aggregate, materially impairs the ability of Buyer to consummate the transactions contemplated hereby, or materially prevents or materially delays, any of the transactions contemplated by this Agreement.

“Calculation Time” means 12:01 a.m. Central Time on the Closing Date.

“CBP” means the United States Custom and Border Protection agency.

“Closing Inventory Amount” means the value of the Business Inventory as of the Calculation Time calculated in accordance with the Accounting Principles.

“Closing Payment Amount” means the amount by which the Estimated Purchase Price exceeds the Payoff Amount.

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

“Contract” means any contract, agreement, arrangement or understanding, whether written or oral and whether express or implied.

“control,” including the terms “controlled by” and “under common control with,” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, as trustee or executor, as general partner or managing member, by Contract or otherwise, including the ownership, directly or indirectly, of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such Person.

“COVID-19” means SARS-CoV-2 or COVID-19, and any variants or evolutions thereof or related or associated epidemics, pandemic or disease outbreaks.

“COVID-19 Measures” means any quarantine, “shelter in place,” “stay at home,” furlough, workforce reduction, social distancing, shut down, closure, sequester or any other Law, order, directive, guideline or recommendation by any Governmental Authority in connection with or in response to COVID-19 (but only, in the case of discretionary items, to the extent they are reasonable and prudent in light of the Business and applied in good faith to the Business).

“Employee Plans” means (i) any “employee benefit plan” (within the meaning of Section 3(3) of ERISA, whether or not subject to ERISA), and (ii) any other bonus, commission, severance, retention, change in control, termination, employment, individual consulting, deferred compensation, incentive compensation, equity and equity-based, retiree medical or welfare, retirement, supplemental retirement, vacation, paid time off or fringe benefit plan, program, arrangement or Contract, in each case, that (A) is maintained, contributed to or required to be contributed to by Seller or under which Seller has any liability (including as a result of its affiliation with any ERISA Affiliate) and (B) covers any Business Employee or any Business Service Provider.

“Encumbrance” means any charge, claim, limitation, condition, equitable interest, mortgage, deed of trust, lien, option, pledge, hypothecation, the interest of a lessor under any capital lease, security interest, deed to secure debt, easement, encroachment, covenant, license, right of first refusal, offer or purchase, or other encumbrance or restriction of any kind, including any restriction on or transfer or other assignment, as security or otherwise, of or relating to use, quiet enjoyment, voting, transfer, receipt of income or exercise of any other attribute of ownership.

“Enterprise Value” means \$100,000,000.

“ERISA Affiliate” means any Person that is (or at any relevant time was) a member of a “controlled group of corporations” with or under “common control” with Seller as defined in Section 414(b) or (c) of the Code or that is otherwise (or at any relevant time was) required to be treated, together with Seller, or as the case may be, as a single employer under Sections 414(m) or (o) of the Code.

“Escrow Agent” means Citibank N.A. or such other escrow agent that is mutually agreeable to Buyer and Seller.

“Estimated Inventory Overage” shall exist when (and shall be equal to the amount by which) the Estimated Closing Inventory exceeds the Target Inventory Amount.

“Estimated Inventory Underage” shall exist when (and shall be equal to the amount by which) the Target Inventory Amount exceeds the Estimated Closing Inventory.

“Estimated Purchase Price” means (i) the Enterprise Value, plus (ii) the Estimated Inventory Overage, if any, minus (iii) the Estimated Inventory Underage, if any, minus (iv) the Adjustment Escrow Amount, minus (v) the Seller Property Tax Amount, minus (vi) the Specified Owned Real Property Reduction Amount.

“FDA” means the United States Food and Drug Administration.

“FDC Act” means the United States Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301 et seq.) as amended to date together with any rules or regulations promulgated thereunder.

“Final Closing Purchase Price” means (i) the Enterprise Value, plus (ii) the Final Inventory Overage, if any, minus (iii) the Final Inventory Underage, if any, minus (iv) the Adjustment Escrow Amount, minus (v) the Seller Property Tax Amount, minus (vi) the Specified Owned Real Property Reduction Amount.

“Final Inventory Overage” shall exist when (and shall be equal to the amount by which) the Final Closing Inventory (as finally determined pursuant to Section 2.8) exceeds the Target Inventory Amount.

“Final Inventory Underage” shall exist when (and shall be equal to the amount by which) the Target Inventory Amount exceeds the Final Closing Inventory (as finally determined pursuant to Section 2.8).

“Fraud” means a knowing and intentional misrepresentation in the making of the representations and warranties set forth in Article III and Article IV (as applicable) or the certificates delivered pursuant to Section 2.7(b)(xii) or Section 2.7(d)(viii) (as applicable), but excluding, for the avoidance of doubt, any claim based on negligent or reckless (but not knowing and intentional) misrepresentations.

“FTC” means the United States Federal Trade Commission.

“GAAP” means United States generally accepted accounting principles, consistently applied, as in effect on the date hereof.

“Governmental Authority” means any United States or non-United States federal, national, supranational, state, provincial, local or similar government, governmental, regulatory or administrative authority, branch, agency or commission or any court, tribunal, or arbitral or judicial body (including any grand jury).

“Indebtedness” means, without duplication (but before taking into account the consummation of the transactions contemplated hereby), (i) the unpaid principal amount of accrued interest, premiums, penalties and other fees, expenses (if any), and other payment obligations and amounts due (including such amounts that would become due as a result of the consummation of the transactions contemplated by this Agreement) that would be required to be paid by a borrower to a lender pursuant to a customary payoff letter, in each case, in respect of (A) all indebtedness for borrowed money of the Business, or Seller or its Subsidiaries in connection with the Business, (B) indebtedness evidenced by notes, debentures, bonds or other similar instruments, and (C) all obligations with respect to interest-rate hedging, swaps or similar financial arrangements, other than the Specified Derivative Agreements; (ii) all obligations of the Business, Seller or its Subsidiaries evidenced by any surety bonds, letters of credit or bankers’ acceptances or similar facilities, in each case, solely to the extent drawn and not reimbursed; (iii) all obligations under capitalized leases with respect to which the Business, Seller or its Subsidiaries is liable; (iv) any amounts for the deferred purchase price of goods and services, including any earn out liabilities associated with past acquisitions; (v) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by Seller or its Subsidiaries; and (vi) all obligations of the type referred to in clauses (i) through (v) of other Persons for the payment of which the Business, Seller or its Subsidiaries is responsible or liable, as obligor, guarantor, surety or otherwise, including any guarantee of such obligations.

“Insurance Policies” means all fire, product liability, property, casualty, fiduciary liability, workers’ compensation, vehicular, business interruption and other similar insurance policies by which the Business, the Purchased Assets or the Assumed Liabilities are insured as of the date of this Agreement.

“Intellectual Property” means all intellectual property rights arising from or associated with the following, whether protected, created or arising under the laws of the United States or any other jurisdiction: (i) trade names, trademarks and service marks (registered and unregistered), trade dress and other indicia of origin or source, and all registrations and applications for all of the foregoing, including all extensions, modifications and renewals thereof, and all goodwill associated with all of the foregoing (collectively, “Marks”); (ii) patents, patent applications and invention disclosures, including amendments, certificates of correction, counterparts, continuations, continuations-in-part, divisionals, extensions, non-provisionals, provisionals, reexaminations, reissues, renewals, reviews and substitutions thereof (collectively, “Patents”); (iii) published and unpublished works of authorship, copyrights therein and thereto, software (including source code, object code, development documentation, programming tools, drawings, specifications and data), and all registrations and applications for all of the foregoing, including all renewals, extensions, restorations and reversions thereof (collectively, “Copyrights”); (iv) trade secrets and confidential proprietary information, including know-how, inventions, discoveries, ideas, financial, business, scientific, technical, economic and engineering information, patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, codes, schematics, databases, drawings, models, methodologies, and customer lists, whether tangible or intangible and whether stored, compiled or memorialized physically, electronically, graphically, photographically or in writing (collectively, “Trade Secrets”); (v) domain names and other Internet addresses or identifiers, and accounts with social media companies (e.g., Twitter, Facebook) and the content, handles and identifiers and designations found thereon and related thereto (collectively, “Domain Names”); and (vi) any other proprietary or intellectual property right recognized under applicable Law that is equivalent to any of the foregoing and remedies and claims or causes of action arising out of or related to any infringement, misappropriation or other violation of any of the foregoing, including rights to recover for past, present and future violations thereof.

“International Trade Laws” means all applicable U.S. and non-U.S. Laws or restrictive measures relating to economic, financial, or trade sanctions, export control, or anti-boycott measures administered, enacted, or enforced by a relevant Sanctions Authority, as well as applicable customs Laws.

“IT Systems” means computer hardware, servers, networks, platforms, firmware, applications, databases, peripherals, data communication lines, and other information technology equipment and related systems, including any outsourced systems and processes and Internet websites and related content.

“Knowledge of Seller” means the actual knowledge of Deverl Maserang, Scott Drake and Jared Vitemb and such knowledge as would be imputed to such persons after reasonable inquiry.

“Law” means any statute, law, ordinance, regulation, rule, code, executive order, injunction, judgment, decree, policy or order of any Governmental Authority.

“Liabilities” means all debts, liabilities, guarantees, assurances, commitments and obligations of any kind, whether fixed, contingent or absolute, matured or unmatured, liquidated or unliquidated, accrued or not accrued, known or unknown, due or to become due, whenever or however arising (including whether arising out of any Contract or tort based on negligence or strict liability), and whether or not reflected or required to be reflected on the financial statements of any Person.

“Material Adverse Effect” means any event, change, circumstance, occurrence, effect, result or state of facts that, individually or in the aggregate, (i) is or would reasonably be expected to be materially adverse to the business, assets, liabilities, condition (financial or otherwise) or results of operations of the Business, taken as a whole or (ii) materially impairs the ability of Seller to consummate, or prevents or materially delays, the transactions contemplated by this Agreement and the Ancillary Agreements; provided, however, that in the case of clause (i) only, Material Adverse Effect shall not include any event, change, circumstance, occurrence, effect or state of facts to the extent resulting from (1) changes generally affecting (A) the wholesale coffee industry, or (B) the economy, general legislative or political conditions or the financial or securities markets, in the United States, including (x) changes in interest or exchange rates and (y) any suspension of trading in securities, (2) the outbreak of war or acts of terrorism or escalation of hostilities (including, without limitation, any declaration of war by the U.S. Congress) or acts of sabotage, social unrest, insurrection or terrorism or any escalation or worsening of any such act threatened or underway as of the date of this Agreement, (3) changes in Law or GAAP first enacted after the date of this Agreement or any interpretation thereof, (4) the announcement of this Agreement and the transactions contemplated hereby (including the identity of Buyer) or the pendency of the transactions contemplated hereby; provided, that the exception in this clause (4) shall not apply to the representations or warranties contained in Section 3.3, (5) any action taken or omitted to be taken at the written request of Buyer or any actions expressly required by this Agreement, (6) any failure by Seller or the Business to meet internal projections or forecasts; provided, that the underlying cause of any such failure may be taken into consideration in making such determination, (7) earthquakes, floods, natural disasters or other acts of nature or God or any outbreak of disease or illness, public health emergency, pandemic, epidemic or similar event (including COVID-19) or any Governmental Authority or other regulatory sanctioned response thereto or any escalation or worsening of such or (8) any Casualty Loss or Taking; provided, further, that, with respect to clauses (1), (2), (3) or (7), the impact of such event, change, circumstances, occurrence, effect or state of facts is not disproportionately adverse to the Business, taken as a whole, as compared to other similarly situated companies or businesses (and then such matters shall only be considered to the extent of such disproportionate impact).

“Multiemployer Plan” means any “multiemployer plan,” as defined in Section 4001(a)(3) of ERISA, (i) that Seller or any of its ERISA Affiliates maintains, administers, contributes to or is required to contribute to, or, after September 25, 1980, maintained, administered, contributed to or was required to contribute to, or under which Seller or any of its ERISA Affiliates may incur any liability and (ii) that covers or has covered any Business Employee or any former employee of Seller or any of its ERISA Affiliates that provided services to the Business.

“Occupational Safety and Health Law” shall mean any Law of any Governmental Authority enacted or promulgated which requires or relates to Occupational Safety and Health Matters.

“Occupational Safety and Health Liabilities” means any cost, damage, expense, liability, obligation, duty to indemnify, defend or reimburse, or other responsibility consisting of or relating to:

(i) fines, penalties, judgments, awards, settlements, damages, losses, claims, costs and expenses related to legal or administrative proceedings arising under Occupational Safety and Health Law;

(ii) financial responsibility for corrective action, including without limitation any investigation, or abatement action including but not limited to engineering or administrative controls, or the use of required personal protective equipment, required by any applicable Occupational Safety and Health Law, or by any final decision, injunction, order, judgment, ruling or decree of any applicable Occupational Safety and Health Law jurisdiction; and

(iii) any other compliance, corrective or remedial measures required under Occupational Safety and Health Law.

“Occupational Safety and Health Matters” means all matters related to health and safety of employees, temporary employees, independent contractors or employees of independent contractors at the Owned Real Property.

“Ordinary Course of Business” means, with respect to any Person or business, the ordinary course of business consistent with the applicable Person’s or business’ past custom and practice.

“Organizational Documents” means, with respect to any Person at any time, in each case as amended, modified and supplemented at that time, (i) the articles or certificate of formation, incorporation or organization (or the equivalent organizational or constituent documents) of that Person, (ii) the articles of association, bylaws, limited liability company agreement, limited partnership agreement or regulations (or the equivalent governing documents) of that Person and (iii) each document setting forth the designation, amount and relative rights, limitations and preferences of any class or series of that Person’s equity interests.

“Owned Real Property” means the real property listed on Schedule 3.11(a) of the Disclosure Schedules, together with all buildings, structures, fixtures, and other improvements located thereon, or attached or appurtenant thereto, and together with Seller’s right, title and interests, if any, in and to (i) all development rights, air rights and water rights relating or appurtenant thereto, (ii) all minerals, oil, gas and other hydrocarbon substances thereon and thereunder, (iii) any unpaid award for any taking by condemnation or any damages thereto by reason of a change or grade of any street or highway, and (iv) all easements, licenses, rights-of-way and other rights and interests appurtenant thereto.

“Owned Real Property Matter” means that certain matter relating to the Owned Real Property as set forth on Schedule 1.1(c) of the Disclosure Schedules.

“Owned Real Property Office Lease” means the lease with respect to a portion of the office space located at the Owned Real Property, to be effective as of the Closing, by and between Buyer and Seller, on terms consistent with those set forth in the term sheet in Exhibit A.

“Owned Real Property Warehouse Lease” means the lease with respect to a portion of the warehouse space located at the Owned Real Property, to be effective as of the Closing, by and between Buyer and Seller, on terms consistent with those set forth in the term sheet in Exhibit B.

“Person” means an individual, corporation, partnership, limited liability company, limited liability partnership, syndicate, person, trust, association, organization or other entity, including any Governmental Authority, and including any successor, by merger or otherwise, of any of the foregoing.

“Personal Information” means any information defined as “personal data,” “personally identifiable information,” “personal information,” or any substantial equivalent of these terms regulated under any Laws, including any information that identifies, relates to, describes, is linked to, is reasonably capable of being associated with, or could reasonably be linked with any identified or identifiable individual or household.

“Privacy and Security Requirements” means, to the extent applicable to the Business, (a) any Laws and guidelines from Governmental Authorities; (b) reputable industry practice, standards, self-governing rules and policies, including the Payment Card Industry Data Security Standard issued by the PCI Security Standards Council, as it may be amended from time to time and only to the extent legally or contractually binding on Seller’s operation of the Business; (c) all Contracts between Seller and any other Person; and (d) all of Seller’s own policies and procedures, including all website and mobile application privacy policies and internal information security procedures, in each case relating to data privacy, data or cybersecurity, data protection, data breach notification, data localization, sending solicited or unsolicited electronic mail or text messages, cookies, trackers or the Processing of Personal Information.

“Process” or “Processing” means the collection, processing, transfer, disclosure, sharing, storing, security or use of Personal Information.

“Proposition 65” means the California Safe Drinking Water and Toxic Enforcement Act of 1986.

“Purchase Price” means (i) the Final Closing Purchase Price, as finally determined in accordance with Section 2.8, plus (ii) any amounts paid to Seller out of the Adjustment Escrow Fund.

“Receivables” means all receivables (including accounts receivable, loans receivable and advances) arising from or related to the Business prior to the Closing Date and other rights to payment therefrom from customers of the Business (to the extent arising from or relating to a period prior to the Closing Date), on a consolidated basis, and the full benefit of all security for such accounts, loans and advances, and any claim, remedy or other right arising from or related to any of the foregoing.

“Related Party,” with respect to any specified Person, means: (i) any Affiliate of such specified Person, or any director, executive officer, general partner or managing member of such Affiliate; or (ii) any Person who serves as a director, executive officer, partner, member or in a similar capacity of such specified Person.

“Representatives” means, with respect to any Person, the officers, directors, principals, employees, agents, auditors, advisors, bankers and other representatives of such Person.

“Sanctioned Jurisdiction” means a country or territory which is, or during the past five years has been, the subject or target of comprehensive U.S. sanctions.

“Sanctioned Person” means a Person (i) identified on the United States’ Specially Designated Nationals and Blocked Persons List, the United States’ Denied Persons List, Entity List or Debarred Parties List, the United Nations Security Council Sanctions List, the European Union’s List of Persons, Groups and Entities Subject to Financial Sanctions, the United Kingdom’s Consolidated List of Financial Sanctions Targets, or any other similar list maintained by any Sanctions Authority having jurisdiction over the parties to this Agreement; (ii) located, organized or resident in a Sanctioned Jurisdiction or (iii) owned, 50% or more, individually or in the aggregate by, controlled by, or acting on behalf of a Person described in clause (i) or (ii) above.

“Sanctions Authority” means the United States government, the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, the Bureau of Industry and Security of the U.S. Department of Commerce, the United Nations Security Council, the European Union, any member state of the European Union and the competent national authorities thereof, the United Kingdom, the Office of Financial Sanctions Implementation of His Majesty’s Treasury, the Export Control Joint Unit of the UK Department of International Trade, and any other relevant governmental, intergovernmental or supranational body, agency or authority with jurisdiction over the parties to this Agreement.

“Security Breach” means any (a) any incident, including any breach of security, in which there was an actual or reasonably suspected unauthorized access, acquisition, use, disclosure, modification, deletion, or destruction of Personal Information; (b) material unauthorized interference with system operations or security safeguards of Seller’s information systems related to the Business; or (c) any material phishing incident or ransomware attack.

“Seller Credit Agreement” means that certain Credit Agreement, dated as of April 26, 2021, by and among the Company, Boyd Assets Co., FBC Finance Company, Coffee Bean Holding Co., Inc., Coffee Bean International, Inc. and China Mist Brands, Inc., as borrowers, Wells Fargo Bank, N.A., as administrative agent and lender, and the other lenders party thereto, as amended or amended and restated from time to time.

“Seller Fundamental Representations” means the representations and warranties of Seller set forth in Section 3.1 (Organization and Qualification; Capitalization), Section 3.2 (Authority), Section 3.3(a)(i) (No Conflicts), Section 3.4(a) (Title to Assets; Sufficiency of Assets) and Section 3.26 (Brokers).

“Shared Contracts” means any Contract (including any purchase orders in connection therewith) pursuant to which both the Business and the Retained Business receive any benefit or have any obligation, including, without limitation, the Contracts set forth on Schedule 1.1(e) of the Disclosure Schedules.

“Specified Derivative Agreements” means the contracts are set forth on Schedule 1.1(f) of the Disclosure Schedules, which contracts, for the avoidance of doubt, constitute all of Seller’s coffee beans derivative contracts primarily relating to the Business (other than Shared Contracts).

“Specified Owned Real Property Reduction Amount” means \$8,388,568.

“Straddle Period” means a taxable period which includes, but does not end on, the Closing Date.

“Subsidiary” means, with respect to any Person, any other Person controlled by such first Person, directly or indirectly, through one or more intermediaries.

“Survey(s)” means a new, current ALTA survey, in form and substance sufficient for the title company to issue the Title Insurance Policy without taking exception for any general survey exceptions and with the survey endorsement, otherwise in form and substance reasonably acceptable to Buyer.

“Target Inventory Amount” means \$30,000,000.

“Tax Abatement Agreements” means all real property tax abatement agreements related to the Owned Real Property and any personal property located therein, including all assignments and amendments of same, which such agreements are set forth on Schedule 1.1(g) of the Disclosure Schedules.

“Tax Return” means any return, report, declaration, statement, schedule, form, claim for refund, election or certificate, including any schedule or attachment thereto, or any amendment thereof and any document with respect to, or accompanying a request for, an extension of time for which to file any such return, report, form, statement, or other information, required to be filed with or submitted to any Governmental Authority in connection with the determination, assessment, collection or payment of any Tax (and including, for the avoidance of doubt, any such document prepared on a consolidated, combined, or unitary basis and including any schedule or attachment thereto, and including any amendment thereof).

“Taxes” means each of (a) any and all federal, state, county, local, provincial, non-U.S., and other taxes (including, without limitation, but for the avoidance of doubt, income, gross income, net income, profits, premium, windfall profits, disability, alternative minimum, stamp, value added, goods and services, estimated, excise, sales, use, occupancy, rent, gross receipts, franchise, inventory, ad valorem, severance, capital levy, capital gains, net worth, utility, communications, production, conservation, environmental, fuel, escheat, unclaimed property, transfer, deed, documentary, recording, registration, conveyance, license, service, lease, leasehold interest, withholding, imputed underpayment (as defined in Treasury Regulations Section 301.6241-1(a)(3)) (or any other similar amount determined under applicable or corresponding state, local or non-U.S. law), employment, social contribution, social security (or similar), unemployment compensation, and other payroll-related taxes, real property taxes, personal property taxes, import duties, custom duties, and other governmental charges and assessments of any kind or nature), whether disputed or not, and whether or not measured in whole or in part by net income, and irrespective of whether owed as a primary, secondary, or joint liability, and including deficiencies, interest, additions to tax, or interest and penalties with respect thereto; (b) any liability for the payment of amounts described in clause (a) as a result of transferee liability, of being a member of an affiliated, consolidated, combined, or unitary group for any period or otherwise through operation of law; (c) any liability for the payment of amounts described in clauses (a) or (b) as a result of any tax sharing, tax indemnity, or tax allocation agreement or any other agreement to indemnify any other Person; and (d) any liability, expense, or loss incurred in connection with the determination, settlement, or litigation of any of the foregoing.

“Title Insurance Policy” means an Owner’s Policy of Title Insurance (Form T-1), or irrevocable and unconditional binder to issue the same, in the amount of the fair market value of the applicable Owned Real Property (as reasonably determined by Buyer and accepted by the Title Company), dated, or updated to, the Closing Date, insuring, or irrevocably committing to insure, Buyer’s good and indefeasible title in fee simple to (or a valid easement interest in, as applicable) the Owned Real Property, subject only to Permitted Encumbrances, and containing such affirmative endorsements as desired by Buyer and as required by any mortgagee of Buyer in connection with the acquisition of the Owned Real Property (to the extent applicable to an owner’s policy), to the extent such endorsements are available in the applicable jurisdiction.

“Transaction Expenses” means the aggregate amount of any and all fees and expenses, incurred by or on behalf of, or paid or to be paid directly by, Seller or any Person that Seller or its Subsidiaries pays or reimburses or is legally obligated to pay or reimburse in connection with the process of selling the Business and the Purchased Assets or the negotiation, preparation or execution of this Agreement or the Ancillary Agreements and other business of Seller or its Subsidiaries or the performance or consummation of the transactions contemplated hereby or thereby, including (i) all fees and expenses of counsel, advisors, consultants, investment bankers, accountants, auditors and any other experts in connection with the transactions contemplated hereby (including any process run by or on behalf of Seller in connection with such transactions); (ii) to the extent contemplated hereunder, any fees or expenses associated with obtaining the release and termination of any Encumbrances (other than Permitted Encumbrances) in connection with the transactions contemplated hereby; (iii) all brokers’, finders’ or similar fees in connection with the transactions contemplated hereby; and (iv) any change of control payments, bonuses, severance, termination or retention obligations or similar amounts payable by Seller or its Subsidiaries in connection with the transactions contemplated hereby, including any employer portion of any payroll Taxes payable in connection therewith, but excluding, for the avoidance of doubt, any expenses payable pursuant to arrangements put in place by Buyer.

“Transfer Taxes” means all transfer, documentary, sales, use, stamp, stamp duty, registration, recording, deed recording fee, value added, mortgage, license, lease, leasehold interest, filing, gross receipts, excise, stock, conveyance taxes and other such Taxes and fees (including any penalties and interest but excluding (for the avoidance of doubt) any capital gains Tax, Tax imposed on a net income basis or any similar Tax) incurred in connection with the transactions contemplated by this Agreement and the documents to be delivered hereunder (or contemplated by any Ancillary Agreement). For the avoidance of doubt, Transfer Taxes shall include any Taxes or fees (including all applicable sales Taxes) incurred by Seller or Buyer or for which Buyer is or will be otherwise responsible in connection with the retitling of vehicles (if any) included as Purchased Assets, whether the transfer of title with respect to such vehicles occurs prior to, at or subsequent to, the Closing.

“Transition Services Agreement” means that certain transition services agreement pursuant to which Buyer or one of its Subsidiaries will purchase from Seller or its Subsidiaries, and Seller or its Subsidiaries will purchase from Buyer or one of its Subsidiaries, on terms consistent with those set forth in the term sheet in Exhibit C, certain transition services as described therein.

“USDA” means the United States Department of Agriculture.

“Willful Breach” means a material breach of a covenant or agreement set forth in this Agreement that is a consequence of an act or failure to act by the breaching party with actual knowledge that the taking of such act or failure to act would constitute a material breach of such covenant or agreement.

Section 1.2 Table of Definitions. The following terms have the meanings set forth in the Sections referenced below:

<u>Definition</u>	<u>Location</u>
Agreement	Preamble
Allocation	2.9
Allocation Principles	2.9
Apportioned Obligations	6.5
Assignment of Contracts	2.7(b)(v)
Assumed Liabilities	2.3
Assumption Agreement	2.7(b)(ii)
Bill of Sale	2.7(b)(i)
Business	Recitals
Buyer	Preamble
Buyer 401(k) Plan	5.9(g)
Buyer Designee	Recitals
Buyer Receivables Payment	5.21
Buyer Replacement Contract	5.20(a)
Buyer Welfare Plans	5.9(e)
Casualty Loss	5.14(b)
Casualty Loss Election	5.14(b)
Casualty Loss Notice	5.14(b)
CERCLA	3.17(e)(iii)
Claim Notice	8.4(a)
Closing	2.7(a)
Closing Date	2.7(a)
COBRA	5.9(d)
Co-Manufacturing Agreement	2.7(b)(viii)
Competing Business	5.4(a)(i)
Competing Transaction	5.3(a)
Condemnation Value	5.14(c)
Confidential Information	5.10(b)
Confidentiality Agreement	5.10(a)
Deed	2.7(b)(iii)
Delayed Closing Deliverable	5.23

<u>Definition</u>	<u>Location</u>
<u>Delayed Closing Deliverables Execution Date</u>	5.23
Designated Shared Contracts	5.20(a)
Disclosure Schedules	Article III
Environmental Laws	3.17(e)(i)
Environmental Permits	3.17(e)(ii)
Escrow Agreement	2.7(b)(vi)
Estimated Closing Inventory	2.8(b)
Excluded Assets	2.2
Excluded Employee List	5.9(b)
Excluded Liabilities	2.4
Extended Closing Date	5.14(b)
Final Closing Inventory	2.8(c)
Final Closing Statement	2.8(c)
Hazardous Substances	3.17(e)(iii)
Indemnified Party	8.4(a)
Indemnifying Party	8.4(a)
Independent Accounting Firm	2.8(e)
Losses	8.2
Material Contracts	3.18(a)
Material Customer	3.19(a)
Material Supplier	3.19(b)
Net Adjustment Amount	2.8(g)(i)
Notice of Disagreement	2.8(d)
Payoff Amount	2.7(c)(i)
Payoff Indebtedness	5.24
Payoff Letter	5.24)
Permitted Business	5.4(a)(i))
Permitted Encumbrances	3.4(a)
Preliminary Closing Statement	2.8(b)
Purchased Assets	2.1
Release	3.17(e)(iv)
Restoration	5.14(b)
Restoration Cost	5.14(b)
Restoration Option	5.14(b)
Retained Business	Recitals
Seller	Preamble
Seller Property Tax Amount	6.5
Seller Registered IP	3.13(a)
Seller Title Deliveries	5.13
Survival Expiration Date	8.1
Taking	5.14(c)
Taking Election	5.14(c)
Taking Notice	5.14(c)
Tax Treatment	6.6
Termination Date	9.1(c)

<u>Definition</u>	<u>Location</u>
Third Party Claim	8.4(a)
Title Company	5.13
Title Documents	3.11(f)
Transferred Codes	2.2(q)
Transferring Employees	5.9(b)
WARN Act	3.10(f)

ARTICLE II PURCHASE AND SALE

Section 2.1 Purchase and Sale of Assets. Upon the terms and subject to the conditions of this Agreement, at the Closing, Seller shall sell, assign, transfer, convey and deliver, to Buyer or the applicable Buyer Designee, and Buyer, in reliance on the representations, warranties and covenants of Seller contained herein, shall, or shall cause the applicable Buyer Designee to, purchase from Seller, all of Seller's right, title and interest in and to all assets, properties and rights of every nature, kind and description, whether tangible or intangible, real, personal or mixed, accrued or contingent (including goodwill), wherever located and whether now existing or hereafter acquired prior to the Closing Date, that are primarily related to the Business, as the same shall exist on the Closing Date, whether or not carried or reflected on or specifically referred to in Seller's books or in the Schedules hereto, other than the Excluded Assets (collectively, the "Purchased Assets"), in each case free and clear of any Encumbrances other than Permitted Encumbrances, including all of Seller's right, title and interest in and to the following:

- (a) the Owned Real Property;
- (b) all Business Contracts;
- (c) all Business Intellectual Property;
- (d) all Business Personal Property;
- (e) all Business Records;
- (f) all Business Inventory;
- (g) all Business Permits;
- (h) all Business Prepaid Items;
- (i) all Business Rights;
- (j) the Specified Derivative Agreements;
- (k) all recipes, product formulas, specifications, product innovations, nutrition labeling data and food safety plans that are primarily related to the Business;

(l) subject to Section 2.2(l), all rights to insurance proceeds under any Insurance Policy in place as of the Closing related to any damage or loss with respect to any Purchased Asset that is, or would have been but for such damage or loss, included in the Purchased Assets, other than in the event that Seller repairs, restores or replaces any such damaged Purchased Asset to its pre-damaged condition prior to the Closing, in which case Seller shall be entitled to the rights to and any insurance proceeds thereof to the extent used to repair, restore or replace the applicable Purchased Asset;

(m) all net cash proceeds actually received by Seller or its Subsidiaries prior to or after the Closing in connection with any sales or other dispositions from and after the date hereof through the Closing of any asset that would have been included in the Purchased Assets but for such sale or disposition, other than (i) with respect to sales of Business Inventory in the Ordinary Course of Business or (ii) to the extent such proceeds are applied by Seller to acquire a replacement asset included in the Purchased Assets;

(n) to the extent assignable and transferrable by Law, personnel and employment records for the Transferring Employees;

(o) all rights under the Tax Abatement Agreements;

(p) those rights in the Shared Contracts (or replacements or portions thereof) in accordance with Section 5.20; and

(q) the goodwill and going concern value and other intangible assets, if any, primarily related to the Business.

