

**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): August 23, 2017

**MGP Ingredients, Inc.**

(Exact name of registrant as specified in its charter)

**KANSAS**  
(State or other jurisdiction  
of incorporation)

**0-17196**  
(Commission  
File Number)

**45-4082531**  
(IRS Employer  
Identification No.)

**Cray Business Plaza**  
**100 Commercial Street**  
**Box 130**  
**Atchison, Kansas 66002**  
(Address of principal executive offices) (Zip Code)

**(913) 367-1480**  
(Registrant's telephone number, including area code)

**Not Applicable**  
(Former name or former address, if changed since last report)

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

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

On August 23, 2017, MGP Ingredients, Inc. (the "Company") entered into a new credit agreement (the "Credit Agreement") with Wells Fargo Bank, National Association. The new credit agreement replaces the Company's existing Third Amended and Restated Credit Agreement.

The Credit Agreement provides for a \$150,000,000 revolving credit facility. The Company may increase the facility from time to time by an aggregate principal amount of up to \$25,000,000 provided certain conditions are satisfied and at the discretion of the lender. The Credit Agreement matures on August 23, 2022.

The interest rate for the Credit Agreement will equal either LIBOR plus an applicable margin or an alternate base rate (which will be the highest of the Wells Fargo prime rate, the 30 day LIBOR (resetting daily) plus 1.00%, and the Federal Funds rate plus 0.50% plus the applicable margin). The applicable margin ranges from 1.375% to 1.5%, depending on the Company's leverage ratio determined as of the last day of the immediately preceding fiscal quarter. The Company has agreed to pay certain fees with respect to the new credit facility, including an unused commitment fee.

The Credit Agreement includes customary covenants restricting the Company's ability to incur additional indebtedness and liens, limiting asset transfers, limiting loans, advances and other investments, and limiting acquisitions to \$100,000,000 in any calendar year. The Credit Agreement requires the Company to maintain a Consolidated Leverage Ratio (defined in the Credit Agreement as the ratio of Consolidated Funded Indebtedness to Consolidated EBITDA) of less than 3 to 1 (2.75 to 1 when measured before or immediately after the consummation of certain acquisitions), and to maintain a Consolidated Fixed Charge Coverage Ratio (the ratio of (a) the remainder of (i) Consolidated EBITDA minus (ii) dividends and distributions to shareholders minus (iii) income taxes, minus (iv) certain capital expenditures, minus (v) certain [limited] share repurchases, to (b) Consolidated Fixed Charges) of 1.25 to 1. The Credit Agreement includes customary representations, warranties, affirmative covenants and events of default.

MGPI Processing, Inc., MGPI Pipeline, Inc., and MGPI of Indiana, LLC, subsidiaries of the Company, entered into a Subsidiary Guaranty Agreement pursuant to which they provided a guaranty of the Company's obligations. The Company and its guarantor subsidiaries' obligations in respect of the credit facility are secured by a lien on certain personal property of the Company and the guarantor subsidiaries.

The foregoing description of the Credit Agreement does not purport to be complete and is qualified in its entirety by reference to the Credit Agreement, which is attached as Exhibit 10.1 to this Current Report on Form 8-K and is incorporated herein by reference.

On August 23, 2017, the Company also entered into a Note Purchase and Private Shelf Agreement (the "Note Purchase Agreement") with PGIM, Inc., an affiliate of Prudential Financial, Inc., and certain affiliates of PGIM, Inc. The Note Purchase Agreement provides for the issuance of up to \$75,000,000 of Senior Secured Notes, and the Company issued \$20,000,000 of Senior Secured Notes due 2027. The Senior Secured Notes rank *pari passu* with the credit facility, are guaranteed by the same subsidiaries of the Company as is the case for the credit facility, and are secured by *pari passu* liens on the same personal property as secures the credit facility. The Senior Secured Notes due 2027 issued on August 23, 2017 have a maturity date of August 23, 2027 and bear interest at a rate of 3.53% per year. The Company may prepay the outstanding principal amount under the Senior Secured Notes at any time, subject to the payment of a make-whole payment. Additional Senior Secured

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Notes may be issued from time to time pursuant to the Note Purchase Agreement, subject to the satisfaction of certain conditions and at the discretion of the purchasers of such notes. The Note Purchase Agreement requires the Company to maintain a consolidated leverage ratio and a consolidated fixed charge coverage ratio consistent with the requirements of the Credit Agreement. The Note Purchase Agreement includes customary representations, warranties, affirmative covenants and events of default.

The foregoing description of the Note Purchase Agreement does not purport to be complete and is qualified in its entirety by reference to the Note Purchase Agreement, which is attached as Exhibit 10.2 to this Current Report on Form 8-K and is incorporated herein by reference.

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

The information contained in Item 1.01 is incorporated herein by reference.

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

The information contained in Item 1.01 is incorporated herein by reference.

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits

10.1 Credit Agreement between MGP Ingredients, Inc. and Wells Fargo Bank, National Association, dated August 23, 2017.

10.2 Note Purchase and Private Shelf Agreement between MGP Ingredients, Inc., PGIM, Inc., and certain purchasers affiliated with PGIM, Inc., dated August 23, 2017.

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**SIGNATURES**

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

MGP INGREDIENTS, INC.

Date: August 24, 2017

By: /s/ Thomas K. Pigott

Thomas K. Pigott, Vice President and Chief Financial Officer

CREDIT AGREEMENT

This CREDIT AGREEMENT (this "Agreement") is entered into as of August 23, 2017, by and between MGP INGREDIENTS, INC. a Kansas corporation (the "Borrower"), and WELLS FARGO BANK, NATIONAL ASSOCIATION (the "Lender").

The parties hereto agree as follows:

ARTICLE I - DEFINITIONS; RULES OF INTERPRETATION; ACCOUNTING MATTERS.

SECTION 1.1. Definitions.

"AAA" is defined in Section 8.14(b).

"Acquisition" means (a) the acquisition of a Controlling Equity Interest in another Person, whether by purchase of such Equity Interest, the exercise of an option or warrant for, or conversion of securities into, such Equity Interest, or otherwise, in each case causing any Person to become a Subsidiary, (b) the acquisition of assets of another Person (other than the Borrower or a Subsidiary) which constitute all or substantially all of the assets of such Person or of a line or lines of business conducted by such Person, or (c) a merger or consolidation or any other combination with another Person (other than the Borrower or a Subsidiary) provided that the Borrower or a Person that is a Subsidiary (after giving effect to such merger, consolidation or other combination) is the survivor.

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

"Anti-Corruption Laws" means, collectively, the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and all other similar anti-corruption legislation in other jurisdictions.

"Applicable Rate" is defined in Section 2.2(a).

"Availability Period" is defined in Section 2.1(a).

"Base Rate" means at any time the highest of (a) the per annum rate which the Lender publicly announces from time to time to be its prime lending rate, as in effect from time to time, (b) LIBOR that would then be applicable to a new LIBOR Loan with a one month Interest Period plus 1.00% (resetting daily) and (c) the Federal Funds Rate, as in effect from time to time, plus 0.50%. The Lender's prime lending rate is a reference rate and does not necessarily represent the lowest or best rate charged to customers. The Lender may make commercial loans or other loans at rates of interest at, above or below the Lender's prime lending rate. Each change in the Lender's prime lending rate shall be effective from and including the date such change is publicly announced as being effective.

"Base Rate Loan" means a Loan at any time that it bears interest at a rate based on the Base Rate.

"Bunge Agreements" means, collectively (a) that certain Grain Supply Agreement dated as of January 1, 2015 between MGPI of Indiana, LLC, a Delaware limited liability company, and Consolidated Grain and Barge and (b) that certain Grain Supply Agreement dated as of December 22, 2014 between MGPI Processing and Bunge Milling, Inc., in each case as amended from time to time and together with any replacements thereof.

"Business Day" means any day except a Saturday, Sunday or any other day on which commercial banks in Georgia or New York, New York are authorized or required by law to close.

"Capital Expenditures" means for any period, without duplication, (a) the additions to property, plant and equipment and other capital expenditures of the Consolidated Group that are (or would be) set forth on a consolidated statement of cash flows of the Consolidated Group for such period prepared in accordance with GAAP and (b) Capital Lease Obligations incurred by the Consolidated Group during such period; provided that Capital Expenditures shall not include (i) expenditures that constitute Acquisitions permitted hereunder, (ii) the purchase price of equipment that is purchased simultaneously with the trade-in of existing equipment but only to the extent that the gross amount of such purchase price is reduced by the credit granted by the seller of such equipment for the equipment being traded in at such time, or (iii) expenditures made in connection with the replacement, substitution, restoration or repair of assets to the extent financed with (x) insurance proceeds paid on account of the loss or damage to the assets being replaced, restored or repaired or (y) awards of compensation arising from the taking by eminent domain or condemnation of the assets being replaced.

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

"Cash Collateralize" means to deposit cash in a deposit account with the Lender as collateral for the payment and performance of the obligations of the Borrower under this Agreement in an amount equal to 103% of the outstanding Letter of Credit Exposure (or, in the case of Section 2.1(b), in the amount required thereunder to eliminate any excess exposure) plus any accrued and unpaid interest thereon. Such deposit account shall be in the name of the Lender and the Lender shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Lender and at the Borrower's risk and expense, such deposits shall not bear interest. Moneys in such account shall be applied by the Lender to reimburse the Lender for drawings under Letters of Credit for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the Letter of Credit Exposure at such time or, if the maturity of the Loans has been accelerated, be applied to satisfy other obligations of the Borrower under this Agreement.

"Change of Control" means any event or series of events by which:

(a) (i) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its Subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) other than the Permitted Investors becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a "person" or "group" shall be deemed to have "beneficial ownership" of all Equity Interests that such "person" or "group" has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an "option right")), directly or indirectly, of more than forty percent (40%) of the Equity Interests of the Borrower entitled to vote in the election of members of the board of directors (or equivalent governing body) of the Borrower or (ii) during any period of 12 consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Borrower cease to be composed of individuals (x) who were members of that board or equivalent governing body on the first day of such period, (y) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (x) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (z) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (x) and (y) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body; or

(b) there shall have occurred under any indenture or other instrument evidencing any Indebtedness of any Loan Party in excess of \$10,000,000 any "change in control" or similar provision (as

set forth in the indenture, agreement or other evidence of such Indebtedness) obligating the Borrower or any of its Subsidiaries to repurchase, redeem or repay all or any part of the Indebtedness provided for therein.

"Closing Date" is defined in [Section 2.1\(a\)](#).

"Code" means the Internal Revenue Code of 1986, as amended.

"Collateral" means, collectively, all property of the Borrower, any Guarantor or any other Person in which the Collateral Agent is granted a Lien under any Security Document as security for all or any portion of the Obligations.

"Collateral Agent" means the Lender, in its capacity as collateral agent pursuant to the Intercreditor Agreement, together with its successors and assigns in such capacity.

"Commitment" is defined in [Section 2.1\(a\)](#).

"Commodity Exchange Act" means the Commodity Exchange Act (7 U.S.C. § 1 *et seq.*).

"Consolidated EBITDA" means, for the Consolidated Group for any period, the sum of (a) Consolidated Net Income for such period, plus (b) to the extent deducted in arriving at Consolidated Net Income for such period, (i) income taxes (whether federal, state, local or otherwise), (ii) Consolidated Interest Expense, (iii) depreciation and amortization determined on a consolidated basis in accordance with GAAP for such period and (iv) other non-cash charges (except to the extent that such non-cash charges are reserved for cash charges to be taken in the future), minus (c) to the extent included in determining Consolidated Net Income for such period, non-cash gains or non-cash items increasing Consolidated Net Income.

"Consolidated Fixed Charge Coverage Ratio" means, for any period of four consecutive fiscal quarters of the Borrower, the ratio of (a) the remainder of (i) Consolidated EBITDA for such period minus (ii) dividends and distributions by the Borrower to its shareholders during such period (excluding any dividends paid from any pre-merger dividends or any merger, equity cancellation or other consideration received by MGPI Processing in connection with the disposition or cancellation of its Equity Interests in ICP during the period in which such dividends are paid by the Borrower to its shareholders), minus (iii) income taxes (whether federal, state, local or otherwise) paid in cash during such period, minus (iv) Capital Expenditures during such period (excluding Capital Expenditures constituting payments in respect of capital leases and Capital Expenditures financed by Indebtedness permitted under [Section 6.2\(d\)](#)), minus (v) share repurchases or other acquisition or retirement of any of the Borrower's Equity Interests or any security convertible into or exchangeable for any of the Borrower's Equity Interests (in each case excluding share repurchases and other acquisitions of stock of the Borrower or securities convertible therefor required to be purchased pursuant to employee stock compensation plans consistent with the plans in effect on the Closing Date in an aggregate amount not to exceed (x) \$7,500,000 in any period other than the 2019 fiscal year, or (y) \$14,200,000 in the 2019 fiscal year) to (b) Consolidated Fixed Charges for such period.

"Consolidated Fixed Charges" means for the Consolidated Group for any period, the sum (without duplication) of (a) Consolidated Interest Expense for such period, and (b) scheduled principal payments of Consolidated Funded Indebtedness (other than the Loans) during such period.