Section 2.2 Excluded Assets. Seller is not selling, and Buyer is not purchasing, any of the following assets of Seller, all of which shall be retained by Seller (collectively, the "Excluded Assets"):

(a) all of Seller's cash and cash equivalents and any bank accounts of Seller (other than to the extent expressly included as a Purchased Asset);

(b) all Receivables;

(c) any and all legal and beneficial interest in the share capital or equity interest of any Person;

(d) any and all owned and leased real property and other interests in real property, other than the Owned Real Property;

(e) all of Seller's Intellectual Property, other than the Business Intellectual Property;

(f) all Employee Plans and the assets thereof;

(g) all refunds of Taxes that are for the benefit of Seller pursuant to Section 6.7 (except to the extent such refunds expressly relate to the Tax Abatement Agreements);

- (h) all intercompany receivables among Seller or any of its Affiliates;
- (i) all minute books and Organizational Documents of Seller and all of Seller's income Tax Returns (and any work papers related thereto), the general ledgers and books of original entry, reports, data, files and similar documents of Seller;
- (j) (i) the tangible personal property described on Schedule 2.2(j) of the Disclosure Schedules that is located at the Owned Real Property and (ii) to the extent not located at the Owned Real Property, all tangible personal property (other than tangible personal property set forth on Schedule 1.1(d));
- (k) all rights of Seller under this Agreement and the Ancillary Agreements;
- (l) all rights under any Insurance Policies owned by or issued to Seller to the extent related to any damage or loss with respect to any Excluded Liability (except to the extent expressly set forth in Section 2.1(i));
- (m) any Contract primarily related to any Excluded Asset, Excluded Liability or the Retained Business;
- (n) any other assets that are not a Purchased Asset, not primarily related to the Business or that are primarily related to the Retained Business;
- (o) the Shared Contracts (other than the rights thereunder transferred to Buyer pursuant to Section 2.1(p)) retained by Seller in accordance with Section 5.20;
- (p) all claims, causes of action, rights of recovery and rights of set-off against any Person related to the Owned Real Property Matter;
- (q) the GS1 Company Prefixes and associated Global Trade Item Numbers associated with the finished goods inventory used, or held for use, by Seller in connection with the Business or the Retained Business (the "Transferred Codes"); and
- (r) the Business Permits set forth on Schedule 2.2(r) of the Disclosure Schedules.

Section 2.3 Assumed Liabilities. In connection with purchase and sale of the Purchased Assets pursuant to this Agreement, at the Closing, Buyer shall assume the following Liabilities of Seller related to the Business (the "Assumed Liabilities"):

- (a) ordinary course Liabilities of the Business first arising after the Closing under the Purchased Assets (provided, that Buyer will not assume or be responsible for any Liabilities attributable or relating to the period at or prior to the Closing or any Liabilities arising from any breach of any Business Contracts or defaults under any Business Contracts by Seller (or any Affiliate thereof) prior to Closing, all of which shall constitute Excluded Liabilities);

(b) all Liabilities related to the Transferring Employees arising from facts or circumstances first occurring after the Closing (but excluding for the avoidance of doubt any Liabilities arising with respect to the period subsequent to Closing from the continuation following Closing by Buyer or its Affiliates of the pre-Closing practices of Seller, provided that Seller shall retain any liabilities arising with respect to the period of time at or prior to Closing with respect to such practices), including, without limitation, such Liabilities related to wages, hours, termination, severance, benefits, payroll Taxes, vacation, leave, collective bargaining, incentive compensation, and compliance with all relevant employment, labor, compensation, and employee benefits Laws;

(c) all Liabilities of Seller under Business Contracts to be performed after, or in respect of periods following, the Closing Date, including, without limitation, Liabilities for commitments under supply agreements for the purchase of green coffee beans set forth on Schedule 2.3(c) of the Disclosure Schedules, whether or not such commitments were first made or entered into prior to the Closing Date; and

(d) all Liabilities of Seller relating to the Business or the Purchased Assets to the extent arising out of or in connection with any act, omission or circumstance occurring at any time after the Closing; provided, however, that, for the avoidance of doubt, all accounts payable related to the periods ending on or prior to the Closing (regardless of whether the applicable invoice exists prior to or after the Closing) shall be Excluded Liabilities.

Section 2.4 Excluded Liabilities. Notwithstanding the provisions of Section 2.3 or any other provision of this Agreement, any Schedule or Exhibit hereto or any Ancillary Agreement to the contrary, and regardless of any disclosure to Buyer, except for the Assumed Liabilities, Buyer shall not assume or be obligated to pay, perform or otherwise discharge (and Seller shall retain, pay, perform or otherwise discharge without recourse to Buyer) any Liabilities of Seller or its Subsidiaries of any kind (the “Excluded Liabilities”), including the following:

(a) all Liabilities of Seller relating to the Business to the extent incurred at or prior to the Closing or arising prior to the Closing that are not Assumed Liabilities, including, for the avoidance of doubt, all accounts payable related to the period prior to the Closing (regardless of whether the applicable invoice exists prior to or after the Closing);

(b) (i) all Taxes arising from or with respect to the Business, the operation of the Business, or the Purchased Assets that are incurred in or attributable to any period, or any portion of any Straddle Period (such portion of any Straddle Period determined in the same manner as the Apportioned Obligations are determined in accordance with Section 6.5), ending on or prior to the Closing Date, (ii) all Taxes arising from or with respect to the operation of the Business that Seller (or any Affiliate of Seller) elected to defer to any period (or portion thereof) that begins on or subsequent to the Closing, and (iii) all Taxes of Seller (or any of its Affiliates) for any taxable period (or portion thereof), whether ending on, prior to, or after the Closing Date. For the avoidance of doubt, (x) any obligations of Seller relating to Transfer Taxes shall be as provided in Section 6.1 and (y) any obligations of Seller relating to Apportioned Obligations shall be as provided in Section 6.5;

(c) any Liability pursuant to any Environmental Law arising from or related to any action, event, circumstance or condition occurring or existing on the Owned Real Property prior the Closing Date;

(d) any Liability not expressly assumed by Buyer pursuant to Section 5.9 that relates to (i) any Business Employee that does not become a Transferring Employee, (ii) any Transferring Employee for the period prior to the Closing, (iii) the Business Service Providers that are not engaged by Buyer or an Affiliate of Buyer at or after the Closing, and/or (iv) any other current or former employees, directors or individual independent contractors of Seller or its Affiliates who are not Business Employees or Business Service Providers or whose employment or engagement was terminated on or prior to the Closing (and such termination was not related to the offer and acceptance process set forth in Section 5.9), in each case, including, without limitation, those Liabilities related to wages, hours, termination, severance, benefits, payroll Taxes, vacation, leave, collective bargaining, incentive compensation, and compliance with all relevant employment, labor, compensation, and employee benefits Laws;

(e) any Liability arising under any Employee Plan;

(f) any Indebtedness;

(g) all intercompany Liabilities among Seller or any of its Affiliates;

(h) any Liability arising from or related to any breach, failure to perform, torts related to the performance of, violations of Law, infringements or indemnities under, guaranties pursuant to and overcharges or underpayments under, any Business Contract prior to the Closing Date;

(i) any Liability arising from or related to any compliance or noncompliance prior to the Closing Date with any Law applicable to Seller or its Affiliates, the Business or the Purchased Assets;

(j) any Liability arising from or related to any Action against Seller, the Business or the Purchased Assets pending as of the Closing Date or based upon any action, event, circumstance or condition arising as of or prior to the Closing Date;

(k) any Transaction Expenses;

(l) all regulatory obligations and other Liabilities under any Applicable Food Safety Law with respect to the products or services of the Business (including all products manufactured, labeled, or sold prior to the Closing), including complaint handling, complaint investigation and reporting obligations, and any Liabilities for the recall, market withdrawal, stock recovery, relabeling, repackaging, or any other corrective action of any products manufactured or sold by the Business prior to the Closing;

(m) all lawsuits, pre-litigation demands, competitor challenges, and other claims related to any alleged false, misleading, or deceptive labeling, advertising, or marketing claim (express or implied), made on or related to any product associated with the Business, including all products manufactured, labeled, or sold prior to the Closing;

(n) any Liability to indemnify, reimburse or advance amounts to any present or former officer, director, employee or agent of Seller (including with respect to any breach of fiduciary obligations by any such party), other than obligations of Buyer or its subsidiaries to indemnify any such Person who is a Transferring Employee to the extent relating to facts and circumstances first occurring following the Closing;

(o) all Liabilities arising from or related to the Owned Real Property Matter (provided, that Buyer acknowledges that its sole recourse with respect to the matters identified in the Owned Real Property Matter shall be the Specified Owned Real Property Reduction Amount); and

(p) any Liability or obligation relating to an Excluded Asset, whether arising prior to or after the Closing Date.

Section 2.5 Consents and Waivers; Further Assurances.

(a) Nothing in this Agreement or the Ancillary Agreements shall be construed as an agreement to assign any Business Contract, Business Permit, Business Right, the rights under the Tax Abatement Agreements or other Purchased Asset that by its terms or pursuant to applicable Law is not capable of being sold, assigned, transferred or delivered without the consent or waiver of a third party or Governmental Authority unless and until such consent or waiver shall be given. For a period of one (1) year following the Closing Date, Seller shall use its commercially reasonable efforts, and Buyer shall use its commercially reasonable efforts to cooperate reasonably with Seller, to obtain such consents and waivers and to resolve the impediments to the sale, assignment, transfer or delivery contemplated by this Agreement or the Ancillary Agreements and to obtain any other consents and waivers necessary to convey to Buyer or the applicable Buyer Designee all of the Purchased Assets. In the event any such consents or waivers (other than all such consents and waivers required under the Seller Credit Agreement) are not obtained prior to the Closing Date, Seller shall, for a period of one (1) year following the Closing Date, continue to use its commercially reasonable efforts to obtain the relevant consents or waivers until such consents or waivers are obtained, and Seller shall reasonably cooperate with Buyer in any lawful and economically feasible arrangement (but excluding Seller making any expenditures or payments to any third party or incurring any Liability) to provide that Buyer or the applicable Buyer Designee shall receive the interest of Seller in the benefits under any such Business Contract, Business Permit, Business Right or other Purchased Asset, including performance by Seller, if economically feasible (but excluding Seller making any expenditures or payments to any third party or incurring any Liability), as agent; provided, that Buyer shall, or shall cause the applicable Buyer Designee to, undertake to pay or satisfy the corresponding Liabilities for the enjoyment of such benefit to the extent Buyer or the applicable Buyer Designee would have been responsible therefor hereunder if such consents or waivers had been obtained.

(b) From time to time, whether before, at or following the Closing, Seller and Buyer shall execute, acknowledge and deliver all such further conveyances, notices, assumptions and releases and such other instruments, and shall take such further actions, as may be necessary or appropriate to assure fully to Buyer or the applicable Buyer Designee all of the properties, rights, titles, interests, estates, remedies, powers and privileges intended to be conveyed to Buyer or the applicable Buyer Designee under this Agreement and the Ancillary Agreements and to assure fully to Seller the assumption of the liabilities and obligations intended to be assumed by Buyer or the applicable Buyer Designee pursuant to this Agreement and the Ancillary Agreements, and to otherwise make effective as promptly as practicable the transactions contemplated hereby and thereby.

Section 2.6 Consideration. In full consideration for the sale, assignment, transfer, conveyance and delivery of the Purchased Assets to Buyer, at the Closing, Buyer shall, subject in each case to Section 6.4, (a) pay to Seller, by wire transfer to a bank account designated in writing by Seller to Buyer at least two Business Days prior to the Closing Date, an amount equal to the Closing Payment Amount, in immediately available funds in United States dollars, (b) pay to the holders of the Payoff Indebtedness (as defined below), on behalf of Seller, the Payoff Amount (as defined below), (c) deposit the Adjustment Escrow Amount by wire transfer into an account with the Escrow Agent, to be managed and paid out by the Escrow Agent pursuant to the terms of the Escrow Agreement, and (d) assume the Assumed Liabilities. The Estimated Purchase Price shall be subject to adjustment as provided in Section 2.8.

Section 2.7 Closing.

(a) The sale and purchase of the Purchased Assets and the assumption of the Assumed Liabilities contemplated by this Agreement shall take place at a closing (the “Closing”) to be held remotely via electronic exchange of required Closing documentation at 10:00 a.m. central time on the third Business Day following the satisfaction or, to the extent permitted by applicable Law, waiver of all conditions to the obligations of the parties set forth in Article VII (other than such conditions as may, by their terms, only be satisfied at the Closing or on the Closing Date), or at such other place or at such other time or on such other date as Seller and Buyer mutually may agree in writing; provided, that under no circumstances, without the express unanimous written consent of Buyer and Seller (which consent may be given or withheld in each of Buyer’s and Seller’s sole and absolute discretion), shall the Closing occur prior to June 30, 2023. The day on which the Closing takes place is referred to as the “Closing Date.”

(b) At the Closing, Seller shall deliver or cause to be delivered to Buyer the following documents:

- (i) a bill of sale for the Purchased Assets, in the form of Exhibit D (the “Bill of Sale”), duly executed by Seller;
- (ii) a counterpart of the Assumption Agreement, in the form of Exhibit E (the “Assumption Agreement”), duly executed by Seller;
- (iii) a special warranty deed to convey to Buyer the Owned Real Property, in the form of Exhibit F (the “Deed”), duly executed by Seller;
- (iv) the Seller Title Deliveries;
- (v) an instrument of assignment of Business Contracts, in the form of Exhibit G (the “Assignment of Contracts”), duly executed by Seller;
- (vi) a counterpart of the Escrow Agreement, in the form mutually agreeable to Buyer and Seller (the “Escrow Agreement”), duly executed by Seller and the Escrow Agent;

- executed by Seller;
- (vii) a counterpart of the Transition Services Agreement, duly executed by Seller;
 - (viii) a counterpart of the Co-Manufacturing Agreement in the form of Exhibit H (the “Co-Manufacturing Agreement”), duly executed by Seller;
 - (ix) a counterpart of the Owned Real Property Office Lease, duly executed by Seller;
 - (x) a counterpart of the Owned Real Property Warehouse Lease, duly executed by Seller;
 - (xi) duly executed versions of the Payoff Letter;
 - (xii) a duly executed certificate of an executive officer of Seller certifying the fulfillment of the conditions set forth in Section 7.3(a) and Section 7.3(b);
 - (xiii) a valid, properly completed, and duly executed IRS Form W-9 of Seller; and
 - (xiv) such other customary bills of sale, assignments and other instruments of assignment, assumption, transfer or conveyance, in form and substance reasonably satisfactory to Buyer, as Buyer may reasonably request or as may be otherwise necessary or desirable to evidence and effect the sale, assignment, transfer, conveyance and delivery of the Purchased Assets to Buyer and the assumption of the Assumed Liabilities by Buyer, duly executed by Seller, it being understood that such instruments will not require Seller or any of its Affiliates to make or be deemed to include, and will in any event be deemed not to include, any additional representations, warranties or covenants, expressed or implied, not contained in this Agreement.
- (c) At the Closing, Buyer will pay (or cause to be paid), on behalf of Seller, to the holders of the Payoff Indebtedness, an amount equal to the Payoff Amount.
- (d) At the Closing, Buyer shall deliver or cause to be delivered to Seller the following documents:
- (i) a counterpart of the Assumption Agreement, duly executed by Buyer;
 - (ii) a counterpart of the Assignment of Contracts, duly executed by Buyer;
 - (iii) a counterpart of the Escrow Agreement, duly executed by Buyer;
 - (iv) a counterpart of the Transition Services Agreement, duly executed by Buyer;
 - (v) a counterpart of the Co-Manufacturing Agreement, duly executed by Buyer;

(vi) a counterpart of the Owned Real Property Office Lease, duly executed by Buyer;

(vii) a counterpart of the Owned Real Property Warehouse Lease, duly executed by Buyer;

(viii) a duly executed certificate of an executive officer of Buyer certifying the fulfillment of the conditions set forth in Section 7.2(a) and Section 7.2(b); and

(ix) such other customary bills of sale, assignments and other instruments of assignment, assumption, transfer or conveyance, in form and substance reasonably satisfactory to Seller, as Seller may reasonably request or as may be otherwise necessary or desirable to evidence and effect the sale, assignment, transfer, conveyance and delivery of the Purchased Assets to Buyer and the assumption of the Assumed Liabilities by Buyer, duly executed by Buyer, it being understood that such instruments will not require Buyer or any of its Affiliates to make or be deemed to include, and will in any event be deemed not to include, any additional representations, warranties or covenants, expressed or implied, not contained in this Agreement.

Section 2.8 Post-Closing Adjustment of Purchase Price.

(a) Seller and Buyer shall jointly conduct a physical count of the Business Inventory three Business Days prior to the Closing Date, or on such other date as mutually agreed, which physical count shall be conducted in accordance with the past practices, policies and procedures of Seller in connection with the Business as set forth on Schedule 2.8(a) of the Disclosure Schedules. Notwithstanding the procedures outlined in such schedule, the parties will cooperate in good faith to conduct a full count of the Business Inventory during such period to the extent not materially disruptive to Seller's business.

(b) At least three Business Days prior to the Closing Date, Seller shall prepare, or cause to be prepared, and deliver to Buyer, a written statement, together with reasonably detailed supporting information and back-up for such calculations (the "Preliminary Closing Statement") setting forth a good-faith calculation of (i) the estimated Closing Inventory Amount (the "Estimated Closing Inventory"), calculated in accordance with the Accounting Principles and consistent with the relevant definitions and terms of this Agreement, (ii) the Seller Property Tax Amount, and (iii) based on the foregoing, the Estimated Purchase Price. Prior to the Closing, Buyer shall be entitled to comment on and request reasonable changes to the Preliminary Closing Statement, and Seller and Buyer in good faith shall seek to resolve any differences that they may have with respect to the computation of any of the items in the Preliminary Closing Statement; provided, that if the parties are unable to resolve all such differences prior to the Closing, the amounts of the Estimated Closing Inventory and Seller Property Tax Amount as reflected in the Preliminary Closing Statement shall be used for purposes of calculating the Estimated Purchase Price on the Closing Date. Buyer's failure to identify any questions or changes to the Preliminary Closing Statement shall not indicate any acceptance or waiver, or otherwise impact Buyer's right to prepare the Final Closing Statement in accordance with Section 2.3(c).

(c) Within 90 days after the Closing Date, Buyer shall prepare, or cause to be prepared, and deliver to Seller a written statement (the “Final Closing Statement”) that shall include and set forth a calculation of (i) the actual Closing Inventory Amount (the “Final Closing Inventory”), determined as of the Calculation Time and without giving effect to the transactions contemplated herein, (ii) the Seller Property Tax Amount and (iii) based on the foregoing, the Final Closing Purchase Price, including a detailed itemization of the components of each of the foregoing clauses (i) – (iii). The Final Closing Inventory shall be calculated in accordance with the Accounting Principles and consistent with the relevant definitions and terms of this Agreement.

(d) The Final Closing Statement shall become final and binding on the 30th day following delivery thereof, unless prior to the end of such period, Seller delivers to Buyer written notice of its disagreement (a “Notice of Disagreement”) specifying the nature and amount of any dispute as to the Final Closing Inventory or the Seller Property Tax Amount and, based on the foregoing, the Final Closing Purchase Price as set forth in the Final Closing Statement. Any component of the Final Closing Statement that is not the subject of a Notice of Disagreement by Seller shall be final and binding on the parties hereunder.

(e) During the 15-day period following delivery of a Notice of Disagreement by Seller to Buyer, the parties in good faith shall seek to resolve in writing any differences that they may have with respect to the computation of the Final Closing Inventory as specified therein. Any disputed items resolved in writing between Seller and Buyer within such 15-day period shall be final and binding with respect to such items, and if Seller and Buyer agree in writing on the resolution of each disputed item specified by Seller in the Notice of Disagreement and the amount of the Final Closing Inventory and/or Seller Property Tax Amount, the amount so determined shall be final and binding on the parties for all purposes hereunder. If Seller and Buyer have not resolved all such differences by the end of such 15-day period, Seller and Buyer shall submit, in writing, to an independent public accounting firm (the “Independent Accounting Firm”), their briefs detailing their views as to the correct nature and amount of each item remaining in dispute and the amount of the Final Closing Inventory, and the Independent Accounting Firm shall make a written determination as to each such disputed item and the amount of the Final Closing Inventory and/or Seller Property Tax Amount, which determination shall be final and binding on the parties for all purposes hereunder and shall not be subject to appeal or further review. The Independent Accounting Firm shall consider only those items and amounts in Seller’s and Buyer’s respective calculations of the Final Closing Inventory that are identified as being items and amounts to which Seller and Buyer have been unable to agree. In resolving any disputed item, the Independent Accounting Firm may not assign a value to any item greater than the greatest value for such item claimed by either party or less than the smallest value for such item claimed by either party. The Independent Accounting Firm shall be Ernst & Young Global Limited or, if such firm is unable or unwilling to act, a different nationally recognized firm of independent certified public accountants, which does not have any material relationship with Buyer, Seller or any of their respective Affiliates, as shall be agreed in writing by Seller and Buyer. Seller and Buyer shall use their commercially reasonable efforts to cause the Independent Accounting Firm to render a written decision resolving the matters submitted to it as promptly as practicable, and in any event within 30 days following the submission thereof. Judgment may be entered upon the written determination of the Independent Accounting Firm in accordance with Section 10.9. In acting under this Agreement, the Independent Accounting Firm shall have the power to conclusively resolve differences in disputed items as specified in this Agreement and the decision of the Independent Accounting Firm shall be final and binding upon the parties and judgment may be entered upon the determination of the Independent Accounting Firm in any court having jurisdiction over the party against which such determination is to be enforced.

(f) The costs of any dispute resolution pursuant to Section 2.8(e), including the fees and expenses of the Independent Accounting Firm and of any enforcement of the determination thereof, shall be borne by Seller and Buyer in inverse proportion as they may prevail on the matters resolved by the Independent Accounting Firm, which proportionate allocation shall be calculated on an aggregate basis based on the relative dollar values of the amounts in dispute and shall be determined by the Independent Accounting Firm at the time the determination of such firm is rendered on the merits of the matters submitted. The fees and disbursements of the Representatives of each party incurred in connection with the preparation or review of the Final Closing Statement and preparation or review of any Notice of Disagreement, as applicable, shall be borne by such party.

(g) Buyer and Seller will (in the case of Seller, prior to the Closing and, in the case of Buyer, during the period from and after the date of delivery of the Final Closing Statement through the resolution of any adjustment to the Estimated Purchase Price contemplated by this Section 2.8) afford the other party and its Representatives reasonable access, during normal business hours and upon reasonable prior notice, to the personnel, properties, books and records relating to the Business, the Purchased Assets and Assumed Liabilities and to any other information reasonably requested for purposes of preparing and reviewing the calculations contemplated by this Section 2.8. Each party shall authorize its accountants to disclose work papers generated by such accountants in connection with preparing and reviewing the calculations of the Final Closing Inventory as specified in this Section 2.8; provided, that such accountants shall not be obligated to make any work papers available except in accordance with such accountants' disclosure procedures and then only after the non-client party has signed an agreement relating to access to such work papers in form and substance acceptable to such accountants.

(h) The Net Adjustment Amount shall be paid as follows:

(i) For the purposes of this Agreement, the "Net Adjustment Amount" means an amount, which may be positive or negative, equal to (a) if the Final Closing Purchase Price is greater than the Estimated Purchase Price, the amount by which the Final Closing Purchase Price is greater than the Estimated Purchase Price or (b) if the Final Closing Purchase Price is less than the Estimated Purchase Price, the amount by which the Final Closing Purchase Price is less than the Estimated Purchase Price (expressed as a negative number).

(ii) If the Net Adjustment Amount is positive, the Estimated Purchase Price shall be adjusted upwards in an amount equal to the Net Adjustment Amount. In such event, (A) Buyer and Seller shall deliver joint written notice to the Escrow Agent specifying the Net Adjustment Amount, (B) Buyer shall pay the Net Adjustment Amount to Seller and (C) the Escrow Agent shall pay all funds in the Adjustment Escrow Fund to Seller; and

(iii) If the Net Adjustment Amount is negative (in which case the "Net Adjustment Amount" for purposes of this clause (iii) shall be deemed to be equal to the absolute value of such amount), the Estimated Purchase Price shall be adjusted downwards in an amount equal to the Net Adjustment Amount. In such event, Buyer and Seller shall deliver joint written notice to the Escrow Agent specifying the Net Adjustment Amount, and the Escrow Agent shall pay the Net Adjustment Amount out of the Adjustment Escrow Fund to Buyer in accordance with the terms of the Escrow Agreement. If the Adjustment Escrow Fund is insufficient to cover the entire amount payable to Buyer pursuant hereto, then the Escrow Agent shall distribute the entire Adjustment Escrow Fund to Buyer as provided in the Escrow Agreement, and Seller shall pay an amount to Buyer equal to the amount of such deficiency.

(i) Payments in respect of Section 2.8(h) shall be made and/or joint instructions to the Escrow Agent shall be delivered within three Business Days of final determination of the Net Adjustment Amount pursuant to the provisions of this Section 2.8 by, in the case of payment, wire transfer of immediately available funds to such account or accounts as may be designated in writing by the party entitled to such payment at least two Business Days prior to such payment date. For the avoidance of doubt, any payments made pursuant to this Section 2.8 shall be treated as an adjustment to the consideration paid pursuant to this Agreement, unless otherwise required by applicable Law.

Section 2.9 Purchase Price Allocation. No more than one hundred twenty (120) days subsequent to the final determination of the Purchase Price pursuant to Section 2.8, Buyer shall prepare and deliver to Seller a statement which shall provide for the allocation of the Purchase Price (plus the Assumed Liabilities, to the extent properly taken into account pursuant to the provisions of Code Section 1060, plus any other items constituting consideration for applicable income tax purposes pursuant to the provisions of Code Section 1060) among the Purchased Assets (the "Allocation") in a manner consistent with the principles of Code Section 1060 and the Treasury Regulations promulgated thereunder (the "Allocation Principles"). Within thirty (30) days after receipt of such Allocation, Seller shall propose to Buyer in writing any reasonable changes to such Allocation together with documentation supporting such changes (and in the event that no such changes are proposed in writing to Buyer within such time period, Seller shall be deemed to have agreed to, and accepted, the Allocation). Buyer and Seller shall attempt in good faith to resolve those differences, if any, with respect to the Allocation within fifteen (15) days after Buyer's receipt of a timely written notice of comments from Seller. If Buyer and Seller are unable to resolve such differences within such time period, then any remaining disputed matters shall be submitted to the Independent Accounting Firm for resolution in accordance with this Agreement and the Allocation Principles. Promptly, but not later than fifteen (15) days after such matters are submitted to it for resolution hereunder, the Independent Accounting Firm will determine those matters in dispute and will render a written report as to the disputed matters and the resulting allocation, which report shall, absent manifest error or fraud, be conclusive and binding upon Buyer, Seller, and their respective Affiliates. The fees, costs and expenses of the Independent Accounting Firm shall be borne in inverse proportion as they may prevail on matters resolved by the Independent Accounting Firm, which proportionate allocations shall be determined by the Independent Accounting Firm at the time its determination is rendered on the merits of the matters submitted to it; provided, that the Independent Accounting Firm may increase the allocation of the costs of such determination to any party making, or that has made, unnecessary information requests. Each party hereto agrees (a) to file IRS Form 8594 (Asset Allocation Statement) as well as any similar statement or form for its taxable year that includes the Closing Date in a manner consistent with the Allocation (as finalized) and (b) except in the case of a revised Allocation, that neither Seller nor Buyer nor any of their respective Affiliates shall take a position on any Tax Return, or in any Tax audit or other Tax proceeding that is in any manner inconsistent with the Allocation, except as required by a final determination made a competent Governmental Authority. Each party hereto shall use its commercially reasonable efforts to notify promptly each other party hereto following receipt of notice of any pending or threatened Tax audit or Tax proceeding or assessment challenging the Allocation. Notwithstanding anything to the contrary herein, any amounts included within Assumed Liabilities (including, for the avoidance of doubt, deferred revenue) shall be reported by the parties hereto (and their respective Affiliates) for all applicable tax purposes in a manner that does not result in Buyer's recognition of any income in respect of a deemed payment from Seller to Buyer in respect of such amounts (including deferred revenue).

Section 2.10 Transfer of Purchased Assets; Wrong Pockets.

(a) If, at any time after the Closing, any asset held by Buyer or its Affiliates and acquired from Seller pursuant to this Agreement is determined to be an Excluded Asset, then (i) Buyer shall return or transfer and convey (without further consideration) to Seller or the appropriate Affiliate of Seller such asset; and (ii) Seller and Buyer shall, and shall cause their appropriate Affiliates to, execute such documents or instruments of conveyance or assumption and take such further acts as are reasonably necessary or desirable to effect the transfer of such Excluded Asset back to Seller or its appropriate Affiliate, in each case such that each Person is put into substantially the same economic position as if such action had been taken on or prior to the Closing Date.