"Consolidated Funded Indebtedness" means, as of any date of determination, all outstanding liabilities for borrowed money and other interest-bearing liabilities of the Consolidated Group outstanding on such date, including, without limitation, (a) all obligations evidenced by bonds, debentures, loan agreements, notes or other similar agreements or instruments, (b) all Capital Lease Obligations and purchase money indebtedness, (c) all obligations, contingent or otherwise, in respect of drawn letters of credit, acceptances or similar extensions of credit, (d) all obligations, contingent or otherwise, to purchase, redeem, retire or otherwise acquire for value any Equity Interests of such Person (other than stock of the Borrower required to be purchased pursuant to employee stock compensation plans consistent with the plans in effect on the

Closing Date) and (e) Guarantees of Indebtedness of any of the foregoing types described in clauses (a) through (d) of this definition, after eliminating all off-setting debits and credits between members of the Consolidated Group and all other items required to be eliminated in the course of the preparation of consolidated financial statements of the Consolidated Group in accordance with GAAP.

"Consolidated Group" means, collectively, the Borrower and its Subsidiaries.

"Consolidated Interest Expense" means, for the Consolidated Group for any period determined on a consolidated basis in accordance with GAAP, total interest expense (including the interest component of any payments in respect of Capital Lease Obligations and the net payment obligations pursuant to Swap Contracts pertaining to interest rate transactions) during such period.

"Consolidated Leverage Ratio" means, as of the date of computation thereof, the ratio of (i) Consolidated Funded Indebtedness (determined as at such date) to (ii) Consolidated EBITDA for the period of four consecutive fiscal quarters of the Borrower most recently ended on or prior to such date; provided that, during any period that includes any Material Acquisition or a Material Disposition, the calculation of Consolidated EBITDA shall be made on a historical Pro Forma Basis with respect to that portion of the applicable measurement period that occurred prior to the consummation of such transaction in accordance with Section 1.3(d).

"Consolidated Net Income" means, for any period, the net income (or loss) of the Consolidated Group for such period determined on a consolidated basis in accordance with GAAP, but excluding therefrom (to the extent otherwise included therein) (a) any extraordinary gains or losses, (b) any gains attributable to a sale of assets (other than inventory sold in the ordinary course of business) or the write-up of assets and non-cash losses attributable to the impairment of any intangible asset, (c) any Equity Interest of any member of the Consolidated Group in the unremitted earnings of any Person that is not a Subsidiary and (d) except to the extent included pursuant to Section 1.3(d), any income (or loss) of any Person accrued prior to the date it becomes a Subsidiary of or is merged into or consolidated with a member of the Consolidated Group or the date that such Person's assets are acquired by a member of the Consolidated Group.

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

"Customer Owned Inventory" means inventory owned by a customer of the Borrower or any of its Subsidiaries and with respect to which the Borrower or any of its Subsidiaries is acting as a bailee or the like or is otherwise storing or disposing of such inventory at the request of or for the benefit of such customer or its assignee, including any lender to such customer, in each case so long as such inventory is owned by such customer.

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

"Default Rate" means (a) when used with respect to Obligations other than Letter of Credit Fees, an interest rate equal to (i) the Base Rate plus (ii) the Applicable Rate, if any, applicable to Base Rate Loans plus (iii) 2% per annum; provided that with respect to a LIBOR Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan plus 2% per annum, and (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Rate for LIBOR Loans plus 2% per annum.

"Disposition" or "Dispose" means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.



"Dollars" or "\$" means dollars constituting legal tender for the payment of public and private debts in the United States of America.

"Eligible Investments" means:

- (a) direct obligations of, or obligations the timely payment of principal or interest of which are fully and unconditionally guaranteed by the United States of America or any agency thereof;
- (b) obligations of any corporation organized under the laws of any state of the United States of America or under the laws of any other nation, payable in the United States of America, expressed to mature not later than 270 days following the date of issuance thereof and having one of the two highest ratings obtainable from either S&P Global Ratings, a division of S&P Global, Inc. ("S&P") or Moody's Investor's Services, Inc. ("Moody's");
- (c) interest bearing demand or time deposits issued by the Lender or certificates of deposit maturing within one year from the date of issuance thereof and issued by a bank or trust company organized under the laws of the United States or of any state thereof having capital surplus and undivided profits aggregating at least \$1,000,000,000 and being rated "A" or better by S&P or "A" or better by Moody's;
- (d) deposit accounts maintained with any bank that satisfies the criteria in clause (c) above or 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 bank is insured by the Federal Deposit Insurance Corporation; and
- (e) any other investments expressly approved in writing by the Lender.

"Environmental Laws" means all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by or with any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the management, Release or threatened Release of any Hazardous Material or to health and safety matters.

"Environmental Liability" means any liability, contingent or otherwise (including any liability for damages, costs of environmental investigation and remediation, costs of administrative oversight, fines, natural resource damages, penalties or indemnities), of any member of the Consolidated Group or any Guarantor directly or indirectly resulting from or based upon (a) any actual or alleged violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) any actual or alleged exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equity Interests" means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person.

"ERISA" is defined in Section 3.8.

"ERISA Affiliate" means any corporation or trade or business that is under common control with the Borrower, as described in Section 414(b) or (c) of the Code (and for purposes of provisions relating to Section 412 of the Code, described in Section 414(m) or (o) of the Code).

"ERISA Event" means (a) any Reportable Event; (b) the withdrawal of the Borrower or any ERISA Affiliate from a Plan subject to Section 4063 of ERISA during a plan year in which such entity was a "substantial employer" as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Borrower or any

ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate or the treatment of a Plan amendment as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan; (g) the determination that any Plan or Multiemployer Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; or (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate.

**"ERISA Litigation"** means any claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that, if determined adversely, could reasonably be expected to have a Material Adverse Effect.

**"Event of Default"** is defined in [Section 7.1](#).

**"Excluded Assets"** means, collectively, (a) any lease, license or contract to which any member of the Consolidated Group or any Guarantor is a party, or any license, consent, permit, variance, certification, authorization or approval of any Governmental Authority (or any person acting on behalf of a Governmental Authority) of which such member of the Consolidated Group or Guarantor, as the case may be, is the owner or beneficiary, or any of its rights or interests thereunder, if and for so long as the grant of a security interest therein shall constitute or result in (i) the abandonment, invalidation or unenforceability of the right, title or interest of such member of the Consolidated Group or Guarantor (as applicable) therein or (ii) a breach or termination pursuant to the terms of, or a default under, such lease, license or contract or such license, consent, permit, variance, certification, authorization or approval (other than to the extent that any such term would be rendered ineffective pursuant to Section 9-406, 9-407, 9-408 or 9-409 of the UCC or any other applicable law or principles of equity), (b) any equipment, inventory or real property owned by a member of the Consolidated Group or Guarantor, as the case may be, on the date hereof or hereafter acquired that is subject to a purchase money Lien or a Lien securing a Capital Lease Obligation permitted to be incurred hereunder and, in the case of a Guarantor, under the Guaranty Agreement to which it is a party if the contract or other agreement (or the documentation providing for such purchase money obligation or Capital Lease Obligation) in which such Lien is granted validly prohibits the creation of any other Lien on such equipment, inventory or real property, (c) any real property (excluding from this definition, however, any equipment in the nature of trade fixtures, but including any fixtures in the nature of heating, ventilation, air conditioning or similar fixtures relating to physical structure or basic operation of any improvements on such real property), (d) any motor vehicles, trailers, mobile homes, manufactured homes, boats or rolling stock, (e) any assets of any Excluded Subsidiaries, and (f) Equity Interests issued by any Foreign Subsidiary, other than (x) 65% of the issued and outstanding Equity Interests entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) of any first-tier Foreign Subsidiary and (y) 100% of the non-voting Equity Interests in any first-tier Foreign Subsidiary.

**"Excluded Subsidiary"** means (a) any Immaterial Subsidiary and (b) any Foreign Subsidiary; provided, that in no event shall such definition include any Subsidiary that incurs, Guarantees or otherwise provides collateral to support any Senior Note Indebtedness or Incremental Equivalent Debt.

**"Excluded Swap Obligation"** means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Guarantor of, or the grant under a Loan Document by such Guarantor of a Lien or security interest to secure, such Swap Obligation (or any guarantee thereof) is or becomes a violation of 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 Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act (determined after giving effect any and all "keep well" arrangements and other Guarantees by other Persons) at the time the Guarantee of such Guarantor, or grant by such Guarantor of a Lien in or security interest, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under

a Master Agreement governing more than one Swap Contract, such exclusion shall apply to only the portion of such Swap Obligation that is attributable to Swap Contracts for which such Guarantee, Lien or security interest is or becomes a violation of 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).

"Existing Credit Agreement" means that certain Third Amended and Restated Credit Agreement, dated as of March 21, 2016, by and among the Borrower, certain Subsidiaries of the Borrower party thereto as borrowers, Wells Fargo Bank, National Association, as administrative agent, and the lenders from time to time party thereto.

"Existing Supply Agreements" means, collectively, (a) each Bunge Agreement, and (b) that certain Supply Agreement dated July 10, 2015 between Ardent Mills, LLC and MGPI Processing, as amended from time to time and together with any replacements thereof.

"Family Trust" means, in respect of any individual, any trust for the exclusive benefit of such individual, his/her spouse and lineal descendants, so long as such individual has the exclusive right to control such trust.

"FASB ASC" means the Accounting Standards Codification of the Financial Accounting Standards Board.

"Federal Funds Rate" means, for any day, the rate per annum (rounded upwards, if necessary, to the next 1/100<sup>th</sup> of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with member banks of the Federal Reserve System as published by the Federal Reserve Bank of New York on the next succeeding Business Day or if such rate is not so published for any Business Day, the Federal Funds Rate for such day shall be the average rounded upwards, if necessary, to the next 1/100th of 1% of the quotations for such day on such transactions received by the Lender from three Federal funds brokers of recognized standing selected by the Lender.

"Foreign Subsidiary" means any Subsidiary that is not organized under the laws of any political subdivision of the United States of America or the District of Columbia.

"GAAP" means generally accepted accounting principles, being those principles of accounting set forth in pronouncements of the Financial Accounting Standards Board, the American Institute of Certified Public Accountants, or which have other substantial authoritative support and are applicable in the circumstances as of the date of a report.

"Governmental Authority" means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"Guarantee" means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or

other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term "Guarantee" as a verb has a corresponding meaning.

"Guarantors" means, collectively, the Subsidiary Guarantors and any other Person that Guarantees any of the Obligations.

"Guaranty Agreements" means, collectively, the Subsidiary Guaranty Agreement and all other agreements pursuant to which any other Person Guarantees any of the Obligations.

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

"ICM Lease" means that certain Equipment Lease Agreement, dated as of August 16, 2017, between MGPI Processing, as lessor, and ICM, Inc., as lessee.

"ICP" means Illinois Corn Processing, LLC, a Delaware limited liability company.

"Immaterial Subsidiary" means, as of any date of determination, any Subsidiary which (a) does not have material assets or material operations as reasonably determined by the Borrower and the Lender and (b) does not own, directly or indirectly, any Equity Interests of any Subsidiary that has material assets or material operations as reasonably determined by the Borrower and the Lender; provided that if either (i) the total assets of the Immaterial Subsidiaries, taken as a whole, as of the last day of the fiscal quarter set forth in the most recent financial statements delivered pursuant to Section 5.2(a) or (b), is greater than five percent (5%) of the consolidated total assets of the Borrower and its Subsidiaries on such date or (ii) the total revenue of the Immaterial Subsidiaries, taken as a whole, for the four fiscal quarter period ending on the last day of the most recent fiscal quarter covered by financial statements is greater than five percent (5%) of the consolidated total revenue of the Borrower and its Subsidiaries for such period, then the Borrower shall identify in writing and cause one or more Immaterial Subsidiaries (other than a Foreign Subsidiary) to become a Guarantor and comply with the requirements of Section 5.8 until the total assets and total revenue of the Immaterial Subsidiaries, taken as a whole, constitute less than five percent (5%) of consolidated total assets and five percent (5%) of consolidated total revenue of the Borrower and its Subsidiaries at such time.

"Increase Date" is defined in Section 2.7.

"Incremental Commitment" is defined in Section 2.7.

"Incremental Equivalent Debt" is defined in Section 6.2.

"Incremental Increase" is defined in Section 2.7.

"Indebtedness" of any Person means, without duplication (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, loan agreements, notes or other similar agreements or instruments, (c) all obligations of such Person in respect of the deferred purchase price of property or services (other than current trade payables incurred in the ordinary course of business), (d) all obligations of such Person under any conditional sale or other title retention agreement(s) relating to property acquired by such Person, (e) all Capital Lease Obligations of such Person, (f) all obligations, contingent or otherwise, of such Person in respect of letters of credit, acceptances or similar extensions of credit, (g) all Guarantees of such Person of the type of Indebtedness described in clauses (a) through (f)

above, (h) all Indebtedness of a third party secured by any Lien on property owned by such Person, whether or not such Indebtedness has been assumed by such Person, (i) all obligations of such Person, contingent or otherwise, to purchase, redeem, retire or otherwise acquire for value any Equity Interests of such Person, (j) all Off-Balance Sheet Liabilities and (k) the Swap Termination Value under any Swap Contract of such Person. The Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture in which such Person is a general partner or a joint venturer, except to the extent that the terms of such Indebtedness or applicable law provide that such Person is not liable therefor.