(b) Prior to the Closing, to the extent any Purchased Assets are held by an Affiliate of Seller, Seller shall cause each applicable Affiliate to execute such documents or instruments of conveyance or assumption and take such further acts as are reasonably necessary or desirable to effect the transfer of such Purchased Asset to Seller. If, at any time after the Closing, any asset held by Seller or its Affiliates is determined to be a Purchased Asset, then (i) Seller shall return or transfer and convey (without further consideration) to Buyer or the appropriate Affiliate of Buyer such Purchased Asset or Assumed Liability; and (ii) Seller and Buyer shall, and shall cause their appropriate Affiliates to, execute such documents or instruments of conveyance or assumption and take such further acts as are reasonably necessary or desirable to effect the transfer of such Purchased Asset back to Buyer or its appropriate Affiliate, in each case such that each Person is put into substantially the same economic position as if such action had been taken on or prior to the Closing Date.

**ARTICLE III
REPRESENTATIONS AND WARRANTIES OF SELLER**

Except as set forth in the corresponding sections or subsections of the confidential Disclosure Schedules delivered by Seller to Buyer concurrently herewith (collectively, the “Disclosure Schedules”), Seller hereby represents and warrants to Buyer as follows:

Section 3.1 Organization and Qualification; Capitalization. Seller is a corporation, duly incorporated, validly existing and in good standing under the laws of the State of Delaware and has full power and authority to own, lease and operate the Purchased Assets and to carry on the Business as now conducted and as currently proposed to be conducted. Seller is duly qualified or licensed as a foreign corporation to do business, and is in good standing, in each jurisdiction where the ownership or operation of the Purchased Assets or the conduct of the Business makes such qualification or licensing necessary, except to the extent that the failure to be so licensed or qualified would have a Material Adverse Effect.

Section 3.2 Authority.

(a) Seller has full power and authority to execute and deliver this Agreement and each of the Ancillary Agreements to which it will be a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby.

(b) The execution, delivery and performance by Seller of this Agreement and of the Ancillary Agreements to which it will be a party and the consummation by Seller of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action.

(c) This Agreement has been, and upon their execution each of the Ancillary Agreements to which Seller will be a party will have been, duly executed and delivered by Seller and, assuming due execution and delivery by each of the other parties hereto and thereto, this Agreement constitutes, and upon their execution each of the Ancillary Agreements to which Seller will be a party will constitute, the legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms (except as enforceability may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other Laws relating to or affecting the rights and remedies of creditors generally and to general principles of equity (regardless of whether in equity or at law)).

Section 3.3 No Conflict; Required Filings and Consents.

(a) The execution, delivery and performance by Seller of this Agreement and each of the Ancillary Agreements to which it will be a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not:

(i) conflict with or violate the Organizational Documents of Seller;

(ii) conflict with or violate any Law applicable to Seller, the Business or any of the Purchased Assets or by which Seller, the Business or any of the Purchased Assets may be bound or affected; or

(iii) except as set forth on Schedule 3.3(a)(iii) of the Disclosure Schedules, result in any breach of, constitute a default (or an event that, with notice or lapse of time or both, would become a breach or default) under, require any consent of or notice to any Person pursuant to, give to others any right of termination, amendment, modification, acceleration or cancellation of, allow the imposition of any fees or penalties, require the offering or making of any payment or redemption, give rise to any increased, guaranteed, accelerated or additional rights or entitlements of any Person or otherwise adversely affect any rights of Seller or the Business under, or result in the creation of any Encumbrance on any of the Purchased Assets pursuant to, any note, bond, mortgage, indenture, agreement, lease, license, permit, franchise, instrument, obligation or other Contract to which Seller or its Subsidiaries is a party or by which Seller, any of its Subsidiaries, the Business or the Purchased Assets may be bound or affected except, with respect to clauses (ii) and (iii) for any such conflicts, violations, breaches, defaults or other occurrences that would reasonably expected to be, individually or in the aggregate, material to the Business.

(b) Except as set forth on Schedule 3.3(b) of the Disclosure Schedules, Seller is not required to file, seek or obtain any notice, authorization, approval, order, permit or consent of or with any Governmental Authority in connection with the execution, delivery and performance by Seller of this Agreement and each of the Ancillary Agreements to which it will be a party or the consummation of the transactions contemplated hereby or thereby or in order to prevent the termination of any right, privilege, license or qualification of or affecting the Business or the Purchased Assets, except for (i) such filings in connection with any Transfer Taxes, if any and (ii) such other consents, approvals, orders, authorizations, registrations, declarations, filings, notices or permits the failure of which to be obtained or made would not be material to the Business.

Section 3.4 Title to Assets; Sufficiency of Assets.

(a) Seller has good and valid title to or a valid leasehold interest in all of the Purchased Assets (or, with respect to the Owned Real Property, good and indefeasible title), free and clear of any Encumbrance, other than (i) statutory liens for Taxes (A) that are not yet due or payable and (B) in respect which adequate reserves have been established, and are being maintained, in accordance with GAAP, (ii) mechanics', workmen's, repairmen's, warehousemen's and carriers' liens arising in the Ordinary Course of Business as to which there is no default on the part of Seller or any of its Subsidiaries, as the case may be, or the validity or amount of which is being contested in good faith, diligently pursued and by appropriate proceedings, and for which adequate reserves have been established in accordance with GAAP, (iii) non-exclusive licenses to Intellectual Property granted in the Ordinary Course of Business; (iv) matters of record set forth in Schedule 3.4(a) of the Disclosure Schedules, (v) matters disclosed by the Survey, (vi) the Owned Real Property Office Lease and the Owned Real Property Warehouse Lease, and (vii) such other imperfections of title arising that do not, individually or in the aggregate, materially impair the value or interfere with the continued ownership, use and operation of the Purchased Assets in the conduct of the Business as currently conducted (collectively, "Permitted Encumbrances").

(b) The delivery to Buyer of the Deed, the Bill of Sale and other instruments of assignment, conveyance and transfer pursuant to this Agreement and the Ancillary Agreements will transfer to Buyer good and valid title to or a valid leasehold interest in all of the Purchased Assets (or, with respect to the Owned Real Property, good and indefeasible title), free and clear of any Encumbrance other than Permitted Encumbrances. No Affiliate of Seller has any right, title or interest in or to any of the Purchased Assets.

(c) The Purchased Assets, together with the rights and benefits provided pursuant to the Transition Services Agreement and the Co-Manufacturing Agreement, constitute all of the assets, properties and rights necessary and sufficient for the conduct and operation of the Business as currently conducted or proposed to be conducted.

Section 3.5 Absence of Certain Changes or Events. Since March 31, 2023: (a) Seller has conducted the Business only in the ordinary course consistent with past practice; (b) there has not been any change, event or development or prospective change, event or development that, individually or in the aggregate, has had or is reasonably likely to have a Material Adverse Effect; (c) neither the Business nor the Purchased Assets have suffered any material loss, damage, destruction or other casualty affecting any material properties or assets thereof or included therein, whether or not covered by insurance; and (d) Seller has not taken any action that, if taken after the date of this Agreement, would constitute a breach of any of the covenants set forth in Section 5.1.

Section 3.6 Reserved.

Section 3.7 Compliance with Law; Permits.

(a) Seller is and has been in compliance in all material respects with all applicable Laws in connection with the conduct or operation of the Business and the ownership or use of the Purchased Assets. Seller has not received during the past five years, nor to the Knowledge of Seller is there any reasonable basis for, any written notice, order, complaint or other communication from any Governmental Authority or any other Person that Seller is not in compliance in all material respects with any such Laws in connection with the conduct or operation of the Business and the ownership or use of the Purchased Assets.

(b) Schedule 3.7(b) of the Disclosure Schedules sets forth a true and complete list of all Business Permits. There are no Business Permits, other than such Business Permits set forth on Schedule 3.7(b) of the Disclosure Schedules, that Seller is required to obtain and/or maintain in connection with the Business, as currently conducted, or the Purchased Assets. Seller is and has been in compliance in all material respects with all such Business Permits. No suspension, cancellation, modification, revocation or nonrenewal of any Business Permit is pending or, to the Knowledge of Seller, threatened. Except as set forth on Schedule 3.7(b) of the Disclosure Schedules all Business Permits may be transferred in accordance with applicable Law and assigned to Buyer.

Section 3.8 Litigation. Except as set forth on Schedule 3.8 of the Disclosure Schedules, there is no Action pending or, to the Knowledge of Seller, threatened in connection with the Business or the Purchased Assets or Seller's ownership or operation thereof, including with respect to any matter arising from or related to COVID-19 or COVID-19 Measures (whether regarding contractual, labor, employment, benefits or other matters), nor, to the Knowledge of Seller, is there any basis for any such Action. There is no Action pending or, to the Knowledge of Seller, threatened seeking to prevent, hinder, modify, delay or challenge the transactions contemplated by this Agreement or the Ancillary Agreements. There is no outstanding order, writ, judgment, injunction, decree, determination or award of, or pending or, to the Knowledge of Seller, threatened investigation by, any Governmental Authority relating to the Business, the Purchased Assets, Seller's ownership or operation thereof or the transactions contemplated by this Agreement or the Ancillary Agreements. Except as set forth on Schedule 3.8 of the Disclosure Schedules, there is no Action by Seller pending, or which Seller has commenced preparations to initiate, against any other Person in connection with the Business or the Purchased Assets.

Section 3.9 Employee Benefit Plans.

(a) Schedule 3.9(a) of the Disclosure Schedules set forth a true and complete list of all Employee Plans. True and complete copies of each of the following documents have been delivered by Seller to Buyer with respect to each Employee Plan, if applicable: (i) all plan documents and any amendments thereto (or, if unwritten, a written description of the material terms); (ii) the most recent determination, opinion or advisory letter from the Internal Revenue Service; and (iii) all non-routine material correspondence with any Governmental Authority in the past three years to the extent it relates to or such Employee Plan covers any Business Employee or Business Service Provider.

(b) Except as set forth on Schedule 3.9(b) of the Disclosure Schedules, Seller and its ERISA Affiliates do not sponsor, maintain, or contribute to any Multiemployer Plan, single employer pension plan within the meaning of Section 4001(a)(15) of ERISA for which Seller or any ERISA Affiliate of Seller could incur liability under Section 4063 or 4064 of ERISA, or any Employee Plan subject to either Title IV of ERISA or Section 412 of the Code. Except as set forth on Schedule 3.9(b) of the Disclosure Schedules, no Employee Plan provides for or promises, and Seller has no obligation with respect to any Business Employee to provide for, any post-employment or post-retirement medical or other welfare benefits, except as required by Section 4980B of the Code or similar state or local law.

(c) Except as would not, individually or in the aggregate, result in any material liability to Buyer, (i) each Employee Plan is now and always has been operated in all material respects in accordance with its terms and the requirements of all applicable Laws, including ERISA and the Code, (ii) no material Action (other than routine claims for benefits) is pending or, to the Knowledge of Seller, threatened with respect to any Employee Plan or any fiduciary thereof, (iii) each Employee Plan that is intended to be qualified under Section 401(a) of the Code or Section 401(k) of the Code has received or is entitled to rely upon a determination, opinion or advisory letter from the Internal Revenue Service with respect to such qualification, and to the Knowledge of Seller, no fact or event has occurred that could adversely affect the qualified status of such Employee Plan, and (iv) each Employee Plan that is a “nonqualified deferred compensation plan” (as defined for purposes of Section 409A(d)(1) of the Code) has been operated and documented in material compliance with Section 409A of the Code and all applicable guidance promulgated thereunder.

(d) Neither the execution, delivery or performance of this Agreement or the Ancillary Agreements nor the consummation of the transactions contemplated hereby or thereby (either alone or in connection with any other event) will (i) entitle any Business Employee or Business Service Provider to severance pay or accrued pension benefit or any other payment or benefit, (ii) accelerate the time of payment or vesting, or increase the amount of compensation or benefits due or payable to any Business Employee or Business Service Provider, or (iii) give rise to the payment of any amount that could reasonably be expected to be a “parachute payment” under 280G of the Code.

Section 3.10 Labor and Employment Matters.

(a) Schedule 3.10(a) of the Disclosure Schedules sets forth a complete and accurate list of the names of all current Business Employees, specifying each Business Employee’s (i) position, (ii) salary or hourly wage rate, as applicable, (iii) date of hire, (iv) business location, (v) commission, bonus and incentive entitlements, (vi) status as exempt or non-exempt under the Fair Labor Standards Act, and (vii) identifying, other than with respect to any employees on the Excluded Employee List, whether currently on leave and if so, the type of leave and anticipated date of return to active employment.

(b) Seller is not a party to any labor or collective bargaining Contract that pertains to any Business Employees. There are no, and during the past five years have been no, organizing activities or collective bargaining arrangements affecting the Business pending or being negotiated with any Business Employees or any labor organization. There is no, and during the past five years there has been no, material labor dispute, strike, controversy, slowdown, work stoppage or lockout pending or, to the Knowledge of Seller, threatened against or affecting the Business or Seller in connection with the Business (including as a result of COVID-19 or COVID-19 Measures). Seller has not breached or otherwise failed to comply with the material provisions of any collective bargaining or union Contract affecting any Business Employees. There are no pending or, to the Knowledge of Seller, threatened union grievances or union representation questions involving any Business Employees.

(c) Seller is, and during the past five years has been, in compliance in all material respects with all applicable Laws respecting employment, including discrimination or harassment in employment, terms and conditions of employment, termination of employment, wages, overtime classification, hours, occupational safety and health, employee whistle-blowing, immigration, employee privacy, employment practices and classification of employees, consultants and independent contractors, in connection with the Business. Seller is not engaged in any unfair labor practice, as defined in the National Labor Relations Act or other applicable Laws, in connection with the Business. No unfair labor practice or labor charge or complaint is pending or, to the Knowledge of Seller, threatened with respect to the Business or Seller in connection with the Business before the National Labor Relations Board, the Equal Employment Opportunity Commission or any other Governmental Authority.

(d) Seller has withheld and paid to the appropriate Governmental Authority or is holding for payment not yet due to such Governmental Authority all amounts required to be withheld from Business Employees and is not liable for any arrears of wages, taxes, penalties or other sums for failure to comply with any applicable Laws relating to the employment of labor in connection with the Business. Seller has paid in full to all Business Employees or adequately accrued in accordance with applicable Law for all wages, salaries, commissions, bonuses, benefits and other compensation due to or on behalf thereof.

(e) Seller is not a party to, or otherwise bound by, any consent decree with, or citation by, any Governmental Authority relating to or affecting Business Employees or employment practices in connection with the Business. Neither Seller nor any of its executive officers has received within the past five years any notice of intent by any Governmental Authority responsible for the enforcement of labor or employment laws to conduct an investigation relating to the Business and, to the Knowledge of Seller, no such investigation is in progress.

(f) To the Knowledge of Seller, no current Business Employee intends, or is expected, to terminate such Business Employee's employment relationship with the Business following the consummation of the transactions contemplated hereby.

(g) Seller has not in the past five years effectuated (i) a “plant closing” as defined in the Worker Adjustment and Retraining Notification Act or any similar state or local law (the “WARN Act”) related to the Business, or (ii) a “mass layoff” as defined in the WARN Act related to the Business.

(h) During the past three years, (i) no Action alleging workplace sexual harassment or discrimination has been initiated, filed or, to the Knowledge of Seller, threatened against any current or former directors, officers or employees of the Business in their capacities as such, (ii) to the Knowledge of Seller, no incidents of any such workplace sexual harassment, discrimination or other misconduct have occurred, and (iii) neither the Business nor Seller in connection with the Business has entered into any settlement agreement related to allegations of sexual harassment or discrimination by any of their employees or any independent contractor.

(i) Except as set forth on Schedule 3.10(i) of the Disclosure Schedules, since January 1, 2020, as related to COVID-19, neither the Business nor Seller in connection with the Business has (i) taken any material action with respect to any Business Employees, including implementing workforce reductions, terminations, furloughs or material changes to compensation, benefits or working schedules or (ii) experienced any material employment-related liability.

Section 3.11 Real Property.

(a) Schedule 3.11(a) of the Disclosure Schedules sets forth a true and complete description of the Owned Real Property. Seller has good and indefeasible title in fee simple to (or a valid easement interest in, as applicable) the Owned Real Property, free and clear of all Encumbrances except Permitted Encumbrances.

(b) Except for the Permitted Encumbrances, there are no contractual or legal restrictions that preclude or restrict the ability to use any Owned Real Property by Seller or the Business for the current use of such real property. Except as set forth on Schedule 3.11(b) of the Disclosure Schedules and except for the Owned Real Property Matter, there are no material latent defects or material adverse physical conditions affecting the Owned Real Property. Except for the Owned Real Property Matter, all plants, warehouses, distribution centers, structures and other buildings and improvements on the Owned Real Property are adequately maintained and are in good operating condition and repair for the requirements of the Business as currently conducted.

(c) Except for any occupancy or possessory interest pursuant to any Permitted Encumbrances, there are no Persons in possession or occupancy of any part of the Owned Real Property or the facilities located on the Owned Real Property or who have possessory rights with respect to any part of the Owned Real Property.

(d) No binding commitment has been made by Seller or any Affiliates of Seller to any Governmental Authority, utility company or any other organization, group or individual relating to the Owned Real Property or any part thereof which imposes upon or could impose upon Seller or any Affiliate of Seller an obligation to make any contribution or dedication of money or land or to construct, install or maintain any improvements of a public or private nature on or off such Owned Real Property.

(e) Except as set forth on Schedule 3.11(e) of the Disclosure Schedules and except for the Owned Real Property Matter, there are no pending or, to the Knowledge of Seller, threatened expropriation, condemnation or eminent domain proceedings, lawsuits or administrative or other Actions relating to any Owned Real Property.

(f) True, correct and complete copies of all deeds, title insurance policies, surveys, mortgages, certificates of occupancy, building permits and inspection certificates, agreements and other documents granting Seller (or any of its Affiliates) title to or otherwise affecting or evidencing the state of title with respect to the Owned Real Property, together with all amendments, modifications and supplements thereto (collectively, the “Title Documents”) have been made available to Buyer to the extent in Seller’s possession or control. With respect to the Title Documents, no breach or event of default on the part of Seller or any of its Affiliates, and to the Knowledge of Seller, no breach or event of default on the part of any other party thereto and no event that, with the giving of notice or lapse of time or both, would constitute a breach or event of default under any term, covenant or condition of such Title Documents, has occurred and is continuing.

(g) Except as set forth on Schedule 3.11(g) of the Disclosure Schedules, to the Knowledge of Seller, none of the Owned Real Property or any condition or activity thereon, any plants, buildings, fixtures, or improvements located thereon, or the current use, operation or maintenance thereof is in violation of any law, rule, regulation, code or ordinance or is in violation of the terms of any restrictive covenant or other encumbrance, provided, however, that in the event the use and operation of any Owned Real Property is a non-conforming use as of the Closing Date, the right to continue such non-conforming use is not restricted or terminated upon the consummation of the transactions contemplated by this Agreement.

(h) To the Knowledge of Seller, there are no strips or gores with respect to or affecting any parcel of Owned Real Property (or portion thereof) which cause any related parcels of land to be non-contiguous.

(i) All Owned Real Property is supplied with utilities and other services to the extent reasonably necessary for the operation of the Business immediately after the Closing Date in all material respects as it is being conducted as of the date hereof. All utilities required for the operation of each parcel of Owned Real Property either enter such Owned Real Property through adjoining streets or pass through adjoining land, and do so in accordance with valid public easements or irrevocable private easements, and all of such utilities are installed and operating.

(j) To the Knowledge of Seller, all easements, cross easements, licenses, air rights, and rights-of-way or other similar property interests, if any, necessary for the full utilization of the Owned Real Property as currently used have been obtained and are in full force and effect without default thereunder. All of the Owned Real Property has direct rights of access to public ways. All roads necessary for the use of the Owned Real Property for its current purposes have been completed and are available for public use.

(k) The Owned Real Property is not situated in a flood hazard area as defined by the Federal Insurance Administration. To the Knowledge of Seller, no portion of the Owned Real Property is located on or adjacent to navigable waters and no portion of the Owned Real Property consists of filled-in land.

(l) Neither the Owned Real Property nor any part thereof are subject to any purchase options, rights of first refusal or other similar rights in favor of third parties.

(m) There are no leases, subleases, licenses, concessions, or other agreements, written or oral, granting to any Person the right of use or occupancy of any portion of the Owned Real Property. There are no adverse parties in possession of the Owned Real Property or of any part thereof.

(n) There is no special proceeding pending or, to the Knowledge of Seller, threatened, in which any taxing authority having jurisdiction over any of the Owned Real Property is seeking to increase the assessed value thereof.

Section 3.12 Personal Property.

(a) Schedule 3.12(a) of the Disclosure Schedules set forth a true and complete list of (i) all Business Personal Property owned by Seller having a fair market value of \$100,000 or more and (ii) each lease or other Contract under which Seller is the lessee of, or holds or operates, any Business Personal Property owned by a third Person, which Business Personal Property has a fair market value of \$100,000 or more.

(b) All of the Business Personal Property has been maintained in all material respects in accordance with past practice and generally accepted industry practice. Each item of the Business Personal Property is, in all material respects, in good operating condition and repair, ordinary wear and tear excepted, and is adequate for the uses to which it is being put. All leased Business Personal Property is, in all material respects, in the condition required of such property by the terms of the lease applicable thereto.

Section 3.13 Intellectual Property.

(a) Schedule 3.13(a) of the Disclosure Schedules sets forth a true and complete list of all (i) Business Intellectual Property that is the subject of an issuance, registration, or application with a Governmental Authority or domain registrar (each identified as a Mark, Domain Name, Copyright or Patent, as the case may be) (the "Seller Registered IP") and (ii) material unregistered Marks included in the Business Intellectual Property. The Seller Registered IP is valid and subsisting and, to the Knowledge of Seller, enforceable.

(b) Except as set forth on Schedule 3.13(b) of the Disclosure Schedules, no Seller Registered IP has been abandoned, cancelled or adjudicated invalid, or is subject to any outstanding written order, writ, injunction, judgment, stipulation or decree restricting its use or adversely affecting or reflecting Seller's rights thereto. There is no Action pending or, to the Knowledge of Seller, threatened against Seller concerning the ownership, validity, registrability, enforceability, infringement or use of any Business Intellectual Property.

(c) Seller exclusively owns all right, title, and interest in and to all Business Intellectual Property, free and clear of any and all Encumbrances, other than Permitted Encumbrances. Seller has not received any written notice or claim challenging its ownership of any of the Business Intellectual Property, nor to the Knowledge of Seller is there a reasonable basis for any claim that it does not so own any of such Business Intellectual Property.

(d) Seller has taken all reasonable steps in accordance with standard industry practices to protect its rights in the Business Intellectual Property and at all times has taken all commercially reasonable measures to protect the secrecy, confidentiality and value of all Business Intellectual Property that is a Trade Secret, including entering into appropriate confidentiality agreements with all officers, directors, employees, and other Persons with access to such Trade Secrets, and, to the Knowledge of Seller, no unauthorized disclosure of any such Trade Secrets has been made. No current or former employee, consultant or contractor of Seller holds any right, title or interest, directly or indirectly, in whole or in part, in or to any Business Intellectual Property.

(e) All Business Intellectual Property developed by or for Seller was conceived, invented, reduced to practice, authored or otherwise created solely by either employees of Seller acting within the scope of their employment, or independent contractors of Seller pursuant to agreements containing an assignment of Intellectual Property to Seller.

(f) The development, manufacture, sale, distribution or other commercial exploitation of products, and the provision of any services, by or on behalf of the Business or Seller in connection with the Business, and all of the other activities or operations of the Business or Seller in connection with the Business, in the past six years have not infringed, misappropriated, violated, or diluted, and do not infringe, misappropriate, violate, or dilute, any Intellectual Property of any third party. In the past six years, Seller has not received any written notice, claim, complaint or demand, including invitations to license or requests for indemnification, alleging any such infringement, misappropriation, violation, or dilution of any third party Intellectual Property, nor to the Knowledge of Seller, is there a reasonable basis therefor. No Business Intellectual Property is subject to any outstanding written order, judgment, decree, stipulation or agreement restricting the use or licensing thereof by Seller or the Business. To the Knowledge of Seller, no third party is misappropriating, infringing, diluting or otherwise violating any Business Intellectual Property.

(g) Subject to obtaining the consents set forth on Schedule 3.3(a)(iii) of the Disclosure Schedules, upon the consummation of the Closing, Buyer shall succeed to all of the Business Intellectual Property and all of such rights shall be exercisable by Buyer to the same extent as by Seller prior to the Closing. The Business Intellectual Property constitutes all Intellectual Property necessary for the operation of the Business as currently conducted and, except as set forth on Schedule 3.3(a)(iii) of the Disclosure Schedules, all of the Business Intellectual Property is fully assignable by Seller to any Person, without payment, consent of any Person or other condition or restriction.

(h) Subject to obtaining the consents set forth on Schedule 3.3(a)(iii) of the Disclosure Schedules, the execution, delivery and performance by Seller of this Agreement and the Ancillary Agreements, and the consummation of the transactions contemplated hereby, will not give rise to any right of any third party to terminate or re-price or otherwise modify any of the Business' rights or obligations under any agreement under which any right or license of or under Intellectual Property is granted to or by the Business.

Section 3.14 IT Systems.

(a) Seller owns or has rights to access and use all IT Systems used in connection with the Business or otherwise necessary for the conduct of the Business. Seller has taken reasonable steps in accordance with industry standards to secure the IT Systems used in connection with the Business or otherwise necessary for the conduct of the Business that are controlled by Seller from unauthorized access or use by any Person, and to ensure the continued, uninterrupted and error-free operation of the IT Systems used in connection with the Business or otherwise necessary for the conduct of the Business.

(b) The IT Systems used in connection with the Business or otherwise necessary for the conduct of the Business are adequate in all material respects for their intended use and for the operation of the Business as currently conducted by Seller, and are in good working condition (normal wear and tear excepted), and, to the Knowledge of Seller, are free of all viruses, worms, Trojan horses and other known contaminants and do not contain any bugs, errors or problems of a nature that would materially disrupt their operation or have a material adverse impact on the operation of the IT Systems used in connection with the Business or otherwise necessary for the conduct of the Business. In the past three (3) years, there has not been any material malfunction with respect to any of the IT Systems used in connection with the Business or otherwise necessary for the conduct of the Business that has not been remedied or replaced in all material respects.

(c) No capital expenditure is necessary with respect to the use of the IT Systems used in connection with the Business or otherwise necessary for the conduct of the Business other than capital expenditure in the Ordinary Course of Business.

Section 3.15 Business Inventory. The Business Inventory has been maintained in accordance with the regular business practices of Seller, consists of items of a quality and quantity substantially all of which is usable or saleable, in all material respects, in the Ordinary Course of Business. Such inventory has not been consigned to, or held on consignment from, any third person. The Business Inventory consists, and will as of the Closing Date consist, of products of quality and quantity commercially usable and salable in the Ordinary Course of Business, except for any items of obsolete material or material below standard quality, and, except as described on Schedule 3.15 of the Disclosure Schedules, the present quantities of all Business Inventory are reasonable in the present circumstances of the Business.

Section 3.16 Taxes.

(a) There are no material Taxes of Seller or any of its Affiliates for which Buyer could become liable as a result of the transactions contemplated by this Agreement or the Ancillary Agreements.

(b) Seller properly has filed each material Tax Return (that is required to be filed under applicable Law) in respect of any of the Business, the Purchased Assets, and the Assumed Liabilities to the appropriate Governmental Authority on or prior to the date such Tax Return is due (excluding any extensions). All such Tax Returns and reports are true, correct and complete in all material respects. All material Taxes due and owing with respect to any of the Business, the Purchased Assets, or the Assumed Liabilities (whether or not shown on any Tax Return) have been paid, timely and properly, to the appropriate Governmental Authority.

(c) No material Tax examination, audit, dispute, or other similar proceeding relating to any of the Business, the Purchased Assets, or the Assumed Liabilities (x) is in progress or otherwise pending or (y) has taken place, been commenced, or otherwise been threatened at any time in the six years that immediately precede the Closing.

(d) Other than Permitted Encumbrances, there are no Encumbrances for Taxes on the Business or any of the Purchased Assets. No Governmental Authority in the process of imposing any Encumbrance for Taxes on the Business or any of the Purchased Assets (other than for current Taxes that are not yet due or payable).

(e) No Purchased Asset is subject to any tax partnership agreement or provision requiring a partnership income Tax Return to be filed under Subchapter K of Chapter 1 of Subtitle A of the Code or any similar state statute (except to the extent Seller is a partnership for federal income tax purposes (in which case the assets are only subject to such partnership)).

Section 3.17 Environmental Matters. Except as set forth on Schedule 3.17 of the Disclosure Schedules:

(a) Seller is and for the past five years has been in compliance with all applicable Environmental Laws in connection with the conduct or operation of the Business and the ownership or use of the Purchased Assets. Seller has not received any written notice or complaint from a Governmental Authority or other Person alleging that Seller has any liability under any such Environmental Law or is not in compliance with any such Environmental Law, in each case with respect to the Business.

(b) No Hazardous Substances have been Released by Seller or, to the Knowledge of Seller, by any other Person, on any Owned Real Property, and there is no ongoing environmental investigation, clean-up, remediation or corrective action of any kind relating thereto, on the Owned Real Property (including any buildings, structures, improvements, soils and subsurface strata, surface water bodies, including drainage ways, and ground waters thereof), except in each case as would not reasonably be expected to be material to the Business. No underground improvement, including any treatment or storage tank or water, gas or oil well, is or has been located on the Owned Real Property, except in material compliance with Environmental Law. Seller has no liability for any Release of, threatened Release of or contamination by Hazardous Substances in connection with the Business or the Purchased Assets or otherwise under any Environmental Law. There is no pending or, to the Knowledge of Seller, threatened investigation by any Governmental Authority, nor any pending or, to the Knowledge of Seller, threatened Action with respect to the Business or Seller in connection with the Business relating to Hazardous Substances or otherwise arising under any Environmental Law.

(c) Seller holds all Environmental Permits and is and has for the last five years been in compliance therewith. Except as set forth on Schedule 3.3(b) to the Disclosure Schedules, neither the execution, delivery or performance of this Agreement nor the consummation of the transactions contemplated hereby will (i) require any notice to or consent of any Governmental Authority or other Person pursuant to any applicable Environmental Law or Environmental Permit or (ii) subject any Environmental Permit to suspension, cancellation, revocation or nonrenewal.

(d) Seller has provided to Buyer all material permits, and all “Phase I,” “Phase II” or other environmental investigation reports in its possession or its control addressing the Owned Real Property.

(e) For purposes of this Agreement:

(i) “Environmental Laws” means: any Laws of any Governmental Authority relating to (A) Releases or threatened Releases of Hazardous Substances or materials containing Hazardous Substances; (B) the manufacture, handling, transport, use, treatment, storage or disposal of Hazardous Substances or materials containing Hazardous Substances; or (C) pollution or protection of the environment, worker health or safety (as it relates to exposure to Hazardous Substances) or natural resources.

(ii) “Environmental Permits” means all Business Permits required under any Environmental Law.

(iii) “Hazardous Substances” means: (A) those substances defined in or regulated under the Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), the Clean Water Act, the Safe Drinking Water Act, the Atomic Energy Act, the Toxic Substances Control Act, the Federal Insecticide, Fungicide, and Rodenticide Act and the Clean Air Act, and their state counterparts, as each have been amended, and all regulations thereunder; (B) petroleum and petroleum products, including crude oil and any fractions thereof; (C) natural gas, synthetic gas, and any mixtures thereof; (D) lead, polychlorinated biphenyls, perfluoroalkyl and polyfluoroalkyl substances, asbestos and radon; and (E) any other hazardous substance, material or waste regulated by any Governmental Authority pursuant to any Environmental Law.

(iv) “Release” has the meaning set forth in Section 101(22) of CERCLA (42 U.S.C. § 9601(22)), but not subject to the exceptions in Subsections (A) and (D) of 42 U.S.C. § 9601(22).

Section 3.18 Material Contracts.

(a) Except as set forth on Schedule 3.18(a) of the Disclosure Schedules, there are no Contracts relating to the Business or the Purchased Assets of the following nature (such Contracts as are required to be set forth on Schedule 3.18(a) of the Disclosure Schedules being “Material Contracts”):

(i) any Contract for the purchase or delivery of goods, or performance of services, with respect to the Business that provides for annual payments by Seller of more than \$500,000;

(ii) any Contract with a Material Customer or a Material Supplier;

- (iii) any other packing, warehousing, supply, co-manufacturing or purchasing Contract that provides for future payments by or to Seller of more than \$250,000 per annum that is not terminable without penalty upon 30 days' notice or less and is not otherwise contemplated above;
- (iv) any Contract relating to or evidencing indebtedness of the Business or Seller in connection with Business, including mortgages, other grants of security interests, guarantees or notes;
- (v) any Contract with any Governmental Authority;
- (vi) any Contract with a broker, distributor, or agent (other than an employment or consulting Contract) that is not terminable without penalty upon 30 days' notice or less;
- (vii) any Contract with any Related Party of Seller;
- (viii) any employment or consulting Contract with a Business Employee or Business Service Provider (excluding standard restrictive covenant agreements entered into by Business Employees or Business Service Providers in connection with their employment or engagement with Seller);
- (ix) any labor or collective bargaining Contract that covers any Business Employees;
- (x) any Contract that limits, or purports to limit, the ability of Seller or the Business to compete in any line of business or with any Person or in any geographic area or during any period of time, or that restricts the right of Seller or the Business to sell to or purchase from any Person or to hire any Person, or that grants the other party or any third person "most favored nation" status or any type of special discount rights;
- (xi) any Contract that contains minimum purchase obligations binding on Seller;
- (xii) any Contract pursuant to which Seller is the lessee or lessor of, or holds, uses, or makes available for use to any Person any real property;
- (xiii) (A) any capital lease or (B) any other Contract relating to the lease, purchase or sale of tangible personal property providing for aggregate annual payments by or to Seller in excess of \$250,000, under which any equipment is held or used by Seller;
- (xiv) any Contract containing a commitment (or group of related commitments) to make any capital expenditure or to purchase a capital asset in excess of \$250,000 individually or \$500,000 in the aggregate (to the extent applicable to the Business) per annum;
- (xv) any Contract providing for indemnification to or from any Person with respect to liabilities relating to Seller, the Business or the Purchased Assets (other than in the Ordinary Course of Business);

(xvi) any Contract relating in whole or in part to any Business Intellectual Property; other than (A) non-exclusive license agreements with respect to commercially available off-the-shelf software or software-as-a-service, and which no license or royalty payment in excess of \$100,000 was paid in the one-year period preceding the date hereof or have or will become due in any twelve-month period following the date hereof, (B) non-disclosure agreements entered into in the Ordinary Course of Business, (C) confidentiality agreements and intellectual property assignment agreements entered into with employees and contractors, (D) licenses for Intellectual Property embedded into any equipment, fixtures, components or finished products, (E) non-exclusive licenses that are granted to customers in the ordinary course of business or to contractors or vendors of Seller in the ordinary course of business in connection with services performed for the Business, and (F) as incidental, ancillary, or non-material parts of agreements;

(xvii) any joint venture or partnership, merger, asset or stock purchase or divestiture Contract;

(xviii) any hedging, futures, options or other derivative Contract;

(xix) any Contract relating to settlement of any administrative or judicial proceedings within the past five years;

(xx) any Contract that results in any Person holding a power of attorney that relates to Seller, the Business or the Purchased

Assets; and

(b) Each Material Contract is a legal, valid, binding and enforceable agreement of Seller and, to the Knowledge of Seller, each other party thereto. Each Material Contract is in full force and effect and will continue to be in full force and effect on identical terms immediately following the Closing Date. Neither Seller nor, to the Knowledge of Seller, any other party is in material breach or violation of or (with or without notice or lapse of time or both) material default under, any Material Contract, nor has Seller received any written claim of any such material breach, violation or default. Seller has delivered or made available to Buyer true and complete copies of all Material Contracts, including any amendments thereto.

Section 3.19 Customers and Suppliers.

(a) Schedule 3.19(a) of the Disclosure Schedules sets forth a true and complete list of (i) all customers of the Business (each, a “Material Customer”) and (ii) the amount of gross revenue actually received by Seller from each such Material Customer during the 12 months ended December 31, 2022. Seller has not received any written notice that any Material Customer (A) has ceased or substantially reduced, or will cease or substantially reduce, use of products or services of the Business or (B) has sought, or is seeking, to reduce the price it will pay for the services of the Business. To the Knowledge of Seller, and as of the date hereof, no Material Customer has otherwise threatened to take any action described in the preceding sentence as a result of the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements.

(b) Schedule 3.19(b) of the Disclosure Schedules sets forth a true and complete list of (i) the top 20 suppliers to the Business (determined by gross payables) during the 12 months ended December 31, 2022 (each, a “Material Supplier”) and (ii) the aggregate amount paid to each such supplier during such period. Seller has not received any written notice that there has been any material adverse change in the price of such supplies or services provided by any such supplier, or that any such supplier will not sell supplies or services to the Business at any time after the Closing Date on terms and conditions substantially the same as those used in its current sales to the Business, subject to general and customary price increases. To the Knowledge of Seller, and as of the date hereof, no such supplier has otherwise threatened to take any action described in the preceding sentence as a result of the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements.

Section 3.20 Product Liability. To the Knowledge of Seller, there is no basis for any product liability, warranty, material backcharge, material additional work or other claims by any third party (whether based on contract or tort and whether relating to personal injury, including death, property damage or economic loss) arising from (a) the development, cultivation, manufacturing, production, packaging, labeling, handling, storage, transportation, sale or distribution of any product or good sold or delivered by or on behalf of the Business whether delivered to a customer before or after the Closing Date (except with respect to any liability or obligation arising out of any action by Buyer after the Closing Date) or (b) the operation of the Business or the ownership of the Purchased Assets during the period through and including the Closing Date.

Section 3.21 Occupational Safety and Health Matters.

(a) Seller is and has been in material compliance with, and is not in material violation of, or incurred any material liability under, any applicable Occupational Safety and Health Laws in connection with the conduct or operation of the Business and the ownership or use of the Purchased Assets and, to the Knowledge of Seller, no reason exists why Buyer would not be capable of continued operation of the Business in compliance with applicable Occupational Safety and Health Laws without undue expense or burden after the Closing Date.

(b) Seller has not received any written notice or, to the Knowledge of Seller, other communication from any Governmental Authority or any other Person regarding (i) any failure to comply in any material respect with any applicable Occupational Safety and Health Law or (ii) any obligation to undertake or bear any material cost of any Occupational Safety and Health Liabilities, including, without limitation, any Occupational Safety and Health Liabilities with respect to any Owned Real Property at, to or from which Hazardous Substances have been generated, manufactured, refined, transferred, used or processed, transported, treated, stored, handled, transferred, disposed of, recycled or received by Seller, and there are no facts or circumstances that can be reasonably expected to form the basis of clause (i) or (ii).

(c) Seller has made available to Buyer copies of any written occupational and safety assessment or audit reports or similar studies or analyses relating to the Business or any Owned Real Property that have been prepared on behalf of Seller in the past five years.

Section 3.22 Warranties. Seller has delivered to Buyer true and correct copies of all written warranties currently in effect covering the respective products and services of the Business. Each product manufactured or sold by Seller or any of its Subsidiaries, to the extent relating to the Business, is and has been manufactured and sold in conformity with all applicable contractual commitments and all express and implied warranties, except as would not reasonably be expected, individually or in the aggregate, to be material to the Business, as a whole.

Section 3.23 Debt. Except as set forth on Schedule 3.23 of the Disclosure Schedules, Seller has no Indebtedness related to the Business or the Purchased Assets.

Section 3.24 Affiliate Interests and Transactions. There are no Contracts by and between Seller primarily relating to the Business, on the one hand, and any Affiliate of Seller or, to the Knowledge of Seller, any officer, director or employee (or member of the immediate family thereof) of Seller or any Affiliate of Seller, on the other hand. No Affiliate of Seller or, to the Knowledge of Seller, any officer, director or employee (or member of the immediate family thereof) of Seller or any Affiliate of Seller owns any interest in any Purchased Asset.

Section 3.25 Business Insurance. Schedule 3.25 of the Disclosure Schedules sets forth a true and complete list of all Insurance Policies maintained with respect to the Business and the Purchased Assets, together with the carriers and liability limits for each such policy. All such Insurance Policies are in full force and effect, and no application therefor included a material misstatement or omission. All premiums with respect thereto have been paid to the extent due. Seller has not received written notice of, nor to the Knowledge of Seller is there threatened, any cancellation, termination, reduction of coverage or material premium increases with respect to any such policy. No claim currently is pending under any such policy involving an amount in excess of \$50,000. To the Knowledge of Seller, all material insurable risks in respect of the Business and the Purchased Assets are covered by such insurance policies and the types and amounts of coverage provided therein are usual and customary in the context of the Business and the Purchased Assets. The activities and operations of the Business have been conducted in a manner so as to conform in all material respects to all applicable provisions of such insurance policies. The consummation of the transactions contemplated by this Agreement and the Ancillary Agreements will not cause a cancellation or reduction in the coverage of such policies.

Section 3.26 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated hereby based upon arrangements made by or on behalf of Seller for which Buyer or the Business is or could be liable.

Section 3.27 International Trade Laws. Seller is, and for the past five years has been, in compliance with International Trade Laws, and has not taken any action that violates, evades or avoids, or attempts to violate, evade or avoid International Trade Laws, in each case in connection with the operation of the Business. Neither Seller nor any of its Subsidiaries, nor, to the Knowledge of Seller, any of their respective directors, executives, or employees, or, to the Knowledge of Seller, any representative or agent acting on behalf of Seller or its Subsidiaries, currently or during the past five years: (i) is or has been a Sanctioned Person or has acted, directly or indirectly, on behalf of a Sanctioned Person; (ii) is unlawfully conducting or has unlawfully conducted any business or engaged in making or receiving any contribution of funds, goods or services to or for the benefit of any Sanctioned Person in connection with the operation of the Business; or (iii) is unlawfully dealing in or has unlawfully dealt in, or otherwise engaged in, any transaction relating to, any property or interests in property of any Sanctioned Person in connection with the operation of the Business.

Section 3.28 Food Safety Matters. Except as otherwise set forth on Schedule 3.28 of the Disclosure Schedules, the Business is, and for the past five years has been, conducted in material compliance with all Applicable Food Safety Laws. Without limiting the generality of the immediately preceding statement, except as otherwise set forth on Schedule 3.28 of the Disclosure Schedules:

(a) during the past five years, neither Seller nor any of its Affiliates has sold or distributed any products relating to the Business, and there are not any products relating to the Business currently in inventory, which are or were “adulterated,” “misbranded,” or otherwise violative within the meaning of the FDC Act, and/or under any other applicable Law or Applicable Food Safety Laws;

(b) all of the operations of the Business are and for the past five years have been in material compliance with all applicable Laws and Applicable Food Safety Laws issued or implemented by the FDA, FTC, USDA, CBP and/or any other comparable Governmental Authority, including those related to recordkeeping, prior notice of imported food, food safety, hazard analysis and preventive controls, sanitary transportation, food additives, food contact substances, supplier verification, food facility registration, regulatory status, fitness for intended purposes, current good manufacturing practices, allergen control, and food labeling and advertising;

(c) during the last five years, neither Seller nor any of its Affiliates has been subject to any adverse inspection identifying critical violations, FDA Form 483 inspection report, written notice, warning letter, untitled letter, regulatory letter, finding of deficiency, investigation, or any other written communication regarding a violation, investigation, proceeding, inquiry, or compliance or enforcement action, from or by any Governmental Authority with respect to the Business, nor are any such actions pending or being threatened by any Governmental Authority.

(d) during the last five years, neither Seller nor any of its Affiliates has received any written or other notice from the FDA, FTC, USDA, CBP or any other comparable Governmental Authority in connection with any product cultivated, manufactured, produced, packaged, sold, imported, held, or distributed by or on behalf of the Business;

(e) during the last five years, neither Seller nor any of its Affiliates has been excluded or suspended from participation under any government program with respect to the Business pursuant to any Applicable Food Safety Law;

(f) during the last five years, neither Seller nor any of its Affiliates has provided false or misleading information or made any material omission in any submission to any Governmental Authority relating to the Business, nor are they aware of any payment, gratuity, or other thing of value provided by Seller or any of its Affiliates that is prohibited by any Law, such as to a government official relating to the Business;

(g) during the last five years, there have not been, and to the Knowledge of Seller, no Governmental Authority is threatening, any recalls, withdrawals, detentions, suspensions, field notification, field correction, safety alert, or seizures of any products cultivated, manufactured, produced, packaged, distributed, imported, held, or sold by or on behalf of the Business, whether ordered by a Governmental Authority or undertaken voluntarily by Seller or any of its Affiliates, and there have been no written claims or, to the Knowledge of Seller, other instances of the presence of or exposure to any food contaminants or adulterants, undeclared food allergens, food poisoning, pests, Proposition 65 listed chemical, or other Hazardous Substance in any such products, nor any other similar food-related conditions with respect to the Business;

(h) during the last five years, to the Knowledge of Seller, each product cultivated, manufactured, produced, packaged, distributed, imported, held, or sold by or on behalf of the Business complies in all material respects with all applicable labeling requirements (including but not limited to flavor labeling, ingredient statements, nutritional information, storage and/or refrigeration instructions, warnings, and country of origin disclosures) set forth by any Governmental Authority;

(i) during the last five years, each product cultivated, manufactured, produced, packaged, distributed, imported, held, or sold by or on behalf of the Business has been prepared in accordance with the specifications of the applicable customer and, to the Knowledge of Seller, conforms in all material respects to any promises or affirmations of fact or aspiration, whether express or implied, made on the container, label, internet website, or any other means of advertising (e.g., social media platforms) for such product and in connection with its distribution or sale (including to the extent that such products are being marketed with claims such as “non-GMO,” “fresh,” “organic,” “all natural,” “sustainable,” “U.S. grown,” “Made in U.S.A.,” “Kona” “made with natural ingredients,” “made with natural flavors,” “__ calories,” “gluten free,” “kosher,” “fat-free,” “no artificial colors, flavors, or sweeteners,” “nutritious,” “low calorie,”) or with similar claims, including but not limited to all labeling and advertising claims, nutrient content claims, health-related or structure/function claims, and social and environmental marketing claims (e.g., ESG claims), and Seller possesses appropriate documentation to substantiate all such claims, which substantiation materials are included in the Purchased Assets;

(j) during the last five years, neither Seller nor any of its Affiliates has engaged in unfair competition or trade practices, any false, deceptive, unfair or misleading advertising or promotional practices, or violations of consumer protections under any applicable Law in each case, with respect to the Business, and Seller and its Affiliates are in compliance in all material respects with all social media regulations, policies, and guidance established by the FDA, the FTC, and other Governmental Authorities, including, but not limited to, the industry self-regulatory advertising standards of the National Advertising Division of National BBB Programs, Inc., and the FTC’s various guidance documents, in each case, to the extent the same relate to the Business. Neither Seller nor any of its Affiliates has received any notifications and has not been subject to any investigations from the FTC, or any other Governmental Authority regarding the products, services, advertising, or promotional practices of the Business;

(k) there is no proceeding to which Seller or any of its Affiliates is a party, whether filed, pending, or, to the Knowledge of Seller, threatened (including pre-litigation demands and notices of violation) relating to, or otherwise involving: (i) an alleged defect in any product, (ii) the failure of any product to meet certain specifications, or (iii) any misleading or deceptive trade practices or labeling defect, and to the Knowledge of Seller, there is no fact, situation, circumstance, condition or other basis for any of the foregoing; and

(l) during the last five years, each product cultivated, manufactured, produced, packaged, distributed, imported, held, or sold by or on behalf of the Business complies with the FDA's requirements in Title 21 of the Code of Federal Regulations section 100.100 for nonfunctional slack fill and with any other similar state or local requirements, and neither Seller nor any of its Affiliates has received any correspondence from any Governmental Authority or other person or entity alleging that any product's container and/or packaging is deceptive because of nonfunctional slack fill.

Section 3.29 Privacy.

(a) With respect to the operation of the Business, Seller is, and during the past five years has been, in compliance with all applicable Privacy and Security Requirements in all material respects. Seller has not received any written notices or complaints from any Person or Governmental Authority regarding the Processing of Personal Information or alleging Seller's failure to comply with applicable Privacy and Security Requirements in connection with the operation of the Business, nor has Seller, to the Knowledge of Seller, been subject to any audit or investigation regarding the Processing of Personal Information or any Privacy and Security Requirements in connection with the operation of the Business.

(b) In the previous five years, the Business has not experienced any Security Breaches, and Seller has not received any written notices or complaints from any Person regarding such a Security Breach. No circumstance has arisen in which any applicable Privacy and Security Requirements would require Seller to notify a Person or Governmental Authority of a Security Breach in connection with the operation of the Business.

(c) Seller has valid and legal rights, in all material respects, to Process all Personal Information that is Processed by or on behalf of Seller in connection with the use of the Purchased Assets and/or operation of the Business and upon the consummation of the Closing, Buyer shall have the right to Process such Personal Information in order to be able to conduct the Ordinary Course of Business. The execution, delivery, or performance of this Agreement will not violate any applicable Privacy and Security Requirements in any material respects.

(d) During the last five years in connection with the operation of the Business, Seller has implemented, and has ensured that third parties that Process Personal Information for or on behalf of Seller implement, commercially reasonable physical, technical and administrative safeguards designated to ensure the integrity and security of Personal Information and to prevent any destruction, loss, alteration, corruption, misuse or unauthorized disclosure thereof or unauthorized access thereto, and to provide compliance in all material respects with all applicable Privacy and Security Requirements.

Section 3.30 Solvency. Seller has not incurred debts beyond its ability to pay as they become absolute and matured, and as of both the date of this Agreement and immediately following the Closing after giving effect to the transactions contemplated hereby, Seller shall be solvent and shall: (a) be able to pay its debts as they become due; (b) own assets that have a fair saleable value greater than the amounts required to pay its debts (including a reasonable estimate of the amount of all contingent liabilities); and (c) have adequate capital to carry on its business. No transfer of property is being made, and no obligation is being incurred in connection with the transactions contemplated hereby with the intent to hinder, delay or defraud either present or future creditors of Seller.

Section 3.31 No Other Representations or Warranties. The representations and warranties made by Seller in this Article III constitute the sole and exclusive representations made by Seller in connection with the transactions contemplated by this Agreement and the other Ancillary Agreements and all other representations and warranties of any kind or nature, whether express or implied, oral or written, have not been relied upon by Buyer and are expressly and specifically disclaimed and shall not form the basis of any claim by Buyer for breach of representation or warranty, Fraud or otherwise, and neither Seller nor any other Person will have or be subject to any liability to Buyer or any other Person with respect thereto.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller as follows:

Section 4.1 Organization. Buyer is a corporation, validly existing and in good standing under the laws of Delaware and has full corporate power and authority to own, lease and operate its properties and to carry on its business as it is now being conducted.

Section 4.2 Authority.

(a) Buyer has full corporate power and authority to execute and deliver this Agreement and each of the Ancillary Agreements to which it will be a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby.

(b) The execution, delivery and performance by Buyer of this Agreement and each of the Ancillary Agreements to which it will be a party and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action.

(c) This Agreement has been, and upon their execution each of the Ancillary Agreements to which Buyer will be a party will have been, duly executed and delivered by Buyer and, assuming due execution and delivery by each of the other parties hereto and thereto, this Agreement constitutes, and upon their execution each of the Ancillary Agreements to which Buyer will be a party will constitute, the legal, valid and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms (except as enforceability may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other Laws relating to or affecting the rights and remedies of creditors generally and to general principles of equity (regardless of whether in equity or at law)).

Section 4.3 No Conflict; Required Filings and Consents.

(a) The execution, delivery and performance by Buyer of this Agreement and each of the Ancillary Agreements to which Buyer will be a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not:

(i) conflict with or violate the certificate of incorporation or bylaws of Buyer;

(ii) conflict with or violate any Law applicable to Buyer; or

(iii) result in any breach of, constitute a default (or an event that, with notice or lapse of time or both, would become a default) under or require any consent of any Person pursuant to, any note, bond, mortgage, indenture, agreement, lease, license, permit, franchise, instrument, obligation or other Contract to which Buyer is a party; except, with respect to clauses (ii) and (iii), for any such conflicts, violations, breaches, defaults or other occurrences that do not, individually or in the aggregate, have a Buyer Material Adverse effect.

(b) Buyer is not required to file, seek or obtain any notice, authorization, approval, order, permit or consent of or with any Governmental Authority in connection with the execution, delivery and performance by Buyer of this Agreement and each of the Ancillary Agreements to which it will be party or the consummation of the transactions contemplated hereby or thereby.

Section 4.4 Financing. Buyer has and will have at the Closing sufficient funds and immediately available funding to permit Buyer to fund in cash all of the amounts required to be provided by Buyer for the consummation of the transactions contemplated hereby and the other Ancillary Agreements to which it is or will be a party and sufficient for the satisfaction of all of Buyer's obligations under this Agreement and the other Ancillary Agreements to which it is or will be a party, including, without limitation, the payment of all associated costs and expenses of Buyer in connection with the transactions contemplated by this Agreement and the other Ancillary Agreements to which it is or will be a party. Such funding is not subject to any delay, restriction or required consent. Buyer has not incurred any obligation, commitment, restriction or Liability of any kind, and is not contemplating or aware of any obligation, commitment, restriction or Liability of any kind, in any case which would impair or adversely affect such funding. Buyer acknowledges and agrees that Buyer's performance of its obligations under this Agreement is not in any way contingent upon the availability of financing of any kind to Buyer, whether or not for, or related to, the transactions contemplated by this Agreement.

Section 4.5 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated hereby based upon arrangements made by or on behalf of Buyer.

Section 4.6 Solvency. Immediately after giving effect to the transactions contemplated hereby, Buyer shall be solvent and shall: (a) be able to pay its debts as they become due; (b) own property that has a fair saleable value greater than the amounts required to pay its debts (including a reasonable estimate of the amount of all contingent liabilities); and (c) have adequate capital to carry on its business. No transfer of property is being made and no obligation is being incurred in connection with the transactions contemplated hereby with the intent to hinder, delay or defraud either present or future creditors of Buyer. In connection with the transactions contemplated hereby, Buyer has not incurred, nor plans to incur, debts beyond its ability to pay as they become absolute and matured.

ARTICLE V COVENANTS

Section 5.1 Conduct of Business Prior to the Closing. Between the date of this Agreement and the Closing Date, unless (i) expressly permitted by this Agreement, (ii) Buyer shall otherwise consent in advance in writing (such consent not to be unreasonably withheld, conditioned or delayed), (iii) set forth on Schedule 5.1 of the Disclosure Schedules or (iv) required by applicable Law, Seller shall cause the Business to be conducted only in the Ordinary Course of Business, and shall use commercially reasonable efforts to preserve substantially intact the organization of the Business, keep available the services of the current Business Employees and consultants of the Business and preserve the current relationships of the Business with customers, suppliers and other persons with which the Business has significant business relations. By way of amplification and not limitation, between the date of this Agreement and the Closing Date, Seller shall not do or propose to do, directly or indirectly, any of the following in connection with the Business or the Purchased Assets without the prior written consent of Buyer (such consent not to be unreasonably withheld, conditioned or delayed), unless (i) expressly permitted by this Agreement or the Ancillary Agreements, (ii) set forth on Schedule 5.1 of the Disclosure Schedules or (iii) required by applicable Law:

(a) sell, pledge, dispose of or otherwise subject to any Encumbrance (other than Permitted Encumbrances) any Purchased Assets, other than sales or transfers of Business Inventory in the Ordinary Course of Business;

(b) incur any indebtedness for borrowed money or issue any debt securities or assume, guarantee or endorse, or otherwise become responsible for, the obligations of any Person, or make any loans or advances, in each case affecting the Business or the Purchased Assets, except for borrowings under the Seller Credit Agreement in the Ordinary Course of Business; provided, that in no event shall Seller, in connection with the Business, incur, assume or guarantee any long-term indebtedness for borrowed money;

(c) materially amend, waive, modify or consent to the termination of any Material Contract, or materially amend, waive, modify or consent to the termination of Seller's rights thereunder, or enter into any Contract in connection with the Business or the Purchased Assets other than in the Ordinary Course of Business;

(d) authorize, or make any commitment with respect to, any single capital expenditure for the Business that is in excess of \$250,000 or capital expenditures which are, in the aggregate, in excess of \$500,000 for the Business taken as a whole unless (i) paid in full prior to Closing or (ii) such commitments to make such capital expenditures are set forth in the capital expenditure plan presented to Buyer prior to the date hereof;

(e) acquire any corporation, partnership, limited liability company, other business organization or division thereof or any material amount of assets, or enter into any joint venture, strategic alliance, exclusive dealing, noncompetition or similar contract or arrangement;

- (f) enter into any lease of real or personal property or any renewals thereof in connection with the Business involving a term of more than one year or rental obligation exceeding \$250,000 per year in any single case;
- (g) sell, dispose, transfer, assign, lease, sublease, exclusively license, mortgage, pledge, encumber or otherwise convey any interest in any property that is or would otherwise be a Purchased Asset (other than the sale of Business Inventory or pledges or encumbrances of Business Inventory under the Seller Credit Agreement, in each case in the Ordinary Course of Business);
- (h) acquire any interest in real property in connection with the operation of the Business;
- (i) except as required by applicable Law or an Employee Plan that exists as of the date hereof, (i) increase the compensation payable or to become payable or the benefits provided to its Business Employees or Business Service Providers, except for normal merit and cost-of-living increases in the Ordinary Course of Business in salaries or wages of Business Employees who receive less than \$75,000 in total annual cash compensation from Seller; (ii) grant any severance or termination payment to, or pay, loan or advance any amount to, any Business Employee or Business Service Provider; (iii) terminate any Business Employee or Business Service Provider (other than for cause) or hire or engage any new Business Employee or Business Service Provider other than to fill a vacant position; or (iv) establish, adopt, enter into or amend any Employee Plan that provides compensation or benefits solely to a Business Employee or Business Service Provider;
- (j) enter into any Contract with any Related Party of Seller in connection with or affecting the Business or the Purchased Assets;
- (k) make any change in any method of accounting or accounting practice or policy affecting the financial statements of the Business, except as required by GAAP;
- (l) in each case to the extent doing so would have a material impact on Buyer or its Affiliates post-Closing (i) enter into any transaction that gives rise to a material amount of deferred gain or loss of any kind, (ii) make, revoke, or modify any material election related to Taxes, (iii) settle, concede, or compromise any material liability related to Taxes, (iv) file any material amended Tax Return or any amendment or other modification to any Tax Return, (v) enter into any closing agreement (as described in Section 7121 of the Code), (vi) enter into any voluntary disclosure agreement or program with any Governmental Authority, (vii) settle, compromise, concede, or abandon any material Tax claim or assessment, or (viii) consent to any extension or waiver of the limitation period applicable to any material Tax, material Tax claim, or material Tax assessment;
- (m) cancel, compromise, waive or release any right or claim relating to the Business or the Purchased Assets, other than in the Ordinary Course of Business;
- (n) permit the lapse of any existing policy of insurance relating to the Business or the Purchased Assets without obtaining substantially similar coverage;

- (o) permit the lapse of any right relating to material Business Intellectual Property or any other material intangible asset used or held for use in connection with the Business;
- (p) sell, assign, transfer or license any Business Intellectual Property (other than non-exclusive licenses granted in the Ordinary Course of Business);
- (q) commence or settle any Action relating to the Business, the Purchased Assets or the Assumed Liabilities;
- (r) amend its Organizational Documents in a manner which would reasonably be expected to materially and adversely impact Buyer; or
- (s) enter into any formal or informal agreement, or otherwise make a commitment to do any of the foregoing.