"Intercreditor Agreement" means the Collateral Agency and Intercreditor Agreement, dated as of the Closing Date, in form and substance reasonably satisfactory to the Lender, among the Lender, Wells Fargo Bank, National Association, as collateral agent for itself and the purchasers under the Senior Note Purchase Agreement, and acknowledged by the Loan Parties.

"Interest Period" means a period commencing on a New York Business Day and continuing for one, three or six months, as designated by the Borrower, during which all or a portion of the outstanding principal balance of a Loan bears interest determined in relation to LIBOR; provided, that (i) no Interest Period may be selected for a principal amount less than \$100,000, (ii) if the day after the end of any Interest Period is not a New York Business Day (so that a new Interest Period could not be selected by the Borrower to start on such day), then such Interest Period shall continue up to, but shall not include, the next New York Business Day after the end of such Interest Period, unless the result of such extension would be to cause any immediately following Interest Period to begin in the next calendar month in which event the Interest Period shall continue up to, but shall not include, the New York Business Day immediately preceding the last day of such Interest Period, (iii) no Interest Period shall extend beyond the Availability Period, and (iv) the Lender shall have no obligation to quote or maintain more than 5 Interest Periods in effect at any given time.

"IP Rights" is defined in Section 3.7.

"IRB Property" has the meaning given to such term in the definition of Permitted IRB Financings.

"Letter of Credit" is defined in Section 2.1(d).

"Letter of Credit Agreement" is defined in Section 2.1(d).

"Letter of Credit Exposure" means, at any time, the sum of (a) the aggregate undrawn amount of all Letters of Credit outstanding at such time, plus (b) the aggregate amount of unreimbursed drawings under Letters of Credit issued hereunder.

"Letter of Credit Fee" is defined in Section 2.2(h).

"LIBOR" means the rate of interest per annum (rounded upwards, if necessary, to the next 1/100th of 1%) determined by the Lender based on the rate for United States dollar deposits for delivery on the first day of the applicable Interest Period for a period approximately equal to such Interest Period as reported on Reuters Screen LIBOR01 page (or any successor page) at approximately 11:00 a.m., London time, two London Business Days prior to the first day of such Interest Period (or if not so reported, then as determined by the Lender from another recognized source or interbank quotation); provided, that, if LIBOR determined as provided above would be less than zero percent (0.0%), then LIBOR shall be deemed to be zero percent (0.0%).

"LIBOR Loan" means a Loan at any that it bears interest at a rate based on LIBOR (other than by virtue of the application of clause (b) of the definition of Base Rate).

"Lien" means any mortgage, pledge, security interest, lien (statutory or otherwise), charge, encumbrance, hypothecation, assignment, deposit arrangement, or other arrangement having the practical effect of the foregoing or any preference, priority or other security agreement or preferential arrangement of

any kind or nature whatsoever (including any conditional sale or other title retention agreement and any capital lease having the same economic effect as any of the foregoing). For the avoidance of doubt, a Lien shall not include any owner's, bailor's or similar interest with respect to any Customer Owned Inventory.

"Loan" is defined in Section 2.1(a).

"Loan Documents" means, collectively, this Agreement, the Note, each Guaranty Agreement, each Letter of Credit Agreement, each Security Document, the Intercreditor Agreement, and any and all other instruments, agreements, documents and writings executed in connection with any of the foregoing (other than, for the avoidance of doubt, Related Swap Contracts and agreements for cash management services described in the definition of Related Treasury Management Arrangement).

"Loan Parties" means the Borrower and the Subsidiary Guarantors, collectively.

"London Business Day" means any day that is a day for trading by and between banks in Dollar deposits in the London interbank market.

"Material Acquisition" means any Acquisition or series of related Acquisitions consummated after the Closing Date involving aggregate consideration with a fair market value in excess of \$10,000,000.

"Material Adverse Effect" means, with respect to any event, act, condition or occurrence of whatever nature (including any adverse determination in any litigation, arbitration, or governmental investigation or proceeding), whether singly or in conjunction with any other event or events, act or acts, condition or conditions, occurrence or occurrences whether or not related, a material adverse change in, or a material adverse effect on, (a) the business, results of operations, financial condition, assets or liabilities of the Consolidated Group taken as a whole, (b) the ability of any Loan Party or any other Guarantor to perform any of its obligations under the Loan Documents, (c) the rights and remedies of the Lender or the Collateral Agent under any of the Loan Documents or (d) the legality, validity or enforceability of any of the Loan Documents.

"Material Contract" means (a) any contract or other agreement (other than the Loan Documents and any documents or other agreements pertaining to any Indebtedness permitted by Section 6.2(i) or 6.2(k)), whether written or oral, to which any Loan Party is a party that involves payments in an aggregate amount of more than \$25,000,000 or as to which the breach, nonperformance, cancellation or failure to renew by any party thereto would have a Material Adverse Effect, (b) as of the Closing Date, (i) each Existing Supply Agreement, and (ii) that certain Distillate Supply Agreement dated as of July 1, 2013 between Diageo Americas Supply, Inc. and MGPI of Indiana, LLC, and (c) after the Closing Date, each agreement described in clause (b) above, if then in effect, together with any amendments, restatements or other modifications thereof entered into after the Closing Date.

"Material Disposition" means any Disposition or series of related Dispositions consummated after the Closing Date involving aggregate consideration with a fair market value in excess of \$1,000,000.

"Maturity Date" is defined in Section 2.1(a).

"MGPI Processing" means MGPI Processing, Inc., a Kansas corporation.

"Multiemployer Plan" means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

"Net Proceeds" means, with respect to any event (a) the cash proceeds received in respect of such event including (i) any cash received in respect of any non-cash proceeds, but only as and when received, (ii) in the case of a casualty or recovery under any life insurance policy, insurance proceeds, and (iii) in the

case of a condemnation or similar event, condemnation awards and similar payments, net of (b) the sum of (i) all reasonable fees and out-of-pocket expenses paid by any member of the Consolidated Group to third parties (other than Affiliates) in connection with such event, (ii) in the case of a Disposition of an asset (including pursuant to a sale and leaseback transaction or a casualty or a condemnation or similar proceeding), the amount of all payments required to be made by any member of the Consolidated Group as a result of such event to repay Indebtedness (other than Loans) secured by such asset or otherwise subject to mandatory prepayment as a result of such event and (iii) the amount of all taxes paid (or reasonably estimated to be payable) by any member of the Consolidated Group, and the amount of any reserves established by such member of the Consolidated Group to fund contingent liabilities reasonably estimated to be payable, in each case during the year that such event occurred or the next succeeding year and that are directly attributable to such event (as determined reasonably and in good faith by the Borrower or such other Person).

**"New York Business Day"** means any day except a Saturday, Sunday or any other day on which commercial banks in New York are authorized or required by law to close.

**"Note"** is defined in [Section 2.1\(a\)](#).

**"Obligations"** means all amounts owing by any Loan Party to the Collateral Agent, the Lender or any Affiliate of the Lender pursuant to or in connection with this Agreement or any other Loan Document or otherwise with respect to any Loan, Letter of Credit or Related Credit Arrangement, including without limitation, all principal, interest (including any interest accruing after the filing of any petition in bankruptcy or the commencement of any insolvency, reorganization or like proceeding relating to any Loan Party, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), all reimbursement obligations, fees, expenses, indemnification and reimbursement payments, costs and expenses (including all fees and expenses of counsel to the Lender incurred pursuant to this Agreement, any other Loan Document or any Related Credit Arrangement), whether direct or indirect, absolute or contingent, liquidated or unliquidated, now existing or hereafter arising hereunder or thereunder, together with all renewals, extensions, modifications or refinancings thereof, provided that the "Obligations" of a Guarantor shall exclude any Excluded Swap Obligations with respect to such Guarantor.

**"OFAC"** means the Office of Foreign Assets Control of the United States Department of the Treasury.

**"Off-Balance Sheet Liabilities"** of any Person means (a) any repurchase obligation or liability of such Person with respect to accounts or notes receivable sold by such Person, (b) any liability of such Person under any sale and leaseback transactions which do not create a liability on the balance sheet of such Person, (c) any liability of such Person under any so-called "synthetic" lease transaction or (d) any obligation arising with respect to any other transaction which is the functional equivalent of or takes the place of borrowing but which does not constitute a liability on the balance sheet of such Person.

**"Organization Documents"** means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

**"Payment Office"** means the office of the Lender located at 1100 Abernathy Road, Suite 1130, MAC G0189-112, Sandy Springs, Georgia 30328, or such other location as to which the Lender shall have given written notice to the Borrower.

"PBGC" means the Pension Benefit Guaranty Corporation or any entity succeeding to any or all of its functions under ERISA.

"Pension Funding Rules" means the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Plans. Any reference to "compliance" with Pension Funding Rules herein shall be deemed to include that (a) no waiver of any applicable minimum funding standards has been applied for or obtained and (b) as of the most recent valuation date for any Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is 60% or higher and neither the Borrower nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any Plan to drop below 60% as of the most recent valuation date.

"Permitted Acquisition" means any Acquisition by any Loan Party; provided that:

- (a) no Default or Event of Default shall have occurred and be continuing either before or after giving effect to such Acquisition and any Indebtedness incurred in connection therewith;
- (b) the total cash and noncash consideration (including the fair market value of all Equity Interests issued or transferred to the sellers thereof, all indemnities, earn-outs and other contingent payment obligations to, and the aggregate amounts paid or to be paid under non-compete, consulting and other affiliated agreements with, the sellers thereof, all write-downs of property and reserves for liabilities with respect thereto and all assumptions of debt, liabilities and other obligations in connection therewith) paid by or on behalf of the Borrower and its Subsidiaries for any such Acquisition, when aggregated with the total cash and non-cash consideration paid by or on behalf of the Borrower and its Subsidiaries for all other Acquisitions made by the Borrower and its Subsidiaries, shall not exceed \$100,000,000 in any fiscal year;
- (c) such Acquisition is not a "hostile" acquisition and, if required by applicable law, has been approved by the board of directors and/or shareholders (or comparable persons or groups) of the applicable Loan Party and the Person to be (or whose assets are to be) acquired;
- (d) the lines of business of the Person to be so acquired are permitted pursuant to Section 6.4 or, in the case of an Acquisition of assets, the assets acquired are useful in the business of the Borrower and its Subsidiaries as conducted immediately prior to such Acquisition;
- (e) all of the requirements set forth in Section 5.8 are satisfied;
- (f) the Consolidated Leverage Ratio calculated on a Pro Forma Basis (as of the closing date of the Acquisition after giving effect thereto) shall be no greater than 2.75 to 1.00; and
- (g) in the case of a Material Acquisition, at least five Business Days before the date on which any such Acquisition is to be consummated, the Borrower has delivered to the Lender (i) a certificate from an authorized officer of the Borrower, in form and substance reasonably satisfactory to the Lender, certifying that all of the requirements set forth in clauses (a) through (f) have been satisfied or will be satisfied on or prior to the consummation of such Acquisition, (ii) copies of Permitted Acquisition Documents, which shall be in form and substance reasonably satisfactory to the Lender, and (iii) if requested by the Lender, a 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 1 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 the Lender.

"Permitted Acquisition Documents" means with respect to any Acquisition proposed by any Loan Party, final copies or substantially final drafts if not executed at the required time of delivery of the purchase



agreement, sale agreement, merger agreement or other agreement evidencing such Acquisition and each other document executed, delivered, contemplated by or prepared in connection therewith and any amendment, modification or supplement to any of the foregoing.

**"Permitted Encumbrances"** means, collectively, (a) Liens imposed by law for taxes, assessments or governmental charges or levies on property not yet due or which are being contested in good faith by appropriate proceedings and with respect to which adequate reserves are being maintained in accordance with GAAP; (b) statutory Liens of landlords and Liens of carriers, warehousemen, mechanics, materialmen and other Liens imposed by law created in the ordinary course of business for amounts not yet due or which are being contested in good faith by appropriate proceedings and with respect to which adequate reserves are being maintained in accordance with GAAP; (c) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other social security laws or regulations; (d) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business; (e) judgment and attachment liens not giving rise to an Event of Default; (f) customary Liens and rights of setoff upon deposits in favor of depository institutions and Liens of a collecting bank on payment items in the course of collection, in each case except to the extent required to be waived or subordinated pursuant to a control agreement or subordination agreement in favor of the Lender required to be executed and delivered pursuant to this Agreement; (g) any interest of title of a lessor under, and Liens arising from precautionary Uniform Commercial Code financing statements (or equivalent filings, registrations or agreements) relating to, leases permitted by this Agreement; and (h) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or materially interfere with the ordinary conduct of business of the Borrower or any Subsidiary; provided that the term "Permitted Encumbrances" shall not include any Lien securing indebtedness or any leasing or subleasing of real property that is not approved in advance in writing by the Lender.

**"Permitted Investors"** means any of (a) Karen Seaberg, (b) Richard B. Cray and (c) Laidacker M. Seaberg, or any Family Trust of such Persons.