Section 5.2 Covenants Regarding Information.

(a) From the date hereof through the Closing Date, Seller shall afford Buyer and its Representatives reasonable access (including for inspection and copying) at all reasonable times upon reasonable advance notice to the Purchased Assets and Seller's Representatives, properties, offices, plants and other facilities, books and records and customers and suppliers relating to the Business and the Purchased Assets, and shall furnish Buyer with such financial, operating and other data and information in connection with the Business and the Purchased Assets as Buyer may reasonably request; provided, however, that any such access shall be conducted at Buyer's sole risk, cost and expense, during normal business hours, under the supervision of the Seller's personnel and in such a manner as not unreasonably to interfere with the normal operations of Seller and shall be subject to any limitations resulting from any COVID-19 Measures; provided, further, that with respect to the Owned Real Property or Seller's other properties, plants or facilities, if applicable, any such access shall not include access for the purpose of conducting any Phase II environmental sampling or other intrusive testing without the prior written consent of Seller and shall take place upon at least two Business Days' prior notice to Seller, shall comply with all of Seller's requirements regarding entry upon the such properties, plants or facilities and shall not unreasonably interrupt or interfere with any work being performed at any such property, plant or facility. Notwithstanding anything to the contrary in this Agreement, Seller shall not be required to provide access to any information to Buyer or its Representatives if Seller determines, in its reasonable discretion, that (i) such access would jeopardize any attorney-client or other legal privilege, (ii) such access would contravene any applicable Laws, fiduciary duty or binding Contract entered into prior to the date hereof or (iii) such information to be accessed does not relate primarily to the Business.

(b) In order to facilitate the resolution of any claims made by or against or incurred by Buyer after the Closing or for any other reasonable purpose, for a period of 5 years following the Closing, Seller shall: (i) retain all books, documents, information, data, files and other records of Seller that relate to the Business, the Purchased Assets or the Assumed Liabilities for periods prior to the Closing and which do not otherwise constitute Purchased Assets; (ii) upon reasonable notice, afford Buyer and its Representatives reasonable access (including for inspection and copying, at Buyer's expense), during normal business hours, to such books, documents, information, data, files and other records, including in connection with claims, proceedings, actions, investigations, audits and other regulatory or legal proceedings involving or relating to the Business, the Purchased Assets or the Assumed Liabilities; and (iii) furnish Buyer and its Representatives reasonable assistance (at Buyer's expense), including access to personnel, in connection with any such claims and other proceedings. Seller shall permit, promptly upon reasonable advance written request, Buyer and its Representatives to use original copies of any such records for purposes of litigation; provided, that such records shall promptly be returned to Seller following such use. Seller shall not destroy any such books and records without providing Buyer with written notice detailing the contents of such books and records, and providing Buyer with the opportunity to obtain such books and records, at least 90 days prior to the destruction thereof. Notwithstanding anything to the contrary in this Agreement, Seller shall not be required to disclose any information to Buyer if such disclosure would: (A) jeopardize any attorney-client privilege; or (B) violate any applicable Law or breach any confidentiality agreement or fiduciary duty.

Section 5.3 Exclusivity. Seller agrees that between the date of this Agreement and the earlier of the Closing and the termination of this Agreement, Seller shall not, and shall take all action necessary to ensure that none of its Affiliates or any of their respective Representatives shall, directly or indirectly:

(a) solicit, initiate, consider, encourage or accept any other proposals or offers from any Person relating to any direct or indirect acquisition or purchase of all or any portion of the Business or the Purchased Assets, whether effected by sale of assets, sale of stock, merger or otherwise, other than Business Inventory to be sold in the Ordinary Course of Business (a “Competing Transaction”); provided, that a sale (by merger or otherwise) of the equity of Seller shall not be deemed a “Competing Transaction”; or

(b) participate in any discussions, conversations, negotiations or other communications regarding, or furnish to any other Person any information with respect to a Competing Transaction, or otherwise cooperate in any way, assist or participate in, facilitate or encourage any effort or attempt by any other Person to seek to do any of the foregoing with respect to a Competing Transaction. Seller immediately shall cease and cause to be terminated all existing discussions, conversations, negotiations and other communications with any Persons conducted heretofore with respect to a Competing Transaction.

Seller shall notify Buyer promptly, but in any event within 24 hours, orally and in writing if any such proposal or offer, or any inquiry or other contact with any Person with respect to a Competing Transaction, is made. Any such notice to Buyer shall, to the extent permitted under any applicable confidentiality agreement, indicate in reasonable detail the identity of the Person making such proposal, offer, inquiry or other contact and the material terms and conditions of such proposal, offer, inquiry or other contact. Seller shall not release any Person from, or waive any provision of, confidentiality obligations related to the Business under any confidentiality agreement to which Seller is a party, without the prior written consent of Buyer.

Section 5.4 Non-Competition; Non-Solicitation; Non-Disparagement.

(a) *Seller Non-Competition; Non-Solicitation; Non-Disparagement.* For a period of five years following the Closing, Seller shall not, and shall cause its Affiliates not to, directly or indirectly through any Person or contractual arrangement:

(i) (i) engage in the Business anywhere within North America ("Competing Business"), provided that (i) the sale of products to Buyer under the Co-Manufacturing Agreement, (ii) the sale of Seller's branded products on e-commerce websites (e.g., Amazon) or through third party food service distributors (e.g., Aramark), (iii) indirect sales of Seller's products or services to Customers indirectly through one or more third party distributors who were not engaged by Seller with the intent of circumventing the requirements set forth in this Section 5.4(a)(i) (provided, that, in any event, such sales pursuant to this clause (iii) do not exceed, in any fiscal year of Seller, more than \$1,000,000) (the "Permitted Business") or (iv) the collection of Receivables shall not, in each case, constitute a breach of this Section 5.4(a)(i);

(ii) approach or seek Competing Business from any Customer (as hereinafter defined), refer Competing Business from any Customer to any Person or be paid commissions based on Competing Business sales received from any Customer by any Person; provided, that the foregoing shall not prohibit Seller from (i) engaging in the Permitted Business or (ii) collecting Receivables. For purposes of this Section 5.4(a), the term "Customer" means the customers listed on Schedule 1.1(a) of the Disclosure Schedules; provided, that the foregoing shall not prohibit any referral of business by Seller to Buyer; or

(iii) disparage Buyer or any of its Affiliates in any way that could adversely affect the goodwill, reputation or business relationships of the Business, Buyer or any of its Affiliates with the public generally, or with any of their customers, suppliers or employees.

(b) *Buyer Non-Solicitation.* For a period of two years following the Closing, Buyer shall not, and shall cause its Affiliates not to, directly or indirectly through any Person or contractual arrangement, solicit or recruit any employee of Seller listed on Schedule 5.4(b) of the Disclosure Schedules; provided, that the foregoing shall not prohibit (A) a general solicitation to the public of general advertising or similar methods of solicitation by search firms not specifically directed at such Seller employee or (B) Buyer or any of its Affiliates from soliciting, recruiting or hiring any Seller employee who has ceased to be employed or retained by Seller or any of its respective Affiliates as a result of any involuntary termination of such employment by Seller or any of its Affiliates.

(c) Each of Seller and Buyer acknowledges that the covenants of Seller and Buyer, as applicable, set forth in this Section 5.4 are an essential element of this Agreement and that any breach by Seller or Buyer, as applicable, of any provision of this Section 5.4 will result in irreparable injury to Seller or Buyer, as applicable. Each of Seller and Buyer acknowledges that in the event of such a breach, in addition to all other remedies available at law, Buyer or Seller, as applicable, shall be entitled to equitable relief, including injunctive relief, and an equitable accounting of all earnings, profits or other benefits arising therefrom, as well as such other damages as may be appropriate. Each of Seller and Buyer has independently consulted with its counsel and after such consultation agrees that the covenants set forth in this Section 5.4 are reasonable and proper to protect the legitimate interest of Seller or Buyer, as applicable.

(d) If a court of competent jurisdiction determines that the character, duration or geographical scope of the provisions of this Section 5.4 are unreasonable, it is the intention and the agreement of the parties that these provisions shall be construed by the court in such a manner as to impose only those restrictions on Seller's or Buyer's, as applicable, conduct that are reasonable in light of the circumstances and as are necessary to assure to Seller or Buyer, as applicable, the benefits of this Agreement. If, in any judicial proceeding, a court shall refuse to enforce all of the separate covenants of this Section 5.4 because taken together they are more extensive than necessary to assure to Seller or Buyer, as applicable, the intended benefits of this Agreement, it is expressly understood and agreed by the parties that the provisions hereof that, if eliminated, would permit the remaining separate provisions to be enforced in such proceeding, shall be deemed eliminated, for the purposes of such proceeding, from this Agreement.

Section 5.5 Notification of Certain Matters. Until the Closing, each party hereto shall promptly notify the other party hereto in writing of any fact, change, condition, circumstance or occurrence or nonoccurrence of any event of which it is aware that will or is reasonably likely to result in any of the conditions set forth in Article VII of this Agreement becoming incapable of being satisfied.

Section 5.6 Payment of Liabilities. Following the Closing, Seller shall pay or otherwise satisfy the Excluded Liabilities in the Ordinary Course of Business.

Section 5.7 Refunds and Remittances. After the Closing: (a) if Seller or any of its Affiliates receive any refund or other amount that is a Purchased Asset or is otherwise properly due and owing to Buyer in accordance with the terms of this Agreement, Seller promptly shall remit, or shall cause to be remitted, such amount to Buyer and (b) if Buyer or any of its Affiliates receive any refund or other amount that is an Excluded Asset or is otherwise properly due and owing to Seller or any of its Affiliates in accordance with the terms of this Agreement, Buyer promptly shall remit, or shall cause to be remitted, such amount to Seller.

Section 5.8 Bulk Transfer Laws. Subject to Section 8.2(c), Buyer hereby waives compliance by Seller with any applicable bulk sale or bulk transfer Laws of any jurisdiction in connection with the sale of the Purchased Assets to Buyer (other than any obligations with respect to the application of the proceeds therefrom). Pursuant to Article VIII, Seller has agreed to indemnify Buyer and each Buyer Designee against any and all liabilities or Losses that may arise as a result of noncompliance with any such Law by Seller or its Affiliates.

Section 5.9 Employee Matters.

(a) Except as specifically provided in this Section 5.9: (i) Buyer shall not adopt, become a sponsoring employer of, or have any obligations under or with respect to the Employee Plans, and Seller shall be solely responsible for any and all liabilities and obligations that have been incurred or may be incurred under or in connection with any Employee Plan; (ii) Seller shall be solely responsible for any and all liabilities arising out of or relating to the employment of Business Employees who do not become Transferring Employees (as defined below), whether such liabilities arise before, on or after the Closing Date, provided, that Buyer shall be solely responsible for any and all liabilities arising out of or relating to (A) the rescission or termination of any offer of employment of any Business Employee or any other failure to hire or employ any Business Employee by Buyer or any of its Affiliates following an offer of employment delivered in accordance with Section 5.9(b), and (B) the employment of any Transferring Employees by Buyer or any of its Affiliates; and (iii) Seller shall be solely responsible for any and all liabilities arising out of or relating to the employment of any Transferring Employee before the Closing Date, or if later, the hire date with Buyer and its Affiliates pursuant to Section 5.9(b).

(b) Prior to the date hereof, Buyer has provided Seller with a list of each Business Employee to whom Buyer will not be making an offer of employment (the “Excluded Employee List”), which list is set forth on Schedule 5.9(b) of the Disclosure Schedules. Buyer shall, or shall cause one of its Affiliates to, extend written offers of employment to each Business Employee listed on Schedule 3.10(a) of the Disclosure Schedules who is both not identified on the Excluded Employee List, completes a Form I-9 and completes a criminal background check and drug test to the reasonable satisfaction of Buyer (all such employees who accept Buyer’s offer of employment are referred to as the “Transferring Employees”); provided that such background checks and drug tests shall be deemed to have been completed to the reasonable satisfaction of Buyer if such background checks have not been finalized on or prior to June 30, 2023. Such offers of employment shall be effective as of the Closing Date and shall be consistent with the requirements of Section 5.9(e). For purposes of this Agreement, any Business Employee who accepts Buyer’s offer of employment and is on authorized short-term leave of absence or short-term disability shall not be deemed to constitute a “Transferring Employee” for purposes of this Agreement until such time as they return to active employment; provided, however, that such return to active employment must occur no later than six months following the Closing. Seller shall terminate the employment of all Transferring Employees immediately prior to the Closing and shall cooperate with and use its commercially reasonable efforts to assist Buyer in its efforts to secure satisfactory employment arrangements with the Business Employees to whom Buyer makes offers of employment.

(c) Seller shall comply with the requirements of the WARN Act or any similar state, provincial or local law with respect to any “plant closing” or “mass layoff,” as those terms are defined in the WARN Act or such other applicable law, which may result from Seller’s termination of the employment of any of its employees in connection with the transactions contemplated hereby through the Closing Date.

(d) Seller and its ERISA Affiliates shall comply with the provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended (“COBRA”), as set forth in Section 4980B of the Code and Part 6 of Title I of ERISA, with respect to any employee, former employee or beneficiary of any such employee or former employee who is covered under any group health plan, as defined in Section 5000(b)(1) of the Code, maintained by Seller and its ERISA Affiliates as of the Closing or whose “qualifying event” within the meaning of Section 4980B(f) of the Code occurs on or prior to the Closing, whether pursuant to the provisions of COBRA or otherwise. Buyer shall comply with the provisions of COBRA with respect to Transferring Employees after the Closing.

(e) Buyer agrees that, for a period of one (1) year following the Closing (or, if earlier, until the date of termination of the relevant employee), each Transferring Employee shall be provided with (i) a base salary or hourly wage rate, as applicable, that is no less favorable than the base salary or hourly wage rate, as applicable, provided to such Transferring Employee immediately prior to Closing, and (ii) employee benefits (other than equity or equity-based compensation, severance, and long-term incentive compensation) that are no less favorable in the aggregate to those benefits (other than any equity or equity-based compensation, severance, and long-term incentive compensation) provided to similarly situated employees of Buyer or its Affiliate following the Closing. Buyer shall use commercially reasonable efforts to (i) waive all limitations as to pre-existing conditions, exclusions and waiting periods with respect to participation and coverage requirements applicable to Transferring Employees under Buyer’s health and welfare benefit plans (the “Buyer Welfare Plans”) to the extent such pre-existing conditions, exclusions and/or waiting periods were waived or satisfied as of the Closing Date under the corresponding Employee Plan and (ii) provide each Transferring Employee with credit under the Buyer Welfare Plans for any co-payments and deductibles paid under the corresponding Employee Plans prior to the Closing Date in satisfying any applicable deductible, co-insurance, co-payment and/or maximum out-of-pocket requirements applicable to the Transferring Employee and his or her covered dependents for the year in which the Closing Date occurs.

(f) For purposes of determining eligibility to participate, vesting and determination of the level of benefits (but not benefit accrual or entitlement to benefits other than for purposes of any benefit accrual under any vacation or severance policy, program or plan) for Transferring Employees under all employee benefit plans and arrangements of Buyer (excluding any incentive plan, post-employment welfare benefit plan or defined benefit plan), Buyer shall recognize service with Seller to the same extent recognized under the corresponding Employee Plans as in effect immediately prior to the Closing Date; provided, that the foregoing shall not result in the duplication of benefits.

(g) As soon as practicable following the Closing Date, Buyer shall establish or designate a defined contribution retirement plan eligible for qualification under Section 401(a) of the Code (the “Buyer 401(k) Plan”). Each Transferring Employee who satisfies the eligibility requirements of the Buyer 401(k) Plan shall become eligible to participate in the Buyer 401(k) Plan as soon as practicable following the date he or she is hired by Buyer. Buyer shall cause the Buyer 401(k) Plan to accept participant-directed rollovers of distributions (including loans) attributable to the Transferring Employees from under the applicable defined contribution plan of Seller in which the Transferring Employee participated prior to the Closing.

(h) The parties hereto acknowledge and agree that all provisions contained in this Section 5.9 are included for the sole benefit of the parties hereto, and that nothing in this Section 5.9, whether express or implied, (i) shall create any third-party beneficiary or other rights (A) in any other person, including any employees or former employees of Seller or its Affiliates, any Transferring Employee or any dependent or beneficiary thereof, or (B) to continued employment with Buyer or any of its Affiliates, (ii) shall be treated as an amendment or other modification of any Employee Plan, Buyer Welfare Plan, Buyer 401(k) Plan or any other employee benefit plan of Seller or Buyer, or (iii) shall limit the right of Buyer, Seller or their respective Affiliates to amend, terminate or otherwise modify any Employee Plan, Buyer Welfare Plan, Buyer 401(k) Plan or any other employee benefit plan of Buyer or Seller.

Section 5.10 Confidentiality.

(a) Each of the parties shall hold, and shall cause its Representatives to hold, in confidence all documents and information furnished to it by or on behalf of the other party in connection with the transactions contemplated hereby pursuant to the terms of the confidentiality agreement dated February 10, 2023 between Buyer and Seller (the “Confidentiality Agreement”), which shall continue in full force and effect until the Closing Date, at which time such Confidentiality Agreement and the obligations of the parties under this Section 5.10(a) shall terminate. If for any reason this Agreement is terminated prior to the Closing Date, the Confidentiality Agreement shall nonetheless continue in full force and effect in accordance with its terms.

(b) For a period of five years following the Closing Date, Seller shall not, and shall cause its Affiliates not to, use for its or their own benefit or divulge or convey to any third party, any Confidential Information; provided, however, that Seller or its Affiliates may furnish such portion (and only such portion) of the Confidential Information as Seller or such Affiliate reasonably determines it is legally obligated to disclose if: (i) it receives a request to disclose all or any part of the Confidential Information under the terms of a subpoena, civil investigative demand or order issued by a Governmental Authority; (ii) to the extent not inconsistent with such request, it notifies Buyer of the existence, terms and circumstances surrounding such request and consults with Buyer on the advisability of taking steps available under applicable Law to resist or narrow such request; (iii) it exercises its commercially reasonable efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to the disclosed Confidential Information; and (iv) disclosure of such Confidential Information is required to prevent Seller or such Affiliate from being held in contempt or becoming subject to any other penalty under applicable Law. For purposes of this Agreement, “Confidential Information” consists of all information and data relating to the Business (including customer and supplier lists, pricing information, marketing plans, market studies, client development plans, business acquisition plans and all other information or data), the Purchased Assets or the Assumed Liabilities, except for data or information that is or becomes available to the public other than as a result of a breach of this Section 5.10.

Section 5.11 Consents. Upon the terms and subject to the conditions set forth in this Agreement, each of the parties agrees to use commercially reasonable efforts to take, or cause to be taken, all actions that are necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement, including using commercially reasonable efforts to accomplish the following: (i) obtain all required consents, approvals or waivers from, or participation in other discussions or negotiations with, third parties, including as required under any Material Contract, (ii) obtain all necessary actions or nonactions, waivers, consents, approvals, orders and authorizations from Governmental Authorities, make all necessary registrations, declarations and filings and make all commercially reasonable efforts to obtain an approval or waiver from, or to avoid any Action by, any Governmental Authority, and (iii) execute and deliver any additional instruments necessary to consummate the transactions contemplated hereby and fully to carry out the purposes of this Agreement; provided, however, that neither Seller nor any of its Affiliates shall commit to the payment of any fee, penalty or other consideration or make any other concession, waiver or amendment under any Contract in connection with obtaining any consent without the prior written consent of Buyer. Each of the parties hereto shall furnish to each other party such necessary information and reasonable assistance as such other party may reasonably request in connection with the foregoing. In exercising the foregoing rights, each of Buyer and Seller shall act reasonably and as promptly as practicable. Subject to applicable Law and the instructions of any Governmental Authority, Seller and Buyer shall keep each other reasonably apprised of the status of matters relating to the completion of the transactions contemplated hereby, including promptly furnishing the other with copies of notices or other written communications received by Seller or Buyer, as the case may be, or any of their respective Subsidiaries, from any Governmental Authority and/or third party with respect to such transactions, and, to the extent practicable under the circumstances, shall provide the other party and its counsel with the opportunity to participate in any meeting with any Governmental Authority in respect of any filing, investigation or other inquiry in connection therewith.

Section 5.12 Public Announcements. Prior to the Closing (but, for the avoidance of doubt, not after the Closing) no party hereto nor any Affiliate or Representative of such party shall issue or cause the publication of any press release or public announcement in respect of this Agreement or the transactions contemplated hereby without the prior written consent of the other party (which consent shall not be unreasonably withheld, conditioned or delayed), except as may be required by Law or stock exchange rules and regulations, in which case the party required to publish such press release or public announcement shall use reasonable efforts to provide the other party a reasonable opportunity to comment on such press release or public announcement in advance of such publication; provided, that the foregoing shall not apply to any press release or public announcement so long as any statements contained therein concerning this Agreement or the transactions contemplated hereby are materially consistent with previous releases or announcements made by the applicable party with respect to which such party has complied with the provisions of this Section 5.12.

Section 5.13 Real Estate. At Buyer's request and sole expense, Seller shall reasonably cooperate with Buyer in connection with any Title Insurance Policy(ies), which shall be issued by a title insurance company selected by Buyer (the "Title Company"), and/or Survey(s) Buyer desires to obtain with respect to the Owned Real Property, which cooperation shall include delivering to the Title Company (a) evidence sufficient to establish (x) the legal existence of Seller, and (y) the authority of the respective signatories of Seller to bind Seller, (b) a certificate of good standing of Seller issued by the State of Delaware, (c) a certificate of good standing of Seller issued by the State of Texas, (d) a customary affidavit of Seller in the form reasonably required by the Title Company in the form attached hereto as Exhibit I, and (e) such other certificates, real estate transfer declarations and customary documentation as the Title Company may reasonably require to issue the Title Insurance Policy in accordance with the terms hereof (collectively, "Seller Title Deliveries"). To the extent any Title Documents are not within Seller's possession or control, Seller agrees to reasonably cooperate with Buyer to request the same from the party in possession of such Title Documents upon Buyer's request therefor.

(a) With respect to any claim, act, omission, event, circumstance, occurrence or loss that occurred or existed prior to the Closing Date that is reported to the appropriate insurer relating to the Business that would be covered by insurance policies of Seller or its Affiliates, Buyer or a Buyer Designee may make claims under such policies and programs, subject to the terms and conditions of such policies and programs and this Agreement; provided, that (i) prior to making any such claim or seeking such benefits or coverage, Buyer promptly notifies Seller of all such claims or efforts to seek benefits or coverage, and to the extent the insurer issuing such coverage agrees to provide coverage to or otherwise communicate directly with Buyer or a Buyer Designee in connection with Buyer or the Buyer Designee's insurance recovery efforts, Buyer shall timely (and no less than quarterly or otherwise upon the reasonable request of Seller) apprise Seller of the status of such communications and efforts; (ii) Seller shall use commercially reasonable efforts to assist Buyer or the Buyer Designee in all reasonably related recovery efforts; (iii) Seller has no obligation to assist Buyer and/or the Buyer Designee in connection with any disputes with the respective insurers in connection with such efforts; (iv) Buyer and/or the Buyer Designee shall not bring any Action in a court of competent jurisdiction, directly or indirectly, against such insurer or such insurance policies without the prior written consent of Seller (such consent not to be unreasonably withheld, conditioned or delayed); and (v) any costs associated with the insurance recovery efforts of Buyer or the Buyer Designee, including any retrospective premiums, deductibles, retentions, obligations, chargebacks, or comparable costs, as applicable, counsel and other fees incurred by Seller in providing assistance to Buyer and/or the Buyer Designee in connection with any claims handling issues and insurance coverage disputes and costs on account of providing Buyer or the Buyer Designee with any such cooperation or assistance, shall be borne solely by Buyer or the Buyer Designee and not by Seller. Buyer shall, promptly upon request of Seller, reimburse Seller and its respective Affiliates for all reasonable and documented out-of-pocket fees, and out-of-pocket costs and expenses (including documented and invoiced fees, costs and out-of-pocket expenses of counsel) incurred by such Persons in connection with the cooperation required by this Section 5.14(a).

(b) If any portion of the Owned Real Property is destroyed or damaged by fire or any other cause on or prior to the Closing (other than use, wear or loss in the Ordinary Course of Business) (each such event, a "Casualty Loss"), Seller shall deliver a written notice thereof (a "Casualty Loss Notice") to Buyer as soon as reasonably practicable but in any event, no later than the earlier of (i) ten days after Seller obtains knowledge of the occurrence of such Casualty Loss or (ii) one day prior to the Closing Date. Such Casualty Loss Notice shall include Seller's good faith estimate of the time required to repair such damage, Seller's good faith estimate of the Restoration Cost (defined below), and an identification of Seller's Casualty Loss Election (defined below), as the case may be. If the cost of restoring such damaged or destroyed Owned Real Property to a condition substantially similar to its condition immediately prior to such Casualty Loss (a "Restoration") (as estimated by a qualified firm reasonably acceptable to Buyer and Seller (and with the costs of such firm being paid by Buyer and Seller in equal proportion)), and such amount being net of and after giving effect to any insurance proceeds available to Seller for such Restoration (but taking into account the amount of any deductible payable by Seller or its Affiliates under an applicable insurance policy (such resulting sum, the "Restoration Cost"), is equal to or greater than \$1,000,000, Seller shall, at its option, elect either to (x) effect a Restoration of the damaged or destroyed portion of the Owned Real Property, at its sole cost and expense, prior to the Closing (such election, the "Restoration Option"), or (y) make an appropriate reduction to the Enterprise Value by an amount equal to the Restoration Cost (clauses (x) and (y)), each, a "Casualty Loss Election"; provided, that, notwithstanding anything in this Agreement to the contrary, in the event the Restoration Cost exceeds \$15,000,000, then Buyer will have the right, but not the obligation, to terminate this Agreement by written notice to Seller within ten Business Days after Buyer has received both (i) a Casualty Loss Notice and (ii) the estimate of the Restoration Cost, as determined by the qualified firm appointed by Buyer and Seller pursuant to this Section 5.14(b). Subject to the proviso in the immediately preceding sentence, in the event that Seller fails to timely deliver a Casualty Loss Notice (and/or fails to timely notify Buyer of its Casualty Loss Election), Seller shall be deemed to have made a Casualty Loss Election pursuant to clause (y) above. If Seller timely elects the Restoration Option, Seller shall use all commercially reasonable efforts to complete, or cause to be completed, such Restoration prior to the Closing, and if the Restoration can be completed on or before the date that is ninety (90) days after the scheduled Closing Date (the "Extended Closing Date"), the Closing Date shall be postponed for the amount of time reasonably necessary (as determined by Seller) to complete such Restoration; provided, however, that if the Closing Date is so extended and such Restoration is not completed in full by the Extended Closing Date, the Closing shall occur on or before the Extended Closing Date and the Estimated Purchase Price will be reduced by the amount of the remaining Restoration Cost as of the Closing (as estimated by a qualified firm reasonably acceptable to Buyer and Seller); provided, further, that if Seller elects the Restoration Option, Buyer shall be entitled to waive Seller's obligation to complete the Restoration by written notice to Seller at any time within twenty (20) days following Seller's written notice to Buyer of such election and proceed to Closing upon satisfaction or waiver of the conditions to Closing set forth in Article VII, in which case Seller shall pay, or cause to be paid, the applicable insurance proceeds with respect to such Casualty Loss to Buyer promptly upon receipt and such Casualty Loss shall not affect the Closing. If Seller makes (or is deemed to have made) a Casualty Loss Election in accordance with this Section 5.14(b), such Casualty Loss shall not affect the Closing (except to the extent expressly set forth herein) and neither Buyer nor Seller shall have the right or option to terminate this Agreement. If the Restoration Cost is less than \$1,000,000, (A) Seller shall not be obligated to repair or replace the damaged or destroyed Owned Real Property (but shall be obligated to cooperate in the pursuit of any applicable insurance proceeds in accordance with Section 5.14(a) and shall use commercially reasonable efforts to assign to Buyer the right to receive any such insurance proceeds), (B) there shall be no reduction to the amount of the Enterprise Value, and (C) neither Buyer nor Seller shall have the right or option to terminate this Agreement and such Casualty Loss shall not affect the Closing.

(c) If any portion of the Owned Real Property is taken by condemnation, eminent domain or similar proceedings (each, a “Taking”) prior to the Closing, Seller shall deliver a written notice thereof (a “Taking Notice”) to Buyer as soon as reasonably practicable but in any event, no later than the earlier of (i) ten (10) days after Seller obtains knowledge of the Taking or (ii) one day prior to the Closing Date. Such Taking Notice shall include Seller’s good faith estimate of the Condemnation Value (defined below) and an identification of Seller’s Taking Election (defined below), as the case may be. If the value of such Owned Real Property (or portion thereof) in the applicable proceeding for such Taking (as determined by a qualified firm reasonably acceptable to Buyer and Seller (and with the costs of such firm being paid by Buyer and Seller in equal proportion)), and such sum being net of and after giving effect to any condemnation award proceeds to be paid to Seller (such resulting sum, the “Condemnation Value”), is equal to or greater than \$1,000,000, Seller shall, at its option, elect either (x) to replace the affected portion of the Owned Real Property that was the subject of such Taking with reasonably comparable real property (including, without limitation, as to value and utility) and/or restore the remaining portion of the Owned Real Property to a condition substantially similar in value and utility as compared to the Owned Real Property, taken as a whole, immediately prior to the Taking, or (y) make an appropriate reduction to the Enterprise Value by an amount equal to such Condemnation Value (less, to the extent not taken into account in calculating the Condemnation Value, the amount of any condemnation award proceeds to be paid to Seller) (each, a “Taking Election”); provided, that, notwithstanding anything in this Agreement to the contrary, in the event the Condemnation Value exceeds \$15,000,000, then Buyer will have the right, but not the obligation, to terminate this Agreement by written notice to Seller within ten Business Days after Buyer has received both (i) Taking Notice and (ii) the estimate of the Condemnation Value, as determined by the qualified firm appointed by Buyer and Seller pursuant to this Section 5.14(c). Subject to the proviso in the immediately preceding sentence, (A) if Seller makes (or is deemed to have made) a Taking Election to replace or restore the Owned Real Property or reduce the Purchase Price, such condemnation shall not affect the Closing, and neither Buyer nor Seller shall have the right or option to terminate this Agreement and (B) in the event that Seller fails to timely deliver a Taking Notice (and/or fails to timely notify Buyer of its Taking Election), Seller shall be deemed to have made a Taking Election pursuant to clause (y) above. If the Condemnation Value is less than \$1,000,000, (1) Seller shall not have the obligation to replace the portion of the Owned Real Property that is the subject of such Taking (but shall be obligated to cooperate in the pursuit of any applicable condemnation award proceeds and shall use commercially reasonable efforts to assign to Buyer the right to receive any such condemnation award proceeds), (2) there shall be no reduction to the Enterprise Value, and (3) neither Buyer nor Seller shall have the right or option to terminate this Agreement and such Taking shall not affect the Closing.