**"Permitted IRB Financings"** means financings, in an aggregate principal amount outstanding at any time not to exceed \$10,000,000, in the nature of industrial revenue bonds or the like issued by a state, county, municipality or similar political subdivision or an industrial revenue authority or similar issuer in connection with the acquisition, construction, installation and/or equipping of land or real property improvements and/or personal property located thereon to be used in the manufacture or storage of whiskey, including but not limited to whiskey maturation warehouses or similar facilities and barrels to fill such warehouses or similar facilities, but excluding whiskey distillate stored in such barrels (collectively, "IRB Property"), and whereby the Borrower or one of its Subsidiaries may transfer all or a portion of such IRB Property to the issuer of such bonds (whether pursuant to a sale or a lease) and whereby, in such event, the Borrower or such Subsidiary, as applicable, shall lease back or otherwise acquire from such issuer a leasehold or similar interest in such IRB Property. Notwithstanding the foregoing, no such financing shall constitute a Permitted IRB Financing if the real property subject to such financing was acquired by the Borrower or a Subsidiary more than one year before the issuance of the industrial revenue bonds related to such real property.

**"Permitted Real Estate"** means real estate owned by the Borrower or one or more of its Subsidiaries and located at or near: 16 Kansas Avenue, Kansas City, Kansas; 10 Berger Avenue, Kansas City, Kansas; 101 Commercial Street, Atchison, Kansas; and 68, 72, 84, 102 and 108 Ridge Avenue, Greendale, Indiana.

**"Permitted Refinancing"** means, with respect to any Person, any modification, refinancing, refunding, renewal, restructuring, replacement or extension of any Indebtedness of such Person (whether with the same or different lenders); provided that (a) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, restructured, refunded, renewed, replaced or extended except by an amount equal to unpaid

accrued interest and premium thereon, (b) such modification, refinancing, refunding, renewal, replacement or extension has a final maturity date equal to or later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended, (c) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to [Section 6.2\(i\)](#), at the time thereof, no Default or Event of Default shall have occurred and be continuing, (d) if such Indebtedness being modified, refinanced, refunded, renewed or extended is secured, the terms and conditions relating to collateral of any such modified, refinanced, refunded, renewed or extended Indebtedness, taken as a whole, are not materially less favorable to the Loan Parties or the Lender than the terms and conditions with respect to the collateral for the Indebtedness being modified, refinanced, refunded, renewed or extended, taken as a whole (and the Liens on any Collateral securing any such modified, refinanced, refunded, renewed or extended Indebtedness shall have the same (or lesser) priority relative to the Liens on the Collateral securing the Obligations), (e) the terms and conditions (excluding any amortization, collateral, subordination, pricing, fees, rate floors, discounts, premiums and optional prepayment or redemption terms) of any such modified, refinanced, refunded, renewed or extended Indebtedness, taken as a whole, shall not be materially less favorable to the Loan Parties than the Indebtedness being modified, refinanced, refunded, renewed or extended, except for covenants or other provisions applicable only to periods after the Maturity Date; (f) such modification, refinancing, refunding, renewal or extension is incurred by the Person who is the obligor on the Indebtedness being modified, refinanced, refunded, renewed or extended; and (g) if such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is subordinated in right of payment to the Obligations, such modification, refinancing, refunding, renewal, replacement or extension is subordinated in right of payment to the Obligations on terms (i) at least as favorable (taken as a whole) (as reasonably determined by the Borrower) to the Lender as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended, and such modification, refinancing, refunding, renewal, replacement or extension is incurred by one or more Persons who is an obligor of the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended or (ii) otherwise reasonably acceptable to the Lender.

**"Person"** means any individual, partnership, firm, corporation, association, joint venture, limited liability company, trust or other entity, or any Governmental Authority.

**"Plan"** means a "defined benefit plan" as defined in Section 3(35) of ERISA.

**"Pledge Agreement"** means the Pledge Agreement dated as of the date hereof by the Borrower and certain of its Subsidiaries to the Collateral Agent.

**"Pro Forma Basis"** means, with respect to compliance with any test hereunder for an applicable period of measurement, that any Investment, Disposition, incurrence or repayment of Indebtedness, Restricted Payment, discontinuance of operations, incurrence of any Indebtedness, or any other event or action requiring or permitting such test to be calculated on a "Pro Forma Basis" and the following shall be deemed to have occurred as of the first day of the applicable period of measurement (as of the last date in the case of a balance sheet item) in such test, in each case on a basis consistent with [Article 11](#) of Regulation S-X of the Securities Act, as interpreted by the Securities and Exchange Commission or otherwise as approved by the Lender: (i) income statement items (whether positive or negative) attributable to the property or person subject to such transaction, event or action (A) in the case of a Disposition of all or substantially all Equity Interests in any Subsidiary of the Borrower or any division, product line, or facility used for operations of the Borrower or any of its Subsidiaries, shall be excluded, and (B) in the case of a Permitted Acquisition or Investment, shall be included, (ii) any retirement of Indebtedness which is retired shall be excluded and shall be deemed to have been retired as of the first day of the applicable period of measurement, and (iii) any Indebtedness incurred or assumed by the Borrower and its Restricted Subsidiaries and if such Indebtedness has a floating or formula rate, shall have an implied rate of interest for the applicable period for purposes of this definition determined by utilizing the rate which is or would be in effect with respect to such Indebtedness as at the relevant date of determination.

"Prohibited Transaction" means a prohibited transaction as defined in Section 406 of ERISA or Section 4975 of the Code, for which a statutory or administrative exemption is not otherwise available.

"Related Credit Arrangements" means, collectively, any Related Swap Contracts and any Related Treasury Management Arrangements.

"Related Parties" means, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person's Affiliates.

"Related Swap Contracts" means all Swap Contracts to or for the benefit of any Loan Party or any Subsidiary that are now or hereafter entered into or maintained with a counterparty that is either the Lender or an Affiliate of the Lender, whether or not such counterparty subsequently ceases to be a party hereto as the Lender or ceases to be an Affiliate of the Lender.

"Related Treasury Management Arrangement" means all arrangements for the delivery of cash management services, including treasury, depository, overdraft, credit or debit card, electronic funds transfer and other cash management arrangements (including any Treasury Management Agreement), to or for the benefit of any Loan Party or any Subsidiary which are now or hereafter entered into or maintained with a counterparty that is either the Lender or an Affiliate of the Lender, whether or not such counterparty subsequently ceases to be a party hereto as the Lender or ceases to be an Affiliate of the Lender.

"Release" means any release, spill, emission, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into the environment (including ambient air, surface water, groundwater, land surface or subsurface strata) or within any building, structure, facility or fixture.

"Reportable Event" means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30-day notice period has been waived.

"Responsible Officer" means, with respect to the Borrower or any Subsidiary, the president, chief financial officer, controller or treasurer of such Person.

"Restricted Payment" means (a) any dividend or other distribution, direct or indirect, on account of any Equity Interest of any member of the Consolidated Group now or hereafter outstanding, (b) any redemption, conversion, exchange, retirement or similar payment, purchase or other acquisition for value, direct or indirect, of any Equity Interest of any member of the Consolidated Group now or hereafter outstanding, and (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire Equity Interest of any member of the Consolidated Group now or hereafter outstanding.