Section 5.15 Use of Transferred Codes. Without limiting Seller's other obligations hereunder, Seller shall reasonably cooperate with Buyer, at Buyer's sole cost and expense, during the 30-day period immediately following the Closing to assist Buyer in obtaining replacements for any of the Transferred Codes (including the associated Product GS1 Company Prefixes on the GS1 US, Inc. register) used or held for use in connection with the Business and shall use commercially reasonable efforts to make the Transferred Codes available to Buyer until Buyer obtains such replacement codes.

Section 5.16 Correspondence. Seller covenants and agrees that it shall use all commercially reasonable efforts to promptly forward to Buyer any mail (physical, electronic or otherwise), facsimile or telephone inquiries of actual customers or actual or potential suppliers and vendors of or relating to the Business, including customer orders.

Section 5.17 Pre-Closing Consents. No later than three Business Days before the Closing Date, Seller shall (i) obtain all necessary consents from the lenders under the Seller Credit Agreement to (A) permit the consummation of the transactions contemplated by this Agreement under the Seller Credit Agreement and (B) effect the release, discharge, removal and termination of all Encumbrances on the Purchased Assets arising under the Seller Credit Agreement and (ii) deliver copies of such consents to Buyer.

Section 5.18 Post-Closing Access; Owned Real Property Matter.

(a) For a period of three (3) years following the Closing Date, Buyer and its Affiliates shall afford Seller and its Representatives reasonable access (including for inspection and copying) at all reasonable times upon reasonable advance notice to the Owned Real Property and to the extent reasonably requested by Seller in connection with any Actions arising from or relating to the Owned Real Property Matter; provided, however, that any such access shall be conducted at Seller's sole risk, cost and expense, during normal business hours, under the supervision of Buyer's personnel and in such a manner as not unreasonably to interfere with the normal operations of Buyer.

(b) For a period of four months following the Closing Date, Buyer shall not, and shall cause its Affiliates and its and their Representatives not to, without the prior written consent of Seller (not to be unreasonably withheld, conditioned or delayed) perform any capital repairs and replacements or other extraordinary maintenance of the Owned Real Property building structure, foundation, supporting structure or similar, to the extent that such repairs, replacements or other extraordinary maintenance arise from or relate to the Owned Real Property Matter unless (i) such repairs, replacements or other extraordinary maintenance are necessary to protect the health or safety of any of Buyer's or its Affiliates' employees or (ii) the failure to make such repairs, replacements or other extraordinary maintenance would reasonably be expected to disrupt the operation of the Business, in which case Buyer will provide Seller reasonable advance notice prior to making such repair, replacements or other extraordinary maintenance.

Section 5.19 Specified Assets. From and after the date of this Agreement through the Closing, Buyer and Seller shall negotiate in good faith to determine whether the assets listed on Schedule 5.19 of the Disclosure Schedules can be removed from the Owned Real Property and transferred to Seller without causing any disruption to the Business.

Section 5.20 Shared Contracts.

(a) Prior to the Closing Date, Buyer shall provide to Seller a list of Shared Contracts to be replaced in connection with the transaction (the "Designated Shared Contracts"). From and after the date of delivery thereof, each of Seller and Buyer shall cooperate and shall use their commercially reasonable efforts to cause each Designated Shared Contract to be replaced with separate contract rights and obligations (each, a "Buyer Replacement Contract") that provides Buyer with contract rights and obligations under such Buyer Replacement Contract that are substantially similar to the rights and obligations primarily attributable to the Business under such Shared Contract.

(b) If, on the Closing Date, any Buyer Replacement Contract is not obtained, (i) Seller and Buyer shall continue to use commercially reasonable efforts for a period of 90 days following the Closing to obtain such Buyer Replacement Contract and (ii) until such Buyer Replacement Contract is obtained and to the extent permissible under applicable Law, use commercially reasonable efforts to institute alternative arrangements under which Buyer and its Affiliates would obtain the appropriate benefits and assume the related obligations and bear the related economic burdens in respect of the Designated Shared Contracts to the extent primarily related to the Business.

(c) In no event shall either party be required to make any out-of-pocket payment (except for out-of-pocket payments that Buyer elects and agrees to reimburse to Seller) or any material concessions to any third party, or commence any Action, to obtain any Buyer Replacement Contract.

Section 5.21 Repayment of Receivables. Within one (1) Business Day following the execution of this Agreement, Buyer shall make a payment in the amount of \$5,479,326.26 ("Buyer Receivables Payment") to be paid by wire transfer of immediately available funds to Seller, which amount shall be applied to the balance of accounts receivable payable by Buyer or its Affiliates to Seller or its Affiliates. In the event Buyer fails to pay in full the Buyer Receivables Payment in accordance with this Section 5.21, such failure shall be deemed a Willful Breach for all purposes under this Agreement and Seller shall be entitled to seek specific performance pursuant to Section 10.11 or terminate this Agreement pursuant Section 9.1(b).

Section 5.22 Financial Cooperation. From and after the date hereof until the date that is one hundred (100) days following the Closing Date, Buyer shall use commercially reasonable efforts, at Seller's sole cost and expense, to provide reasonable assistance to Seller upon Seller's reasonable request, to the extent reasonably necessary to facilitate Seller's preparation of audited financial statements of Seller for its fiscal year ending June 30, 2023 and containing information sufficient to permit Seller to comply with the requirements of Regulations S-K and S-X promulgated under the Securities Exchange Act of 1934, as amended; provided, that Buyer shall have no obligation to procure any third-party services or employ any additional personnel in connection with providing such assistance and cooperation; provided, further, that Buyer shall not be required to provide any such assistance if it would cause unreasonable disruption to Buyer's business.

Section 5.23 Good Faith Efforts to Negotiate. From and after the date hereof until the later of the (a) Closing Date or (b) Delayed Closing Deliverables Execution Date, the parties shall use their reasonable best efforts to diligently negotiate and finalize the forms of, in good faith (i) the Owned Real Property Office Lease, on the terms and conditions set forth on Exhibit A, (ii) the Owned Real Property Warehouse Lease, on the terms and conditions set forth on Exhibit B, (iii) the Transition Services Agreement, on the terms and conditions set forth on Exhibit C and (iv) the Co-Manufacturing Agreement on the terms and conditions set forth on Exhibit D. Notwithstanding anything herein, if all of the conditions to the obligations of the parties set forth in Article VII have been satisfied (other than such conditions as may, by their terms, only be satisfied at the Closing or on the Closing Date) other than the conditions set forth in Section 7.2(d) and Section 7.3(d), in each case, with respect to the execution and delivery of the Owned Real Property Office Lease, the Owned Real Property Warehouse Lease, the Transition Services Agreement and/or the Co-Manufacturing Agreement, as applicable, as a result of the parties having failed to finalize the forms of such agreements prior to such date (each such agreement, a "Delayed Closing Deliverable"), then for purposes of this Agreement, (A) the conditions set forth in Section 7.2(d) and Section 7.3(d), respectively, with respect to such Delayed Closing Deliverables shall be deemed satisfied in full, (B) the parties shall consummate the Closing in accordance with Section 2.7, (C) from and after the Closing until the earlier of (x) the execution of such Delayed Closing Deliverables by each party thereto or (y) the expiration of the term of such Delayed Closing Deliverable set forth in Exhibits A-D, as applicable (such date, the "Delayed Closing Deliverables Execution Date"), the parties shall operate and perform under the terms and conditions set forth on Exhibits A-D, as applicable, of each of the Delayed Closing Deliverables.

Section 5.24 Payoff Indebtedness. Seller shall deliver to Buyer, no less than three Business Days prior to the Closing Date, a payoff letter in form and substance reasonably satisfactory to Buyer executed by the administrative agent under the Seller Credit Agreement, effective as of the Closing Date, which (i) indicates the total amount (the "Payoff Amount") required to be paid to fully satisfy all obligations, fees and expenses related to the term loan outstanding under the Seller Credit Agreement (the "Payoff Indebtedness") in connection with the Closing (including any per diem or similar ticking fee), and (ii) provides for, among other things, the automatic release, discharge, removal and termination of all Encumbrances on the Purchased Assets arising under the Seller Credit Agreement and the other loan documents relating thereto, upon payment of the Payoff Amount (such payoff letter, together with the required discharge statements, termination statements and originals of all pledged collateral to be returned to Seller, the "Payoff Letter").

ARTICLE VI TAX MATTERS

Section 6.1 Transfer Taxes. Seller, on the one hand, and Buyer and its Affiliates, on the other hand, shall cooperate in timely filing all Tax Returns, as and when required, to comply with the provisions of any applicable Tax Laws relating to Transfer Taxes. Each party shall be responsible for (and shall indemnify and hold the other party and its Affiliates harmless from and against) fifty percent (50%) of any Transfer Taxes (and against any cost or expense incurred in connection with filing any Tax Return related to Transfer Taxes).

Section 6.2 Preparation of Tax Returns. Seller shall timely and properly prepare and file (or cause to be timely prepared and filed) all Tax Returns required by applicable Law covering the Business, the operation of the Business, and the Purchased Assets for any taxable period ending at or prior to the Closing that are required to be filed, regardless of when due (and shall timely pay all Taxes shown as due on such Tax Returns), which Tax Returns shall be prepared and filed consistent with past practice and custom (unless otherwise required pursuant to applicable Law). Buyer shall be required to prepare and file (or cause to be prepared and filed) all Tax Returns required by applicable Law covering the Business, the Purchased Assets, and the Assumed Liabilities for any taxable period ending subsequent to the Closing, including any Straddle Period (and shall timely pay all Taxes shown as due on such Tax Returns, subject to the terms of Section 6.1 and Section 6.5); provided, that this sentence will not be construed to require Buyer to file any Tax Return required to be filed by Seller under applicable Law (or to pay any Tax that is includible in Excluded Liabilities).

Section 6.3 Cooperation. Seller and Buyer shall reasonably cooperate with one another in connection with (i) the preparation and filing of any Tax Return with respect to the Business and the Purchased Assets (A) for any Straddle Period or (B) for any non-Straddle Period for up to three years following the Closing, (ii) any Tax claim or other Third Party Claim involving Taxes with respect to the Business and the Purchased Assets (A) for any Straddle Period or (B) for any non-Straddle Period for up to three years following the Closing, and (iii) any other matter under this Agreement relating to Taxes (A) for any Straddle Period or (B) for any non-Straddle Period for up to three years following the Closing. Such cooperation shall include the retention and the provision of records and information that are reasonably relevant to any such Tax matter and reasonable access to representatives on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Without limitation to the foregoing, Seller and Buyer agree to retain all books and records with respect to Tax matters pertinent to the Business and the Purchased Asset relating to any taxable period beginning prior to the Closing Date until the expiration of the statute of limitations applicable to such Tax or Tax matter.

Section 6.4 Withholding. Notwithstanding anything to the contrary stated elsewhere in this Agreement, Buyer shall be entitled to deduct and withhold, or cause to be deducted and withheld, from any consideration payable or otherwise deliverable pursuant to this Agreement to any Person pursuant to this Agreement such amounts as are required to be deducted and withheld with respect to the making of such payment as required by applicable Law. No later than three (3) Business Days prior to the applicable payment to which such deduction and withholding relate, Buyer shall provide written notice to Seller of its intended deduction and withholding, and Buyer shall use commercially reasonable efforts to cooperate to reduce or eliminate any such deduction or withholding. To the extent such amounts are so withheld and paid over to or deposited with the appropriate Governmental Authority, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect to which such deduction and withholding was made.

Section 6.5 Tax Proration. With respect to a Straddle Period, (i) all real property Taxes, personal property Taxes, and similar ad valorem obligations levied or imposed with respect to the Business, the Purchased Assets, and the Assumed Liabilities (individually or in the aggregate) shall be apportioned between Seller and Buyer based on the number of days of such Straddle Period in the period ending on (and including) the Closing Date and the number of days of such taxable period in the period subsequent to the Closing Date and (ii) Taxes other than Taxes described in clause (i) of this sentence levied or imposed with respect to the Business, the Purchased Assets, and the Assumed Liabilities (individually or in the aggregate) shall be allocated using a “closing of the books” methodology as of the end of the Closing Date (the liability for Taxes as allocated between Buyer and Seller pursuant to clause (i) and clause (ii) of this sentence, the “Apportioned Obligations”); provided, that (x) exemptions, allowances, or deductions that are calculated on an annual basis shall be allocated between the period ending on the Closing Date and the period beginning subsequent to the Closing Date in proportion to the number of calendar days in each period and (y) the taxable period in respect of a particular real property Tax, personal property Tax, or any other similar ad valorem obligation shall begin on the date on which ownership of the applicable asset gives rise to the liability for the particular Tax and shall end on the day immediately prior to the next such applicable date. Seller shall be liable for the proportionate amount of such Apportioned Obligations that is attributable to such pre-Closing portion of such Straddle Period (the “Seller Property Tax Amount”). Buyer shall be liable for the proportionate amount of such Apportioned Obligations that is attributable to such post-Closing portion of such Straddle Period. Within sixty (60) days subsequent to the Closing Date, Seller shall present to Buyer Seller’s estimate of the Seller Property Tax Amount together with all documents and materials relevant to the calculation of such estimate. If the Seller Property Tax Amount taken into account in the determination of the Purchase Price (as finally determined pursuant to Section 2.8) exceeds Seller’s proportionate liability for such Taxes as determined by a Governmental Authority or as reported on applicable Tax Returns, Buyer shall reimburse Seller for such excess amount no later than ten (10) Business Days after such determination or any such Tax Return is filed by making a payment to Seller. If the Seller Property Tax Amount taken into account in the determination of the Purchase Price (as finally determined pursuant to Section 2.8) is less than Seller’s proportionate liability for such Taxes as determined by a Governmental Authority or as reported on applicable Tax Returns, Seller shall reimburse Buyer for the absolute value of the amount of such difference no later than ten (10) Business Days after receiving notice from Buyer of such determination or that any such Tax Return has been filed by making a payment to Buyer (or as otherwise directed by Buyer). Any payment required under this Section 6.5 that is not made within the time prescribed in this Section 6.5 shall bear interest at a rate of eight percent (8.0%) per annum, compounded quarterly.

Section 6.6 Tax Treatment. For federal income tax purposes, the sale of the Purchased Assets by Seller, and the purchase of the Purchased Assets by Buyer, is intended to be treated as a taxable acquisition of assets by Buyer from Seller (the “Intended Tax Treatment”). No party hereto shall, or shall permit any of its Affiliates to, take any position, or make any filing on any Tax Return, inconsistent with the Intended Tax Treatment unless otherwise required pursuant to a final, non-appealable determination made by a competent Governmental Authority under applicable Law.

Section 6.7 Tax Refunds. All refunds for any of the Taxes set forth in Section 2.4(b) shall be for the sole benefit of Seller and to the extent that Buyer receives a refund that is for the benefit of Seller, Buyer shall promptly pay such refund (without interest, other than interest received from the applicable Governmental Authority) to Seller, net of any reasonable out-of-pocket expenses incurred by Buyer or any of its Affiliates in connection with obtaining such refund or paying such refund to Seller in accordance with this Section 6.7. All refunds for Transfer Taxes shall be shared in the same manner that the liability for the underlying Tax is shared under Section 6.1. In the event that Buyer has made any payment under this Section 6.7 in respect of a refund and such refund is subsequently diminished, reduced or disallowed in connection with a proceeding initiated by a Governmental Authority primarily related to such refund, promptly upon the request of Buyer, Seller shall repay such amount that was diminished, reduced or disallowed to Buyer (or its designee). For the sake of clarity, and in accordance with Section 2.2(g), and without limiting Seller’s or its Affiliates’ rights under the Owned Real Property Office Lease or Owned Real Property Warehouse Lease, neither Seller nor any of its Affiliates shall be entitled to, or shall receive, any refund that is paid by a Governmental Authority subsequent to, or that arises subsequent to, the Closing if such refund relates to a Tax Abatement Agreement.

ARTICLE VII CONDITIONS TO CLOSING

Section 7.1 General Conditions. The respective obligations of Buyer and Seller to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of the following condition, which may, to the extent permitted by applicable Law, be waived in writing by either party in its sole discretion (provided, that such waiver shall only be effective as to the obligations of such party):

(a) no Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Law (whether temporary, preliminary or permanent) that is then in effect and that enjoins, restrains, conditions, makes illegal or otherwise prohibits the consummation of the transactions contemplated by this Agreement or the Ancillary Agreements.

Section 7.2 Conditions to Obligations of Seller. The obligations of Seller to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of each of the following conditions, any of which may be waived in writing by Seller in its sole discretion:

(a) *Representations and Warranties*. All of Buyer’s representations and warranties contained in Article IV shall be true and correct both when made and as of the Closing Date, except where the failure of such representations and warranties to be true and correct has not had, and would not reasonably be expected to have, individually or in the aggregate, a Buyer Material Adverse Effect.

(b) *Covenants.* Buyer shall have performed or complied with, in all material respects, all covenants and agreements required to be performed or complied with by it under this Agreement at or prior to the Closing.

(c) *Officer's Certificate.* Seller shall have received from Buyer a certificate to the effect set forth in Sections 7.2(a) and 7.2(b), signed by a duly authorized officer thereof.

(d) *Deliveries.* Subject to Section 5.23, Seller shall have received an executed copy of each of the documents listed in Section 2.7(d).

Section 7.3 Conditions to Obligations of Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of each of the following conditions, any of which may be waived in writing by Buyer in its sole discretion:

(a) *Representations and Warranties.*

(i) Each of the Seller Fundamental Representations shall be true and correct in all respects, both when made and as of the Closing Date with the same force and effect as though made on and as of the Closing Date, or in the case of representations and warranties that are made as of a specified date, such representations and warranties shall be true and correct in all but *de minimis* respects as of such specified date.

(ii) Each of the representations and warranties of Seller (other than the Seller Fundamental Representations) contained in Article III shall be true and correct in all respects (without giving effect to any limitation or qualification as to "materiality," "Material Adverse Effect" or similar phrases or words set forth therein) both when made and as of the Closing Date, or in the case of representations and warranties that are made as of a specified date, such representations and warranties shall be true and correct, to the extent set forth above, as of such specified date; except where the failure of such representations and warranties to be so true and correct would have or reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) *Covenants.* Seller shall have performed or complied with, in all material respects, all covenants and agreements required to be performed or complied with by it under this Agreement at or prior to the Closing.

(c) *Officer's Certificate.* Buyer shall have received from Seller a certificate to the effect set forth in Sections 7.3(a) and 7.3(b), signed by a duly authorized officer thereof.

(d) *Deliveries.* Subject to Section 5.23, Buyer shall have received an executed copy of each of the documents listed in Section 2.7(b).

- (e) *No Material Adverse Effect*. Since the date of this Agreement, no Material Adverse Effect shall have occurred.

ARTICLE VIII INDEMNIFICATION

Section 8.1 Survival. All of the representations and warranties of the parties contained in this Agreement shall not survive (and shall expire as of) the Closing; provided, however, that the foregoing shall not preclude the parties from asserting a claim for Fraud. None of the covenants or agreements contained in this Agreement to be performed prior to the Closing shall survive the Closing and shall terminate at the Closing or upon the termination of this Agreement (as the case may be). All of the covenants and agreements contained in this Agreement to be performed on or after the Closing shall survive the Closing until fully performed or fulfilled, unless and only to the extent that non-compliance with such covenants or agreements is waived in writing by the party entitled to such performance (the applicable date on which the representations, warranties, covenants or agreements expire pursuant to this sentence or the preceding sentences of this Section 8.1, each a “Survival Expiration Date”). The parties hereto acknowledge and agree that with respect to any claim that any party may have against any other party that is permitted pursuant to the terms of this Agreement, the Survival Expiration Dates set forth and agreed to in this Section 8.1 shall govern when any such claim may be brought and shall replace and supersede any statute of limitations that may otherwise be applicable.

Section 8.2 Indemnification by Seller. Seller shall save, defend, indemnify and hold harmless Buyer and its Subsidiaries and the respective Representatives, successors and assigns of each of the foregoing from and against, and shall compensate and reimburse each of the foregoing for, any and all losses, damages, liabilities, deficiencies, claims, Taxes, interest, awards, judgments, penalties, costs and expenses (including attorneys’ fees, costs and other out-of-pocket expenses incurred in investigating, preparing or defending the foregoing) (hereinafter collectively, “Losses”), asserted against, incurred, sustained or suffered by any of the foregoing as a result of, arising out of or relating to, without duplication:

(a) any breach of any covenant or agreement by Seller contained in this Agreement;

(b) any Excluded Asset or Excluded Liability; and

(c) (i) Seller’s portion of any Transfer Taxes pursuant to Section 6.1 and (ii) Taxes that are set forth in Section 2.4(b) and that are imposed on Buyer (or any of its Affiliates).

Section 8.3 Indemnification by Buyer. Buyer shall save, defend, indemnify and hold harmless Seller and its Subsidiaries and the respective Representatives, successors and assigns of each of the foregoing from and against, and shall compensate and reimburse each of the foregoing for, any and all Losses asserted against, incurred, sustained or suffered by any of the foregoing as a result of, arising out of or relating to, without duplication:

(a) any breach of any covenant or agreement by Buyer contained in this Agreement;

- (b) any Assumed Liability; and
- (c) Buyer's portion of any Transfer Taxes pursuant to Section 6.1.

Section 8.4 Procedures.

(a) A party seeking indemnification (the "Indemnified Party") in respect of, arising out of or involving a Loss or a claim or demand made by any Person against the Indemnified Party (a "Third Party Claim") shall deliver notice (a "Claim Notice") in respect thereof to the party against whom indemnity is sought (the "Indemnifying Party") with reasonable promptness after receipt by such Indemnified Party of notice of the Third Party Claim, which notice shall describe the claim in reasonable detail and shall indicate the estimated amount, if determinable and reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party, and shall provide the Indemnifying Party with such other information with respect thereto as the Indemnifying Party may reasonably request. The failure to deliver a Claim Notice, however, shall not release the Indemnifying Party from any of its obligations under this Article VIII, except to the extent that the Indemnifying Party is materially prejudiced by such failure.

(b) The Indemnifying Party shall have the right, upon written notice to the Indemnified Party within 20 days of receipt of a Claim Notice from the Indemnified Party in respect of such Third Party Claim, to assume the defense thereof at the expense of the Indemnifying Party with counsel selected by the Indemnifying Party. Notwithstanding the foregoing, the Indemnifying Party shall not be entitled to assume the defense of any Third Party Claim for equitable or injunctive relief or any claim that would impose criminal liability or damages, and the Indemnified Party shall have the right to defend, at the expense of the Indemnifying Party, any such Third Party Claim. The Indemnifying Party shall be liable for the fees and expenses of counsel employed by the Indemnified Party for any period during which the Indemnifying Party has failed to assume the defense thereof in accordance with this Section 8.4(b). If the Indemnifying Party does not expressly elect to assume the defense of such Third Party Claim within the time period and otherwise in accordance with the first sentence of this Section 8.4(b), the Indemnified Party shall have the sole right to assume the defense of and, subject to the last sentence of this Section 8.4(b), to settle such Third Party Claim. If the Indemnifying Party assumes the defense of such Third Party Claim, the Indemnified Party shall have the right to employ separate counsel and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the sole cost and expense of the Indemnified Party unless the named parties to the Third Party Claim (including any impleaded parties) include both the Indemnified Party and the Indemnifying Party, and the Indemnified Party has been advised in writing by counsel that representation by counsel to the Indemnifying Party of both the Indemnifying Party and such Indemnified Party presents or is reasonably likely to present such counsel with a conflict of interest. If the Indemnifying Party assumes the defense of any Third Party Claim, the Indemnified Party shall, at the Indemnifying Party's expense, cooperate with the Indemnifying Party in such defense and make available to the Indemnifying Party all witnesses, pertinent records, materials and information in the Indemnified Party's possession or under the Indemnified Party's control relating thereto as is reasonably required by the Indemnifying Party. If the Indemnifying Party assumes the defense of any Third Party Claim, the Indemnifying Party shall not, without the prior written consent of the Indemnified Party, enter into any settlement or compromise or consent to the entry of any judgment with respect to such Third Party Claim if such settlement, compromise or judgment (i) involves a finding or admission of wrongdoing, (ii) does not include an unconditional written release by the claimant or plaintiff of the Indemnified Party from all liability in respect of such Third Party Claim or (iii) imposes equitable remedies or any obligation on the Indemnified Party other than solely the payment of money damages for which the Indemnified Party will be indemnified hereunder.

(c) The Indemnifying Party shall not be entitled to require that any action be made or brought against any other Person before action is brought or claim is made against it hereunder by the Indemnified Party.

(d) Notwithstanding the provisions of Section 10.9, each Indemnifying Party hereby consents to the nonexclusive jurisdiction of any court in which an Action in respect of a Third Party Claim is brought against any Indemnified Party for purposes of any claim that an Indemnified Party may have under this Agreement with respect to such Action or the matters alleged therein and agrees that process may be served on each Indemnifying Party with respect to such claim anywhere.

(e) Notwithstanding the foregoing or anything else in this Agreement to the contrary, to the extent the resolution of a particular Third Party Claim with respect to Taxes for which more than fifty percent (50%) of the amount of the Third-Party Claim constitute Taxes that are Excluded Liabilities, Seller must (i) promptly notify Buyer of the assertion of such, (ii) keep Buyer informed of all proceedings, and (iii) obtain the written consent of Buyer (not to be unreasonably withheld, conditioned, or delayed) before agreeing to any settlement of the same.

Section 8.5 Limitations on Indemnification.

(a) To the extent required by applicable Law, each Indemnified Party shall take, and cause its Affiliates to take, all reasonable steps to mitigate any Loss upon becoming aware of any event or circumstance that would be reasonably expected to, or does, give rise thereto; provided, that, for the avoidance of doubt, any reasonable fees, costs and expenses incurred as a result of such efforts to mitigate will be deemed Losses for purposes of this Article VIII.

(b) The maximum liability for all Losses for which indemnification is sought under Section 8.2(a) shall not exceed, in the aggregate, the Purchase Price.

(c) Buyer shall not be entitled to recovery under this Article VIII for any Losses in respect of the matters identified in the Owned Real Property Matter (other than, subject to the procedures set forth in this Article VIII, in connection with any Third Party Claim brought against a Buyer Indemnified Party in connection therewith) and Buyer hereby acknowledges and agrees that its sole recourse with respect to such matters shall be the Specified Owned Real Property Reduction Amount received at Closing.

Section 8.6 Tax Treatment of Indemnification Payments. All indemnification payments made under this Agreement shall be treated by each of the parties hereto (and its Affiliates) as an adjustment to the Purchase Price (as finally determined pursuant to Section 2.8) for all applicable tax purposes, unless otherwise required by applicable Law.

**ARTICLE IX
TERMINATION**

Section 9.1 Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by mutual written consent of Buyer and Seller;

(b) (i) by Seller, if Buyer breaches or fails to perform in any respect any of its representations, warranties or covenants contained in this Agreement and such breach or failure to perform (A) would give rise to the failure of the conditions set forth in Section 7.2(a) or Section 7.2(b), (B) cannot be or has not been cured within 15 days following delivery to Buyer of written notice of such breach or failure to perform except that the cure period for a failure to deliver the full consideration payable pursuant to Article II at the Closing or the Buyer Receivables Payment amount pursuant to Section 5.21, in each case, as required hereunder shall be one (1) Business Day following delivery of written notice of such breach or failure to perform, and (C) has not been waived by Seller or (ii) by Buyer, if Seller breaches or fails to perform in any respect any of its representations, warranties or covenants contained in this Agreement and such breach or failure to perform (A) would give rise to the failure of a condition set forth in Section 7.3(a) or Section 7.3(b), (B) cannot be or has not been cured within 15 days following delivery to Seller of written notice of such breach or failure to perform and (C) has not been waived by Buyer;

(c) by either Seller or Buyer if the Closing shall not have occurred by September 30, 2023 (the "Termination Date"); provided, that the right to terminate this Agreement under this Section 9.1(c) shall not be available if the failure of the party so requesting termination to fulfill any obligation under this Agreement shall have been the cause of, or shall have resulted in, the failure of the Closing to occur on or prior to the Termination Date; provided, further, that the Termination Date shall be extended by the amount of time necessary for Seller to complete any Restoration pursuant to a Casualty Loss Election in accordance with Section 5.14(b) or any replacement or restoration pursuant to a Taking Election in accordance with Section 5.14(c);

(d) by either Seller or Buyer in the event that any Governmental Authority shall have issued an order, decree or ruling or taken any other action permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement and such order, decree, ruling or other action shall have become final and non-appealable;

(e) by Buyer, if between the date hereof and the Closing, there has been a Material Adverse Effect; or

(f) by Buyer, if and to the extent permitted pursuant to Section 5.14(b) or Section 5.14(c).

The party seeking to terminate this Agreement pursuant to this Section 9.1 (other than Section 9.1(a)) shall give prompt written notice of such termination to the other party.

Section 9.2 Effect of Termination. In the event of termination of this Agreement as provided in Section 9.1, this Agreement shall forthwith become void and there shall be no liability on the part of either party except (a) for the provisions of Section 3.26 and Section 4.5 relating to broker's fees and finder's fees, Section 5.10 relating to confidentiality, Section 5.12 relating to public announcements, Article X (other than Section 10.11 relating to enforcement) and this Section 9.2 and (b) that no such termination shall relieve either party from any liability or damages arising out of a Willful Breach or Fraud.

ARTICLE X
GENERAL PROVISIONS

Section 10.1 Fees and Expenses. Except as otherwise provided herein, all fees and expenses incurred in connection with or related to this Agreement and the Ancillary Agreements and the transactions contemplated hereby and thereby shall be paid by the party incurring such fees or expenses, whether or not such transactions are consummated; provided, that (i) no such fees and expenses payable by Seller shall be paid from any assets otherwise transferable to Buyer pursuant hereto, and in addition to the other costs and expenses to be paid by Buyer set forth elsewhere in this Agreement, Buyer shall pay for the following costs in connection with this transaction: all recording and filing fees, if any, in connection with the acquisition of the Purchased Assets (other than Transfer Taxes, which shall be paid by Seller and Buyer as set forth in this Agreement), the costs associated with any title commitment received from the Title Company and the standard fees for the Title Insurance Policy and any endorsement thereto, and any Survey of Owned Real Property requested by Buyer. In the event of termination of this Agreement, the obligation of each party to pay its own expenses will be subject to any rights of such party arising from a Willful Breach of this Agreement by the other.

Section 10.2 Amendment and Modification. This Agreement may not be amended, modified or supplemented in any manner, whether by course of conduct or otherwise, except by an instrument in writing specifically designated as an amendment hereto, signed on behalf of each party.

Section 10.3 Waiver. No failure or delay of either party in exercising any right or remedy hereunder 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, or any course of conduct, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the parties hereunder are cumulative and are not exclusive of any rights or remedies which they would otherwise have hereunder. Any agreement on the part of either party to any such waiver shall be valid only if set forth in a written instrument executed and delivered by a duly authorized officer on behalf of such party.

Section 10.4 Notices. All notices and other communications hereunder shall be in writing and shall be deemed duly given (a) on the date of delivery if delivered personally, or if sent via e-mail with confirmed receipt, on the date sent via email, (b) on the first Business Day following the date of dispatch if delivered utilizing a next-day service by a recognized next-day courier or (c) on the earlier of confirmed receipt or the fifth Business Day following the date of mailing if delivered by registered or certified mail, return receipt requested, postage prepaid. All notices hereunder shall be delivered to the addresses set forth below, or pursuant to such other instructions as may be designated in writing by like notice by the party to receive such notice:

(i) if to Seller, to:

Farmer Bros. Co.
1912 Farmer Brothers Drive
Northlake, Texas 76262
Attention: Jared Vitemb
E-mail: jvitemb@farmerbros.com

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

Winston & Strawn LLP
2121 N. Pearl St. Suite 900
Dallas, TX 75230
Attention: Charles T. Haag
E-mail: chaag@winston.com

(ii) if to Buyer, to:

TreeHouse Foods, Inc.
2021 Spring Road
Suite 600
Oak Brook, IL 60523
Attention: Kristy Waterman
E-mail: Kristy.Waterman@treehousefoods.com

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

Gibson, Dunn & Crutcher LLP
2001 Ross Avenue Suite 2100
Dallas, TX 75201
Attention: Jeffrey Chapman and Jonathan Whalen
E-mail: JChapman@gibsondunn.com, JWhalen@gibsondunn.com

Section 10.5 Interpretation. When a reference is made in this Agreement to a Section, Article, Exhibit or Schedule such reference shall be to a Section, Article, Exhibit or Schedule of this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement or in any Exhibit or Schedule are for convenience of reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Any capitalized terms used in any Exhibit or Schedule but not otherwise defined therein shall have the meaning as defined in this Agreement. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth herein. The word “including” and words of similar import when used in this Agreement will mean “including, without limitation,” unless otherwise specified. The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to the Agreement as a whole and not to any particular provision in this Agreement. The term “or” is not exclusive. The word “will” shall be construed to have the same meaning and effect as the word “shall.” References to days mean calendar days unless otherwise specified.

Section 10.6 Entire Agreement. This Agreement (including the Exhibits and Schedules hereto), the Ancillary Agreements and the Confidentiality Agreement constitute the entire agreement, and supersede all prior written agreements, arrangements, communications and understandings and all prior and contemporaneous oral agreements, arrangements, communications and understandings between the parties with respect to the subject matter hereof and thereof. Notwithstanding any oral agreement or course of conduct of the parties or their Representatives to the contrary, no party to this Agreement shall be under any legal obligation to enter into or complete the transactions contemplated hereby unless and until this Agreement shall have been executed and delivered by each of the parties.

Section 10.7 No Third-Party Beneficiaries. Except as provided in Article VIII, nothing in this Agreement, express or implied, is intended to or shall confer upon any Person other than the parties and their respective successors and permitted assigns any legal or equitable right, benefit or remedy of any nature under or by reason of this Agreement.

Section 10.8 Governing Law. This Agreement and any claims or causes of action arising out of or relating to this Agreement, the negotiation, execution or performance of this Agreement or the transactions contemplated hereby (whether in contract, in tort, under statute or otherwise) shall be governed by, and interpreted, construed and enforced in accordance with, the internal Laws of the State of Delaware, including its statutes of limitations, without giving effect to any choice or conflict of Laws rules or provisions (whether of the State of Delaware or any other jurisdiction) that would result in the application of the Laws of any jurisdiction other than the State of Delaware.

Section 10.9 Submission to Jurisdiction. Each of the parties irrevocably agrees that any legal action or proceeding arising out of or relating to this Agreement brought by any party or its successors or assigns against the other party shall be brought and determined in the Court of Chancery of the State of Delaware, provided, that if jurisdiction is not then available in the Court of Chancery of the State of Delaware, then any such legal action or proceeding may be brought in any federal court located in the State of Delaware or any other Delaware state court. Each of the parties hereby irrevocably submits to the exclusive jurisdiction of the aforesaid courts for itself and with respect to its property, generally and unconditionally, with regard to any such action or proceeding arising out of or relating to this Agreement and the transactions contemplated hereby. Each of the parties agrees not to commence any action, suit or proceeding relating thereto except in the courts described above in Delaware, other than actions in any court of competent jurisdiction to enforce any judgment, decree or award rendered by any such court in Delaware as described herein. Each of the parties further agrees that notice as provided herein shall constitute sufficient service of process and the parties further waive any argument that such service is insufficient. Each of the parties hereby irrevocably and unconditionally waives, and agrees not to assert, by way of motion or as a defense, counterclaim or otherwise, in any action or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby, (a) any claim that it is not personally subject to the jurisdiction of the courts in Delaware as described herein for any reason, (b) that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (c) that (i) the suit, action or proceeding in any such court is brought in an inconvenient forum, (ii) the venue of such suit, action or proceeding is improper or (iii) this Agreement, or the subject matter hereof, may not be enforced in or by such courts. Notwithstanding the foregoing, the parties agree that disputes with respect to the matters referenced in Section 2.8 shall be resolved by the Independent Accounting Firm as provided therein.

Section 10.10 Assignment; Successors. Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned or delegated, in whole or in part, by operation of law or otherwise, by either party without the prior written consent of the other party, and any such assignment without such prior written consent shall be null and void; provided, however, that Buyer may assign this Agreement to any Subsidiary of Buyer without the prior consent of Seller; provided, further, that no assignment shall limit Buyer's obligations hereunder. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the parties and their respective successors and assigns.

Section 10.11 Specific Performance. The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. Accordingly, each of the parties shall be entitled to specific performance of the terms hereof, including an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in the Court of Chancery of the State of Delaware, provided, that if jurisdiction is not then available in the Court of Chancery of the State of Delaware, then in any state or federal court located in the State of Delaware, this being in addition to any other remedy to which such party is entitled at law or in equity. Each of the parties hereby further waives (a) any defense in any action for specific performance that a remedy at law would be adequate and (b) any requirement under any law to post security as a prerequisite to obtaining equitable relief.

Section 10.12 Currency. All references to "dollars" or "\$" or "US\$" in this Agreement or any Ancillary Agreement refer to United States dollars, which is the currency used for all purposes in this Agreement and any Ancillary Agreement.

Section 10.13 Severability. Whenever possible, each provision or portion of any provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision or portion of any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable Law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or portion of any provision in such jurisdiction, and this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision or portion of any provision had never been contained herein.

Section 10.14 Waiver of Jury Trial. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 10.15 Counterparts. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same instrument and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

Section 10.16 Facsimile or .pdf Signature. This Agreement may be executed by facsimile or .pdf signature and a facsimile or .pdf signature shall constitute an original for all purposes.

Section 10.17 Time of Essence. Time is of the essence with regard to all dates and time periods set forth or referred to in this Agreement.

Section 10.18 No Presumption Against Drafting Party. Each of Buyer and Seller acknowledges that each party to this Agreement has been represented by legal counsel in connection with this Agreement and the transactions contemplated by this Agreement. Accordingly, any rule of law or any legal decision that would require interpretation of any claimed ambiguities in this Agreement against the drafting party has no application and is expressly waived.

Section 10.19 Exhibits and Schedules; Disclosure Schedule. The Exhibits and schedules to this Agreement are a material part of this Agreement and are incorporated by reference herein. All section headings in the Disclosure Schedules correspond to the sections of this Agreement, but information provided in any section of the Disclosure Schedules shall constitute disclosure for purposes of each section of this Agreement where such information is reasonably apparent based on a plain reading of such disclosure. Unless the context otherwise requires, all capitalized terms used in the Disclosure Schedules shall have the respective meanings assigned to such terms in this Agreement. Certain information set forth in the Disclosure Schedules is included solely for informational purposes, and may not be required to be disclosed pursuant to this Agreement. No reference to or disclosure of any item or other matter in the Disclosure Schedules shall be construed as an admission or indication that such item or other matter is required to be referred to or disclosed in the Disclosure Schedules. No disclosure in the Disclosure Schedules relating to any possible breach or violation of any agreement or Law shall be construed as an admission or indication that any such breach or violation exists or has actually occurred. The inclusion of any information in the Disclosure Schedules shall not be deemed to be an admission or acknowledgment by Seller that, in and of itself, such information is material to or outside the Ordinary Course of Business or is required to be disclosed on the Disclosure Schedules. No disclosure in the Disclosure Schedules shall be deemed to create any rights in any third party.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, Buyer and Seller have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

TREEHOUSE FOODS, INC.

By: Amit Philip
Name: Amit Philip
Title: Senior Vice President, Chief Growth & Strategy Officer

FARMER BROS. CO.

By: /s/ D. Deverl Maserang II
Name: D. Deverl Maserang II
Title: President and Chief Executive Officer

[Signature Page to Asset Purchase Agreement]

Exhibit A

Owned Real Property Office Lease Term Sheet

Exhibit B

Owned Real Property Warehouse Lease Term Sheet

Exhibit C

Transition Services Agreement Term Sheet

Exhibit D

Form of Bill of Sale

Exhibit E

Form of Assumption Agreement

Exhibit F

Form of Deed

Exhibit G

Form of Assignment of Contracts

Exhibit H

Form of Co-Manufacturing Agreement

Exhibit I

Form of Seller Affidavit

AMENDMENT TO EQUITY PURCHASE AGREEMENT

This AMENDMENT (this “Amendment”) to that certain Asset Purchase Agreement, made and entered into as of June 6, 2023 (the “Purchase Agreement”), is dated June 30, 2023, by and among TreeHouse Foods, Inc., a Delaware corporation, (“Buyer”), and Farmer Bros. Co., a Delaware corporation (“Seller”). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Purchase Agreement.

RECITALS:

WHEREAS, Section 10.2 of the Purchase Agreement provides that any amendment to the Purchase Agreement requires a written instrument executed by the Parties; and

WHEREAS, the Parties desire to amend the Purchase Agreement and document certain other agreements as set forth herein.

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein, the Parties hereby agree as follows:

1. **Amendment to the Purchase Agreement.**

- (a) The definition of “Calculation Time” is hereby amended in its entirety and restated as follows:

“Calculation Time” means 11:59 p.m. Central Time on the Closing Date.

- (b) The definition of “Indebtedness” is hereby amended in its entirety and restated as follows (with the deleted language struck through in red text and additional language underlined in blue text below):

“Indebtedness” means, without duplication (but before taking into account the consummation of the transactions contemplated hereby), (i) the unpaid principal amount of accrued interest, premiums, penalties and other fees, expenses (if any), and other payment obligations and amounts due (including such amounts that would become due as a result of the consummation of the transactions contemplated by this Agreement) that would be required to be paid by a borrower to a lender pursuant to a customary payoff letter, in each case, in respect of (A) all indebtedness for borrowed money of the Business, or Seller or its Subsidiaries in connection with the Business, (B) indebtedness evidenced by notes, debentures, bonds or other similar instruments, and (C) all obligations with respect to interest-rate hedging, swaps or similar financial arrangements, ~~other than~~ including the Specified Derivative Agreements; (ii) all obligations of the Business, Seller or its Subsidiaries evidenced by any surety bonds, letters of credit or bankers’ acceptances or similar facilities, in each case, solely to the extent drawn and not reimbursed; (iii) all obligations under capitalized leases with respect to which the Business, Seller or its Subsidiaries is liable; (iv) any amounts for the deferred purchase price of goods and services, including any earn out liabilities associated with past acquisitions; (v) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by Seller or its Subsidiaries; and (vi) all obligations of the type referred to in clauses (i) through (v) of other Persons for the payment of which the Business, Seller or its Subsidiaries is responsible or liable, as obligor, guarantor, surety or otherwise, including any guarantee of such obligations.”

- (c) Section 2.1(j) of the Purchase Agreement shall be amended and restated in its entirety as follows (with the deleted language struck through in red text and additional language underlined in blue text below):

(j) ~~the Specified Derivative Agreements~~[reserved];

- (d) Section 2.2 shall be amended by including the following as Section 2.2(s):

(s) the Specified Derivative Agreements;

- (e) Section 2.7(a) of the Purchase Agreement shall be amended and restated in its entirety as follows (with the deleted language struck through in red text and additional language underlined in blue text below):

“(a) The sale and purchase of the Purchased Assets and the assumption of the Assumed Liabilities contemplated by this Agreement shall take place at a closing (the “Closing”) to be held remotely via electronic exchange of required Closing documentation ~~at 10:00 a.m. Central Time~~ on the third Business Day following the satisfaction or, to the extent permitted by applicable Law, waiver of all conditions to the obligations of the parties set forth in Article VII (other than such conditions as may, by their terms, only be satisfied at the Closing or on the Closing Date), or at such other place or at such other time or on such other date as Seller and Buyer mutually may agree in writing; provided, that under no circumstances, without the express unanimous written consent of Buyer and Seller (which consent may be given or withheld in each of Buyer’s and Seller’s sole and absolute discretion), shall the Closing occur prior to June 30, 2023. The day on which the Closing takes place is referred to as the “Closing Date.” and for all purposes hereunder, the Closing will be deemed to occur at 11:59 p.m. Central Time on the Closing Date.”

- (f) Article V of the Agreement shall be amended to add the following as Section 5.25.

“Section 5.25 Specified Derivative Agreement Substitution. Promptly following the Closing, Seller shall provide the Buyer with a list of each Specified Derivative Agreement that both (a) remains unsettled as of June 29, 2023 and (b) hedges the purchase of green coffee beans to be supplied to the customer listed on Item 7 of Schedule 1.1(a) of the Disclosure Schedules (the “Specified Customer”) with respect to future deliveries of green coffee to the Specified Customer (such future deliveries, the “Specified Deliveries” and such hedges, the “Specified Hedges”). Such list shall identify the quantity of green coffee to be delivered in connection with each Specified Delivery and the date that such Specified Delivery is to be made to the Specified Customer. As promptly as practicable on or following June 29, 2023, Seller shall settle the Specified Hedges and shall provide reasonable documentation to Buyer of the aggregate costs incurred by the Seller to settle the Specified Hedges (such aggregate cost, the “Specified Hedge Unwind Cost”). As promptly as practicable following the Closing, Buyer shall put in place new coffee bean hedging agreements for the purchase of green coffee beans as necessary for Buyer to satisfy its obligations to the Specified Customer with respect to the Specified Deliveries (collectively, the “New Buyer Hedges”). Subject to the limitations in the following sentence, within 30 days of receipt of payment from the Specified Customer with respect to a Specified Delivery, Buyer will remit to Seller, as an adjustment to the Purchase Price, an amount of cash equal to the difference between (i) the amount paid by the Specified Customer to Buyer for green coffee beans with respect to the applicable Specified Delivery minus (ii) the amount paid by Buyer with respect to the applicable green coffee beans under the applicable New Hedge. Notwithstanding the foregoing, under no circumstances shall Buyer’s aggregate obligations to Seller under this Section 5.25 exceed the lesser of (x) \$600,000 and (y) the Specified Hedge Unwind Cost.

2. **Amendment to the Disclosure Schedules.**

- (a) Schedule 1.1(b) of the Disclosure Schedules is hereby amended by deleting Schedule 1.1(b) in its entirety and replacing it with Schedule 1.1(b) as set forth on Exhibit A attached hereto and made a part hereof.
- (b) Schedule 3.10(a) of the Disclosure Schedules is hereby amended by deleting Schedule 3.10(a) in its entirety and replacing it with Schedule 3.10(a) as set forth on Exhibit B attached hereto and made a part hereof.

3. **General Provisions**

- (a) *No Other Provisions Amended.* Except as expressly set forth in this Amendment, all other terms and provisions of the Purchase Agreement will remain in full force and effect.
- (b) *Entire Agreement; Severability.* Sections 10.6 and 10.13 of the Purchase Agreement shall apply to this Amendment, *mutatis mutandis*, as if they had been fully set forth herein.

- (c) *Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.* Sections 10.8, 10.9 and 10.14 of the Purchase Agreement shall apply to this Amendment, *mutatis mutandis*, as if they had been fully set forth herein.
- (d) *Counterparts.* This Amendment may be executed in two or more counterparts, all of which shall be considered one and the same instrument and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.
- (e) *pdf Signature.* This Amendment may be executed by .pdf signature, and a .pdf signature shall constitute an original for all purposes.

[Signature page follows]

IN WITNESS WHEREOF, Buyer and Seller have executed this Amendment as of the date set forth above by their respective officers thereunto duly authorized.

TREEHOUSE FOODS, INC.

By: /s/ Amit Philip
Name: Amit Philip
Title: Senior Vice President & Chief Strategy Officer

FARMER BROS. CO.

By: /s/ D. Deverl Maserang II

Name: D. Deverl Maserang II

Title: President and Chief Executive Officer

SIGNATURE PAGE TO AMENDMENT TO ASSET PURCHASE AGREEMENT

EXHIBIT A

Schedule 1.1(b)

EXHIBIT B

Schedule 3.10(a)

FORM OF AMENDED AND RESTATED SEVERANCE AGREEMENT

This **AMENDED AND RESTATED SEVERANCE AGREEMENT** (this “Agreement”) is effective as of [•], 2023 (the “Effective Date”) and made by and between Farmer Bros. Co. (the “Company”) and [•] (the “Executive”). The Company and the Executive are referred to herein as the “Parties.”

WHEREAS, the Parties entered into a Change in Control Severance Agreement, dated [•] (the “Prior Agreement”), which this Agreement will replace and supersede in its entirety, effective as of the Effective Date;

WHEREAS, the Company considers it essential to the best interests of the Company’s shareholders to attract top executives and to foster the continuous employment of key management personnel; and

WHEREAS, in order to induce the Executive to remain in the employ of the Company and in consideration of the Executive’s continued services to the Company, the Company and the Executive desire to enter into this Agreement.

NOW, THEREFORE, in consideration of the foregoing, the Parties hereby agree as follows:

1. Term of Agreement. This Agreement shall be effective as of the date hereof and shall continue in effect until the earlier of (i) the Executive’s Separation from Service and the Company’s satisfaction of all of its obligations under this Agreement, if any; or (ii) the execution of a written agreement between the Company and the Executive terminating this Agreement.

2. Definitions. As used in this Agreement:

(i) “Accrued Benefits” means the total of:

(a) any portion of Executive’s base salary earned through the date of the Executive’s Separation from Service but not yet paid;

(b) to the extent an Executive is terminated following the end of the Company’s fiscal year, but prior to the payment of any bonus under the Company’s short-term incentive plan (the short-term incentive plan shall be hereinafter referred to as the “STIP”), the STIP payment that would have been paid to Executive based on the Company’s actual financial performance for that fiscal year, with no adjustment for individual performance.

(c) a payment for Executive’s earned but unused vacation time in accordance with applicable Company policy; and

(d) reimbursements for any and all amounts advanced in connection with Executive's employment for reasonable and necessary expenses incurred by Executive through such Separation from Service in accordance with the Company's policies and procedures on reimbursement of expenses.

(ii) "Annual Compensation" means:

(a) one year of base salary, at the highest base salary rate that the Executive was paid by the Company in the twelve (12) month period prior to the date of the Executive's Separation from Service; and

(b) the amount the Executive would pay on an annual basis for COBRA continuation premiums (less required co-pay) if the Executive elected COBRA continuation coverage under the Company's group insurance plans for Executive and Executive's then-covered dependents, if applicable.

(iii) "Cause" means (a) the willful and continued failure of Executive to perform Executive's material job duties with the Company Group (other than any such failure resulting from becoming Disabled), after a written demand for substantial performance is delivered to Executive by the Company which specifically identifies the manner in which the Company believes that Executive has not substantially performed Executive's duties and Executive has had an opportunity for thirty (30) days to cure such failure after receipt of such written demand; (b) engaging in an act (whether by act or omission) of willful misconduct, fraud, embezzlement, misappropriation or theft which results in damage to the Company Group; (c) conviction of Executive of, or Executive pleading guilty or nolo contendere to, a felony (other than a violation of a motor vehicle or moving violation law) or a misdemeanor if such misdemeanor (A) is reasonably expected to or actually causes material damage to the Company Group; or (B) involves the commission of a criminal act against the Company Group; or (d) the breach by Executive of any material provision of, or inaccuracy in any material respect of any representation made by Executive in, the Company's policies or any agreement to which the Executive is party with the Company or its affiliates, that is not cured within 30 days of written notice from the Company setting forth with reasonable particularity such breach or inaccuracy, provided that, if such breach or inaccuracy is not capable of being cured within 30 days after receipt of such notice, Executive shall not be entitled to such cure period.

(iv) "Change in Control" shall mean:

(a) An acquisition by any Person (as such term is defined in Section 3(a)(9) of the Exchange Act and used in Sections 13(d) and 14(d) thereof, including a "group" as defined in Section 13(d) thereof) of Beneficial Ownership of the Shares then outstanding (the "Company Shares Outstanding") or the voting securities of the Company then outstanding entitled to vote generally in the election of directors (the "Company Voting Securities Outstanding"), if such acquisition of Beneficial Ownership results in the Person beneficially owning (within the meaning of Rule 13d-3 promulgated under the Exchange Act) fifty percent (50%) or more of the Company Shares Outstanding or fifty percent (50%) or more of the combined voting power of the Company Voting Securities Outstanding; excluding, however, any such acquisition by a trustee or other fiduciary holding such Shares under one or more employee benefit plans maintained by the Company or any of its subsidiaries; or

(b) The approval of the stockholders of the Company of a reorganization, merger, consolidation, complete liquidation, or dissolution of the Company, the sale or disposition of all or substantially all of the assets of the Company or any similar corporate transaction (in each case referred to in this Section 2(iv)(b) as a “Corporate Transaction”), other than a Corporate Transaction that would result in the outstanding common stock of the Company immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into common stock of the surviving entity or a parent or affiliate thereof) at least fifty percent (50%) of the outstanding common stock of the Company or such surviving entity or parent or affiliate thereof immediately after such Corporate Transaction; provided, however, if the consummation of such Corporate Transaction is subject, at the time of such approval by stockholders, to the consent of any government or governmental agency, the Change in Control shall not occur until the obtaining of such consent (either explicitly or implicitly); or

(c) A change in the composition of the Board such that the individuals who, as of the Effective Date, constitute the Board (such Board shall be hereinafter referred to as the “Incumbent Board”) cease for any reason to constitute at least a majority of the Board; provided, however, for purposes of this Section 2(iv)(a) that any individual who becomes a member of the Board subsequent to the Effective Date whose election, or nomination for election by the Company’s stockholders, was approved by a vote of at least a majority of those individuals who are members of the Board and who were also members of the Incumbent Board (or deemed to be such pursuant to this proviso) shall be considered as though such individual were a member of the Incumbent Board; but, provided, further, that any such individual whose initial assumption of office occurs as a result of either an actual or threatened election contest (as such terms are used in Rule 14a-11 of Regulation 14A promulgated under the Exchange Act, including any successor to such Rule), or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board, shall not be so considered as a member of the Incumbent Board.

(v) “Change in Control Period” means the period beginning on the effective date of a Change in Control and ending on the first anniversary of such date.

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

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

(viii) “Company Group” means the Company and its subsidiaries collectively.

(ix) “Disabled” has the meaning set forth under applicable state or federal law, and no reasonable accommodation can be provided without undue hardship to the Company.

(x) “Good Reason” means, without the Executive’s consent: (a) a material reduction in Executive’s base salary, other than pursuant to a reduction applicable to all executives or employees of the Company generally; (b) a move of Executive’s primary place of work more than fifty (50) miles from its current location; or (c) a material diminution in Executive’s normal duties and responsibilities, including, but not limited to, the assignment without Executive’s consent of any diminished duties and responsibilities which are inconsistent with Executive’s positions, duties and responsibilities with the Company Group on the date of this Agreement, or a materially adverse change in Executive’s reporting responsibilities or titles as in effect on the date of this Agreement, or any removal of Executive from or any failure to re-elect Executive to any of such positions, except in connection with the termination of the Executive’s employment for Cause or upon death, the Executive becoming Disabled, voluntary resignation or other termination of employment by the Executive without Good Reason; provided that, in each case, Executive must provide at least thirty (30) days’ prior written notice of termination for Good Reason within 30 days after the occurrence of the event that Executive claims constitutes Good Reason, and the Company shall have the opportunity to cure such circumstances within thirty (30) days of receipt of such notice. For the avoidance of doubt, Good Reason shall not exist hereunder unless and until the 30-day cure period following receipt by the Company of Executive’s written notice expires and the Company shall not have cured such circumstances, and in such case Executive’s employment shall terminate for Good Reason on the day following expiration of such 30-day notice period.

(xi) “Qualifying Termination” means a Separation from Service on account of a termination of employment by the Company without Cause or the Executive’s resignation for Good Reason.

(xii) “Separation from Service” or “Separates from Service” or similar terms means a termination of employment with the Company Group that the Company determines is a “separation from service” in accordance with Section 409A of the Code.

(xiii) “Specified Employee” means a “specified employee” within the meaning of that term under Section 409A(a)(2)(B) of the Code and using the identification methodology selected by the Company from time to time in accordance therewith, or if none, the default methodology set forth therein.

3. Compensation Upon a Termination by the Company Without Cause or by the Executive for Good Reason.

(i) Outside the Change in Control Period. Subject to Section 3(iii) herein, upon a Qualifying Termination that occurs outside of the Change in Control Period, the Executive will be entitled to:

(a) Accrued Benefits, which shall be paid in a lump sum payment on the first regular pay date following the Separation from Service, except for any portion of Accrued Benefits attributable to any earned STIP payment, which shall be paid on the date the STIP payment would have been made to the Executive but for the Separation from Service;

(b) an amount equal to the Executive's Annual Compensation, which subject to Section 20(ii) below, shall be paid in regular bi-weekly installments on the Company's regular pay dates, commencing on the first regular pay date following the Separation from Service; and

(c) an amount equal to the STIP payment Executive would have otherwise been entitled but for Executive's Separation from Service during the year such Qualifying Termination occurs based on the Company's actual financial performance for such fiscal year (and with no adjustment for individual performance) prorated for the period of actual employment during such fiscal year, which shall be paid on the date the STIP payment is otherwise paid to similar situated employees of the Company pursuant to the STIP, but in no event later than September 15 of the year following Executive's Separation from Service.

(ii) During the Change in Control Period. Subject to Sections 3(iii) and 5 herein, if the Qualifying Termination occurs during the Change in Control Period:

(a) Accrued Benefits, which shall be paid in a lump sum on the first regular pay date following the Separation from Service;

(b) an amount equal to two (2) times the Executive's Annual Compensation, which, subject to Section 20(ii), shall be paid in a lump sum within the fifteen (15) day period following the Qualifying Termination;

(c) an amount equal to the STIP payment Executive would have otherwise been entitled but for Executive's Separation from Service during the year such Qualifying Termination occurs at one hundred percent (100%) of the STIP target award for which the Executive was eligible prorated for the period of actual employment during such fiscal year, which, subject to Section 20(ii), shall be paid in a lump sum within the fifteen (15) day period following the Qualifying Termination; and

(d) the Company shall reimburse the Executive for the reasonable costs, fees and expenses of outplacement assistance services (not to exceed twenty thousand dollars (\$20,000)) provided by any bona fide outplacement agency selected by the Executive, subject to the Executive's providing the Company with substantiation and documentation of such fees. The outplacement expenses must be incurred by the Employee no later than the December 31 of the second calendar year following the calendar year in which Employee's termination occurs and must be paid by the Company no later than the last day of the third fiscal year following the fiscal year in which Employee's termination occurs. In no event will the Executive be entitled to receive the cash value of the outplacement services in lieu of the outplacement services.

(iii) Payment Conditions. The Executive's receipt of any severance payments or benefits upon the Executive's Qualifying Termination under this Section 3 is subject to the Executive's execution and non-revocation of a separation agreement and release of claims in a form reasonably satisfactory to the Company (the "Release") (which must become effective and irrevocable no later than the sixtieth (60th) day following the Executive's Qualifying Termination (the "Release Deadline")). Notwithstanding the times of payment otherwise set forth in Section 3, the payments due under Sections 3(i)(b) and (c) and Sections 3(ii)(b) and (c) shall be made (or commence to the Employee within fifteen (15) days following receipt by the Company of the Release properly executed (and not revoked) by the Employee. If the Release does not become effective and irrevocable by the Release Deadline, the Executive will forfeit any right to severance payments or benefits under Section 3.

4. Compensation Upon Termination as a result of Death or becoming Disabled. Subject to Section 5, if the Executive Separates from Service on account of the Executive's death or the Executive becoming Disabled:

(i) the Executive or Executive's estate will be entitled to Accrued Benefits, which will be payable in a lump sum on the sixtieth (60th) calendar day following such Separation from Service; and

(ii) the Executive or Executive's estate, as applicable, will be entitled to a lump sum payment equal to twelve (12) times the full monthly cost of premiums Executive would pay in the first calendar month immediately following the calendar month that includes the Executive's date of termination if Executive timely elected to continue coverage at the level in effect immediately prior to Executive's Separation from Service in any Company Group group medical, dental, vision or prescription drug plans in which Executive or Executive's eligible dependents are entitled to continue participation under COBRA or other similar applicable law for Executive (in the event of Executive becoming Disabled) and Executive's then-covered dependents, if applicable (in the event of death or Executive becoming Disabled) payable in a lump sum on the sixtieth (60th) calendar day following such Separation from Service.

5. Parachute Payments. If the Board of Directors of the Company determines, in its sole discretion, that Section 280G of the Code applies to any compensation or benefits payable to the Executive, then the provisions of this Section 5 shall apply to such compensation or benefits, as applicable. If any payments or benefits to which the Executive is entitled from the Company, any affiliate, any successor to the Company or an affiliate, or any trusts established by any of the foregoing by reason of, or in connection with, any transaction that occurs after the date hereof (collectively, the "Payments," which shall include, without limitation, the vesting of any equity awards or other non- cash benefit or property) are, alone or in the aggregate, more likely than not, if paid or delivered to the Executive, to be subject to the tax imposed by Section 4999 of the Code or any successor provisions to that section, then the Payments (beginning with any Payment to be paid in cash hereunder), shall be either (i) reduced (but not below zero) so that the present value of such total Payments received by the Executive will be one dollar less than three times the Executive's "base amount" (as defined in Section 280G(b)(3) of the Code) and so that no portion of such Payments received by the Executive shall be subject to the excise tax imposed by Section 4999 of the Code, or (ii) paid in full, whichever of (i) or (ii) produces the better net after tax position to the Executive (taking into account any applicable excise tax under Section 4999 of the Code and any other applicable taxes). The determination as to whether any Payments are more likely than not to be subject to taxes under Section 4999 of the Code and as to whether reduction or payment in full of the amount of the Payments provided hereunder results in the better net after tax position to the Executive shall be made by the Board of Directors of the Company in good faith, which, if reasonably necessary, will include making such determination based on advice from an independent public accounting firm with a national reputation in the United States.

6. No Mitigation. The Executive shall not be required to mitigate the amount of any payment provided herein by seeking other employment or otherwise, nor shall the amount of such payment be reduced by reason of compensation or other income the Executive receives for services rendered after the Executive's Separation from Service from the Company.

7. Exclusive Remedy. In the event of the Executive's Separation from Service, this Agreement is intended to be and is exclusive and in lieu of any other rights or remedies to which the Executive or the Company may otherwise be entitled (including any contrary provisions in any employment agreement the Executive may have with the Company), whether at law, tort or contract, in equity, or under this Agreement.

8. Company's Successors. The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company, to expressly assume and agree to perform the obligations under this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place. As used in this Section 8, Company includes any successor to its business or assets as aforesaid which executes and delivers this Agreement or which otherwise becomes bound by all the terms and provisions of this Agreement by operation of law.

9. Notice. All notices, demands and other communications required or permitted hereunder or designated to be given with respect to the rights or interests covered by this Agreement shall be deemed to have been properly given or delivered when delivered personally or sent by certified or registered mail, return receipt requested, U.S. mail or reputable overnight carrier, with full postage prepaid and addressed to the Parties as follows:

If to the Company, at: 1912 Farmer Brothers Drive
 Northlake, Texas 76262
 Attention: General Counsel

If to Executive, at: Executive's last known address reflected on the payroll records of the Company

The Company may change the above designated address by notice to the Executive. The Executive will maintain a current address with the payroll records of the Company.

10. Amendment. No provisions of this Agreement may be amended, modified, waived or discharged unless the Executive and the Company agree to such amendment, modification, waiver or discharge in writing.

11. Sole Agreement. This Agreement represents the entire agreement between the Executive and the Company with respect to the matters set forth herein and supersedes and replaces any prior agreements in their entirety. No agreements or representations, oral or otherwise, express or implied, with respect to the subject matter of this Agreement will be made by either party which are not set forth expressly herein. No future agreement between the Executive and the Company may supersede this Agreement, unless it is in writing and specifically makes reference to this Section 11.

12. Funding. This Agreement shall be unfunded. Any payment made under the Agreement shall be made from the Company's general assets.

13. Waiver. No waiver by either party of any breach of, or of compliance with, any condition or provision of this Agreement by the other party shall be considered a waiver of any other condition or provision or of the same condition or provision at another time.

14. Headings. All captions and section headings used in this Agreement are for convenience purposes only and do not form a part of this Agreement.

15. Severability. In the event that one or more of the provisions of this Agreement shall be invalidated for any reason by a court of competent jurisdiction, any provision so invalidated shall be deemed to be separable from the other provisions hereof, and the remaining provisions hereof shall continue to be valid and fully enforceable.

16. No Employment Contract. Nothing contained in this Agreement shall confer upon the Executive any right to be employed or remain employed by the Company Group, nor limit or affect in any manner the right of the Company Group to terminate the employment or adjust the compensation of the Executive.

17. Withholding. All payments made pursuant to this Agreement will be subject to withholding of applicable income and employment taxes.

18. Governing Law. This Agreement shall be governed by and construed in accordance with the internal substantive laws of the State of Delaware, without giving effect to any principle of law that would result in the application of the law of any other jurisdiction.

19. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same agreement.

20. Code Section 409A.

(i) General. The Agreement and any amounts payable or benefits that may be provided hereunder are intended to either comply with, or be exempt from, the requirements of Code Section 409A. To the extent that this Agreement and any amounts payable or benefits that may be provided hereunder are not exempt from the requirements of Code Section 409A, this Agreement is intended to comply with the requirements of Code Section 409A and shall be limited, construed and interpreted in accordance with such intent.

(ii) Separation from Service; Specified Employees; Separate Payments. A termination of employment shall not be deemed to have occurred for purposes of any provision of this Agreement providing for the payment of any amounts or benefits upon or following a termination of employment unless such termination is also a Separation from Service. For the avoidance of doubt, none of Executive's compensation is earned or attributable to services in the capacity as a director of the Company but is attributable only to services as an employee. If the Executive is deemed on the date of termination to be a Specified Employee, then to the extent any payment or benefit hereunder (after taking into account all exclusions applicable thereto under Code Section 409A) is "nonqualified deferred compensation" subject to Code Section 409A, then such payment shall be delayed and not be made prior to the earlier of (a) the six-month anniversary of the date of such Separation from Service and (b) the date of the Executive's death (the "Delay Period"). All payments delayed pursuant to this Section 20(ii) (whether they would have otherwise been payable in a single lump sum or in installments in the absence of such delay) shall be paid to the Executive in a single lump sum on the first payroll date on or following the first day following the expiration of the Delay Period, and any remaining payments and benefits due under this Agreement shall be paid or provided in accordance with the normal payment dates specified for them herein. Each payment made under this Agreement will be treated as a separate payment for purposes of Code Section 409A and the right to a series of installment payments under this Agreement is to be treated as a right to a series of separate payments.

[SIGNATURES FOLLOW]

IN WITNESS WHEREOF, this Agreement is executed effective as of the date first set forth above.

FARMER BROS. CO.

By: _____
Name: _____
Title: _____

EXECUTIVE

**Farmer Brothers announces close of sale of its direct ship business and Northlake, Texas facility to TreeHouse Foods**

Company uses portion of \$100 million proceeds to pay off term loan as it focuses operations on direct store delivery and key account sales channels

Northlake, Texas, June 30, 2023 – Farmer Brothers Company (NASDAQ: FARM), a leading roaster, wholesaler, equipment servicer and distributor of coffee, tea and other allied products, announced today it has completed the sale of its direct ship business, including its Northlake, Texas facility to TreeHouse Foods, Inc. for approximately \$100 million, subject to customary purchase price adjustments.

The company used the proceeds to pay off its \$47 million term loan, as well as a portion of its outstanding debt associated with its asset-based lending (ABL). The amended ABL agreement will provide more flexibility with regard to financial covenants, as the fixed charge coverage ratio will no longer be a standing covenant. The covenant will only be subject to testing should the liquidity requirements not be met. The close of the sale marks a significant increase in Farmer Brothers' balance sheet flexibility and underlines its focus on improving margins through execution and strategic growth in its direct store delivery (DSD) and key account sales channels.

"We're delighted to have achieved a rapid close to this transaction and are already applying the proceeds to strengthening our balance sheet and preparing for future growth with a clear focus on our DSD business," said Farmer Brothers President and Chief Executive Officer Deverl Maserang. "In TreeHouse, we found a perfect fit with a valued customer and partner who will provide a good home for our existing direct ship customers and transitioning team members."

As part of the terms of the sales agreement, Farmer Brothers and TreeHouse Foods will continue to manufacture certain products for one another for a period of time to ensure a successful transition. As of today, approximately 180 Farmer Brothers team members have transitioned to TreeHouse Foods and Farmer Brothers has agreed to provide certain additional transition services for at least the next nine months as TreeHouse Foods begins to move a portion of its operations to the newly acquired Northlake, Texas facility.

In addition, Farmer Brothers will begin transitioning the entirety of its DSD production operations to its Portland, Oregon roasting and production facility and will continue existing relationships with third-party roasters for additional capacity as needed. The company's corporate headquarters will remain in Northlake, Texas where it will continue to lease office space from TreeHouse Foods at its current location.

"Looking ahead our goals are clear – to continue to grow, enhance our financial flexibility and profit margins and deliver long-term value for our shareholders through focused operational and strategic execution," said Maserang.

Farmer Brothers' DSD business sells coffee, tea, spices and breakfast/brunch products through a wholly owned national network of 80 independent branches, five distribution centers and nearly 240 routes, reaching 45,000 delivery points annually. Moving forward, the company anticipates its annual revenue will be approximately \$350 million with a shift towards higher margin products.

Winston & Strawn LLP served as Farmer Brothers' legal advisor for the transaction.

About Farmer Brothers

Founded in 1912, Farmer Brothers is a national coffee roaster, wholesaler, equipment servicer and distributor of coffee, tea and culinary products. The company's product lines, include organic, Direct Trade and sustainably produced coffee. With a robust line of coffee, hot and iced teas, cappuccino mixes, spices and baking/biscuit mixes, Farmer Brothers delivers extensive beverage planning services and culinary products to its U.S.-based customers. It serves a wide variety of customers, from small independent restaurants and foodservice operators to large institutional buyers, such as restaurant, department and convenience store chains, hotels, casinos, healthcare facilities and gourmet coffee houses, as well as grocery chains with private brand coffee and consumer branded coffee and tea products, and foodservice distributors.

Headquartered in Northlake, Texas, Farmer Brothers generated net sales of \$469.2 million in fiscal 2022. The company's primary brands include Farmer Brothers, Artisan Collection by Farmer Brother, Superior, Metropolitan, China Mist and Boyd's.

About TreeHouse Foods

TreeHouse Foods, Inc. is a leading private label food and beverage manufacturer in North America. Our purpose is to engage and delight – one customer at a time. Through our customer focus and category experience, we strive to deliver excellent service and build capabilities and insights to drive mutually profitable growth for TreeHouse and our customers. Our purpose is supported by investment in depth, capabilities and operational efficiencies, which are aimed to capitalize on the long-term growth prospects in the categories in which we operate.

Additional information, including TreeHouse's most recent statements on forms 10-Q and 10-K, may be found at [treehousefoods.com](https://www.treehousefoods.com).

Forward-looking statements

This press release and other documents we file with the Securities and Exchange Commission (SEC) contain forward-looking statements that are based on current expectations, estimates, forecasts and projections about us, our future performance, our financial condition, our products, our business strategy, our beliefs, our management's assumptions, and the anticipated benefits to the Company as a result of the sale, including the expected results following the sale. These forward-looking statements can be identified by the use of words such as, "anticipates," "estimates," "projects," "expects," "plans," "believes," "intends," "will," "could," "may," "assumes" and other words of similar meaning. These statements are based on management's beliefs, assumptions, estimates and observations of future events based on information available to our management at the time the statements are made and include any statements that do not relate to any historical or current fact. These statements are not guarantees of future performance and they involve certain risks, uncertainties and assumptions that are difficult to predict. Actual outcomes and results may differ materially from what is expressed, implied or forecast by our forward-looking statements due in part to the risks, uncertainties and assumptions set forth in this press release and Part I, Item 1A of our annual report on Form 10-K for the fiscal year ended June 30, 2022 filed with the SEC on Sept. 2, 2022 (the 2022 Form 10-K) as amended by Amendment No. 1 to the 2022 Form 10-K, filed with the SEC on Oct. 27, 2022, as well as other factors described from time to time in our filings with the SEC.

Factors that could cause actual results to differ materially from those in forward-looking statements include, but are not limited to, statements regarding the achievement of the anticipated benefits of the sale, including expected results following the sale, the risk that any announcements relating to the sale could impact the market price of the Company's common stock and the risk that the sale and its announcement could have an adverse effect on the ability of the parties to retain customers and retain and hire key personnel and maintain relationships with their suppliers, distributors and customers, as well as other risks, uncertainties and assumptions described from time to time in our filings with the SEC.

Given these risks and uncertainties, you should not rely on forward-looking statements as a prediction of actual results. Any or all of the forward-looking statements contained in this press release and any other public statement made by us, including by our management, may turn out to be incorrect. We are including this cautionary note to make applicable and take advantage of the safe harbor provisions of the Private Securities Litigation Reform Act of 1995 for forward-looking statements. We expressly disclaim any obligation to update or revise any forward-looking statements, whether as a result of new information, future events, changes in assumptions or otherwise, except as required under federal securities laws and the rules and regulations of the SEC.

Investor relations contact

Ellipsis
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646-776-0886

Media contact

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Director of Communications
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UNAUDITED PRO FORMA CONDENSED CONSOLIDATED FINANCIAL INFORMATION

OVERVIEW

On June 30, 2023, Farmer Bros. Co., a Delaware corporation (the “Company”), completed the previously announced sale of certain assets of the Company related to its direct ship and private label business (collectively “DS”), including the Company’s production facility and corporate office building in Northlake, Texas (the “Sale”), through an Asset Purchase Agreement (as amended, the “Purchase Agreement”) with TreeHouse Foods, Inc., a Delaware corporation (the “Buyer”). The aggregate purchase price consists of \$100.0 million in cash, subject to certain adjustments, including a reduction for liabilities associated with a specified retained litigation matter. The Company received \$92.2 million in cash (subject to certain adjustments and assuming full release of the \$2.0 million placed into an escrow account for satisfying adjustments, if any, to the purchase price under the Purchase Agreement), after estimated transaction-related expenses of \$7.8 million related to the Sale.

BASIS OF PRESENTATION

The following unaudited pro forma condensed consolidated financial statements of the Company were derived from its historical consolidated financial statements and are being presented to give effect to the Sale. The unaudited pro forma condensed consolidated statements of operations for the nine months ended March 31, 2023 and for each of the three years ended June 30, 2022, 2021, and 2020, reflect the Company’s results as if the Sale had occurred on July 1, 2019. The unaudited pro forma condensed consolidated balance sheet as of March 31, 2023 gives effect to the Sale as if it occurred on that date. The estimated loss on sale in connection with the transaction is reflected in the unaudited pro forma condensed consolidated balance sheet within retained earnings. The estimated loss on sale is not reflected in the unaudited pro forma condensed consolidated statements of operations as it does not have a continuing impact on the Company’s results.

The unaudited pro forma condensed consolidated financial statements give effect to the Sale including: (i) the elimination of the historical DS financial results on a carve-out basis; and (ii) the adjustments to the DS carve-out financial statements to meet the requirements of discontinued operations; and (iii) the transfer of certain assets and liabilities between the Company and the Buyer upon the closing of the transactions contemplated by the Purchase Agreement. The Company has entered into (i) a Transition Services Agreement with the Buyer pursuant to which the Company will provide the Buyer certain specified services on a temporary basis, (ii) a Co-Manufacturing Agreement with the Buyer pursuant to which the Company and the Buyer will manufacture certain products for each other on a temporary basis and (iii) a Lease Agreement with the Buyer pursuant to which the Company will lease office space from the Buyer on a temporary basis.. Each of these transition services are not recurring in nature and as such have not been included in the pro forma adjustments. Additionally, the Company is required to utilize all of the cash proceeds from the Sale to fully extinguish its outstanding term loan with the remaining proceeds to repay a portion of the outstanding revolving credit facility and the related estimated reduction to interest expense. The adjustments related to the paydown of the Company’s debt are reflected in a separate column as “Pro Forma Adjustments for Debt Paydown” within the unaudited pro forma condensed consolidated balance sheet and unaudited pro forma condensed consolidated statements of operations.

The unaudited pro forma condensed consolidated financial information are subject to the assumptions and adjustments described in the accompanying notes. These assumptions and adjustments are based on information presently available. The unaudited pro forma condensed consolidated financial statements are based on the historical financial statements of the Company for each period presented and in the opinion of management, all adjustments and disclosures necessary for a fair presentation of the pro forma data based on information available at the time have been made.

The unaudited pro forma condensed consolidated financial statements are presented for illustrative purposes only and are not necessarily indicative of the results of operations that would have been achieved had the events reflected been completed as of the dates indicated or of the results that may be obtained in the future. These unaudited pro forma condensed consolidated financial statements and the notes thereto should be read together with the Company's audited consolidated financial statements and the notes thereto as of and for the year ended June 30, 2022, and Management's Discussion and Analysis ("MD&A") included in the Company's Annual Report on Form 10-K for the year ended June 30, 2022, as well as the Company's unaudited consolidated financial statements and the notes thereto as of and for the nine months ended March 31, 2023, and Management's Discussion and Analysis included in the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2023.

FARMER BROS. CO.
UNAUDITED PRO FORMA CONDENSED CONSOLIDATED STATEMENT OF OPERATIONS
(in thousands, except share and per share amounts)

	For the nine months ended March 31, 2023			
	Farmer Bros. Historical	Pro Forma Adjustments	Pro Forma Adjustments for Debt Paydown	Pro Forma
Net Sales	\$ 378,306	\$ (121,119)(a)	\$ -	\$ 257,187
Cost of Goods Sold	292,648	(125,522)(a)	-	167,126
Gross profit	85,658	4,403	-	90,061
Selling expenses	83,136	(3,905)(b)	-	79,231
General and administrative expenses	30,858	(5,004)(b)	-	25,854
(Gain) loss on sale of assets	(7,685)	-	-	(7,685)
Operating expense	106,309	(8,909)	-	97,400
Loss from operations	(20,651)	13,312	-	(7,339)
Other (expense) income:				
Interest expense	(12,431)	749(c)	4,367(c)	(7,315)
Other, net	791	(861)(d)	-	(70)
Total other (expense) income	(11,640)	(112)	4,367	(7,385)
Loss before taxes	(32,291)	13,200	4,367	(14,724)
Income tax (benefit) expense	113	-	-	113
Net Income (loss)	\$ (32,404)	\$ 13,200	\$ 4,367	\$ (14,837)
Net income (loss) available to common stockholders	\$ (32,404)	\$ 13,200	\$ 4,367	\$ (14,837)
Net loss available to common stockholders per common share—basic	\$ (1.66)			\$ (0.76)
Net loss available to common stockholders per common share—diluted	\$ (1.66)			\$ (0.76)
Weighted average common shares outstanding—basic	19,467,022			19,467,022
Weighted average common shares outstanding—diluted	19,467,022			19,467,022

FARMER BROS. CO.
UNAUDITED PRO FORMA CONDENSED CONSOLIDATED STATEMENT OF OPERATIONS
(in thousands, except share and per share amounts)

	For the year ended June 30, 2022			
	Farmer Bros. Historical	Pro Forma Adjustments	Pro Forma Adjustments for Debt Paydown	Pro Forma
Net Sales	\$ 469,193	\$ (153,672)(a)	\$ -	\$ 315,521
Cost of Goods Sold	332,277	(155,386)(a)	-	176,891
Gross profit	136,916	1,714	-	138,630
Selling expenses	107,277	(6,136)(b)	-	101,141
General and administrative expenses	47,172	(6,563)(b)	-	40,609
Net (gains) loss on sale of assets	(2,905)	-	-	(2,905)
Operating expense	151,544	(12,699)	-	138,845
Loss from operations	(14,628)	14,413	-	(215)
Other (expense) income:				
Interest expense	(9,516)	335(c)	3,481(c)	(5,700)
Other, net	8,182	(42)(d)	-	8,140
Total other (expense) income	(1,334)	293	3,481	2,440
Loss before taxes	(15,962)	14,706	3,481	2,225
Income tax (benefit) expense	(301)	51(e)	-	(250)
Net Income (loss)	\$ (15,661)	\$ 14,655	\$ 3,481	\$ 2,475
Net income (loss) available to common stockholders	\$ (16,255)	\$ 14,655	\$ 3,481	\$ 1,881
Net income (loss) available to common stockholders per common share—basic	\$ (0.89)			\$ 0.10
Net income (loss) available to common stockholders per common share—diluted	\$ (0.89)			\$ 0.10
Weighted average common shares outstanding—basic	18,200,080			18,200,080
Weighted average common shares outstanding—diluted	18,200,080			18,889,740

FARMER BROS. CO.
UNAUDITED PRO FORMA CONDENSED CONSOLIDATED STATEMENT OF OPERATIONS
(in thousands, except share and per share amounts)

	For the year ended June 30, 2021			
	Farmer Bros. Historical	Pro Forma Adjustments	Pro Forma Adjustments for Debt Paydown	Pro Forma
Net Sales	\$ 397,850	\$ (135,939)(a)	\$ -	\$ 261,911
Cost of Goods Sold	296,925	(133,019)(a)	-	163,906
Gross profit	100,925	(2,920)	-	98,005
Selling expenses	95,503	(4,384)(b)	-	91,119
General and administrative expenses	42,945	(4,592)(b)	-	38,353
Net (gains) loss on sale of assets	(593)	-	-	(593)
Impairment of fixed assets	1,243	-	-	1,243
Operating expense	139,098	(8,976)	-	130,122
Loss from operations	(38,173)	6,056	-	(32,117)
Other (expense) income:				
Interest expense	(15,962)	413(c)	5,925(c)	(9,624)
Postretirement benefits curtailment and pension settlement charge	6,359	-	-	6,359
Other, net	19,720	(334)(d)	-	19,386
Total other (expense) income	10,117	79	5,925	16,121
Loss before taxes	(28,056)	6,135	5,925	(15,996)
Income tax (benefit) expense	13,595	289(e)	-	13,884
Net Income (loss)	\$ (41,651)	\$ 5,846	\$ 5,925	\$ (29,880)
Net income (loss) available to common stockholders	\$ (42,225)	\$ 5,846	\$ 5,925	\$ (30,454)
Net loss available to common stockholders per common share—basic	\$ (2.39)			\$ (1.73)
Net loss available to common stockholders per common share—diluted	\$ (2.39)			\$ (1.73)
Weighted average common shares outstanding—basic	17,635,402			17,635,402
Weighted average common shares outstanding—diluted	17,635,402			17,635,402

FARMER BROS. CO.
UNAUDITED PRO FORMA CONDENSED CONSOLIDATED STATEMENT OF OPERATIONS
(in thousands, except share and per share amounts)

	For the year ended June 30, 2020			
	Farmer Bros. Historical	Pro Forma Adjustments	Pro Forma Adjustments for Debt Paydown	Pro Forma
Net Sales	\$ 501,320	\$ (143,894)(a)	\$ -	\$ 357,426
Cost of Goods Sold	363,198	(140,527)(a)	-	222,671
Gross profit	138,122	(3,367)	-	134,755
Selling expenses	121,762	(6,262)(b)	-	115,500
General and administrative expenses	42,569	(4,738)(b)	-	37,831
Net (gains) loss on sale of assets	(25,237)	-	-	(25,237)
Impairment of goodwill and intangible assets	42,030	-	-	42,030
Operating expense	181,124	(11,000)	-	170,124
Loss from operations	(43,002)	7,633	-	(35,369)
Other (expense) income:				
Interest expense	(10,483)	154(c)	3,959(c)	(6,370)
Postretirement benefits curtailment and pension settlement charge	5,760	-	-	5,760
Other, net	10,443	9(d)	-	10,452
Total other (expense) income	5,720	163	3,959	9,842
Loss before taxes	(37,282)	7,796	3,959	(25,527)
Income tax (benefit) expense	(195)	(10)(e)	-	(205)
Net Income (loss)	\$ (37,087)	\$ 7,806	\$ 3,959	\$ (25,322)
Net income (loss) available to common stockholders	\$ (37,641)	\$ 7,806	\$ 3,959	\$ (25,876)
Net loss available to common stockholders per common share—basic	\$ (2.19)			\$ (1.50)
Net loss available to common stockholders per common share—diluted	\$ (2.19)			\$ (1.50)
Weighted average common shares outstanding—basic	17,205,849			17,205,849
Weighted average common shares outstanding—diluted	17,205,849			17,205,849

FARMER BROS. CO.
UNAUDITED PRO FORMA CONDENSED CONSOLIDATED BALANCE SHEET
(in thousands, except share and per share amounts)

	As of March 31, 2023			
	Farmer Bros. Historical	Pro Forma Adjustments	Pro Forma Adjustments for Debt Paydown	Pro Forma
ASSETS				
Current assets:				
Cash and cash equivalents	\$ 7,256	\$ 92,225(f)	\$ (92,225)(h)	\$ 7,256
Accounts and notes receivable, net	54,098	(28,770)(g)	-	25,328
Inventories	82,255	(30,000)(g)	-	52,255
Other current assets	6,698	-	-	6,698
Total current assets	150,307	33,455	(92,225)	91,537
Property, plant and equipment, net	131,399	(88,786)(g)	-	42,613
Other long-term assets	43,341	-	-	43,341
Total assets	\$ 325,047	\$ (55,331)	\$ (92,225)	\$ 177,491
LIABILITIES AND STOCKHOLDERS' EQUITY				
Current liabilities:				
Accounts payable	\$ 65,145	\$ (21,374)(g)	\$ -	\$ 43,771
Accrued payroll expenses	8,329	(147)(g)	-	8,182
Term loan - current	3,133	-	(3,133)(h)	-
Other current liabilities	14,125	(508)(g)	-	13,618
Total current liabilities	90,733	(22,029)	\$ (3,133)	65,571
Long-term borrowings under revolving credit facility	67,000	-	(47,680)(h)	19,320
Term loan - noncurrent	41,412	-	(41,412)(h)	-
Accrued pension liabilities	28,476	-	-	28,476
Other long-term liabilities	23,584	(735)(i)	-	22,849
Total liabilities	\$ 251,204	\$ (22,764)	\$ (92,225)	\$ 136,214
Stockholders' equity:				
Preferred stock, \$1.00 par value, 500,000 shares authorized; Series A Convertible Participating Cumulative Perpetual Preferred Stock, 21,000 shares authorized; no shares outstanding as of March 31, 2023 and 14,700 shares issued and outstanding as of June 30, 2022; liquidation preference of \$17,346 as of June 30, 2022	-	-	-	-
Common stock, \$1.00 par value, 50,000,000 shares authorized; 19,953,781 and 18,464,966 shares issued and outstanding as of March 31, 2023 and June 30, 2022, respectively	19,955	-	-	19,955
Additional paid-in capital	75,395	-	-	75,395
Retained earnings (deficit)	20,296	(32,567)(i)	-	(12,271)
Less accumulated other comprehensive loss	(41,803)	-	-	(41,803)
Total stockholders' equity	73,843	(32,567)	-	41,277
Total liabilities and stockholders' equity	\$ 325,047	\$ (55,331)	\$ (92,225)	\$ 177,491

NOTES TO THE UNAUDITED PRO FORMA CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

The following items resulted in adjustments in the unaudited pro forma condensed consolidated financial information:

Unaudited Pro Forma Condensed Consolidated Statement of Operations

- (a) Adjustments represent the elimination of revenues and cost of goods sold attributable to DS.
- (b) Adjustments represent the elimination of selling, general and administrative costs attributable to DS. Adjustments do not include general corporate and overhead costs that will have a continuing effect on the Company post-closing.
- (c) Adjustments represent the elimination of interest expense directly attributable to DS as well as the elimination of interest expense allocated to the Company's DS business based on the ratio of the net assets attributable to DS to the Company's consolidated net assets for each period consistent with accounting standards related to the presentation of discontinued operations.
- (d) Adjustments represent the elimination of other income attributable to the DS.
- (e) Adjustments represent the estimated income tax effect of the pro forma adjustments. The Company used the applicable statutory rate based on the jurisdiction in which the adjustment relates to reflect income taxes on the Sale activity.

Unaudited Pro Forma Condensed Consolidated Balance Sheet

- (f) Adjustment represents \$100.0 million of cash consideration from the sale of DS (subject to certain adjustments and assuming full release of the \$2.0 million placed into an escrow account for satisfying adjustments, if any, to the purchase price under the Purchase Agreement), less \$7.8 million of estimated closing adjustments and costs directly associated with the transaction.
- (g) Adjustments represent the elimination of specific assets and liabilities as a result of their transfer to the Buyer pursuant to the Sale.
- (h) Adjustments represent the Company's use of the cash proceeds from the Sale to paydown the outstanding borrowings on the term loan and revolving credit facility.
- (i) Adjustments reflect the pre-tax loss on sale of DS of \$33.3 million calculated as reflected below. The proforma net loss of \$32.6 million is reflected as an adjustment to retained earnings. This amount is based on historical information as of March 31, 2023 for the Company's carrying value. The actual net gain will be based on the Company's carrying value in DS as of June 30, 2023.

<i>(in thousands)</i>	March 31, 2023
Cash consideration received (net of selling expenses)	\$ 92,225
Less: carrying value of DS (\$147.5 million in assets less \$22.0 million in liabilities)	125,527
Pro forma loss before income tax benefit	(33,302)
Benefit for income taxes	735
Pro forma net loss on sale	\$ (32,567)