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

"Sanctioned Person" means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC, the U.S. Department of State, the United Nations Security Council, the European Union, Her Majesty's Treasury or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person owned or controlled by any such Person or Persons described in clauses (a) and (b).

"Sanctions" means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government (including those administered by OFAC), the United Nations Security Council, the European Union, Her Majesty's Treasury or other relevant sanctions authority.

"Security Agreement" means the Security Agreement dated as of the date hereof by the Borrower and its Subsidiaries to the Collateral Agent.

"Security Documents" means, collectively, the Security Agreement, the Pledge Agreement and all other agreements (including control agreements), instruments and other documents, whether now existing or hereafter in effect, pursuant to which the Borrower, any Guarantor or any other Person shall grant or convey to the Collateral Agent a Lien in, or any other Person shall acknowledge any such Lien in, property as security for all or any portion of the Obligations or any other obligation under any Loan Document or with respect to any Senior Note Indebtedness.

"Senior Note Indebtedness" means any Indebtedness outstanding or issued under the Senior Note Purchase Agreement; provided, in the case of any Indebtedness issued after the Closing Date that (i) each holder of such Indebtedness (or an authorized representative) shall be party to the Intercreditor Agreement, (ii) the maturity date of such Indebtedness shall be no shorter than the Maturity Date then in effect, (iii) the Weighted Average Life to Maturity of such Indebtedness shall be no shorter than the Weighted Average Life to Maturity of the Senior Note Indebtedness issued on the Closing Date, (iv) such Indebtedness shall not require mandatory prepayments (other than scheduled amortization payments) that are more restrictive than any mandatory prepayments applicable to the Loans and the Senior Note Indebtedness issued on the Closing Date and may participate on a pro rata basis or on a less than pro rata basis (but not on a greater than pro rata basis) in any mandatory prepayments (other than scheduled amortization payments) applicable to the Loans and any Senior Note Indebtedness issued on the Closing Date, (v) such Indebtedness shall not be incurred by or subject to any Guarantee by any Person other than the Borrower and the Guarantors, respectively, and shall not be secured by any property or assets of any Loan Party other than Collateral, and (vi) all other terms of such Indebtedness not covered in this definition shall be determined by the Borrower and the investors purchasing such Indebtedness and to the extent the terms of such Indebtedness, taken as a whole, are not substantially the same as the terms of the Senior Note Indebtedness issued on the Closing Date (other than, in each case, pricing, amortization and maturity) (as determined by the Borrower in good faith), the terms of such Indebtedness shall be reasonably acceptable to the Lender if they are adverse to the Borrower or more restrictive than the terms and conditions applicable to the Loans or any Senior Note Indebtedness issued on the Closing Date (except for covenants and events of default applicable only to periods after the Maturity Date in effect at the time such Indebtedness is issued).

"Senior Note Purchase Agreement" means that certain Note Purchase and Private Shelf Agreement, dated as of August 23, 2017, made by the Borrower, as issuer, and PGIM, Inc. and certain of its Affiliates, as purchasers.

"Subsidiary" means, with respect to any Person (the "parent"), any other Person the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other Person (a) of which Equity Interests representing more than 50% of the equity or more than 50% of the ordinary voting power, or in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, directly or indirectly by the parent or (b) that is, as of such date, otherwise Controlled, directly or indirectly by the parent. Unless otherwise indicated, all references to "Subsidiary" hereunder means a Subsidiary of the Borrower.

"Subsidiary Guarantors" means, collectively or individually as the context may indicate, each of the existing Subsidiaries of the Borrower on the Closing Date (other than Excluded Subsidiaries) and each other Person that becomes a party to the Subsidiary Guaranty Agreement.

"Subsidiary Guaranty Agreement" means the Subsidiary Guaranty Agreement dated as of the date hereof by the existing Subsidiary Guarantors to the Lender.

"Swap Contract" means (a) any and all interest rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange

transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

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

"Swap Termination Value" means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include the Lender or any Affiliate of the Lender).

"Termination Date" is defined in Section 2.1(a).

"Treasury Management Agreement" means any autoborrow, sweep or similar agreement entered into between the Borrower and the Lender from time to time.

"UCC" means the Uniform Commercial Code as in effect in the State of New York.

"Weighted Average Life to Maturity" means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (b) the then outstanding principal amount of such Indebtedness.

#### SECTION 1.2. RULES OF INTERPRETATION.

(a) Unless the context requires otherwise or such term is otherwise defined herein, each term defined in Articles 1, 8 or 9 of the UCC shall have the meaning given therein. The headings, subheadings and table of contents used herein or in any other Loan Document are solely for convenience of reference and shall not constitute a part of any such document or affect the meaning, construction or effect of any provision thereof. Except as otherwise expressly provided, references in any Loan Document to articles, sections, paragraphs, clauses, annexes, appendices, exhibits and schedules are references to articles, sections, paragraphs, clauses, annexes, appendices, exhibits and schedules in or to such Loan Document. All definitions set forth herein or in any other Loan Document shall apply to the singular as well as the plural form of such defined term, and all references to the masculine gender shall include reference to the feminine or neuter gender, and vice versa, as the context may require. When used herein or in any other Loan Document, words such as "hereunder", "hereto", "hereof" and "herein" and other words of like import shall, unless the context clearly indicates to the contrary, refer to the whole of the applicable document and not to any particular article, section, subsection, paragraph or clause thereof. References to "including" means including without limiting the generality of any description preceding such term, and such term shall not limit a general statement to matters similar to those specifically mentioned. Except as otherwise expressly provided, all dates and times of day specified herein shall refer to such dates and times at Atlanta, Georgia.

Whenever interest rates or fees are established in whole or in part by reference to a numerical percentage expressed as "\_\_\_%", such arithmetic expression shall be interpreted in accordance with the convention that 1% = 100 basis points.

(b) Each of the parties to the Loan Documents and their counsel have reviewed and revised, or requested (or had the opportunity to request) revisions to, the Loan Documents, and any rule of construction that ambiguities are to be resolved against the drafting party shall be inapplicable in the construing and interpretation of the Loan Documents and all exhibits, schedules and appendices thereto.

(c) Any reference to an officer of the Borrower or any other Person by reference to the title of such officer shall be deemed to refer to each other officer of such Person, however titled, exercising the same or substantially similar functions. Any definition of or reference to any agreement, instrument or other document (including any organizational document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document). Any financial ratios required to be maintained by the Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number). In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including;" the words "to" and "until" each mean "to but excluding;" and the word "through" means "to and including."

#### SECTION 1.3. ACCOUNTING MATTERS.

(a) Unless otherwise defined or specified, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared, in accordance with GAAP as in effect from time to time, applied on a basis consistent (except for such changes approved by the Lender in advance in writing) with the financial statements of the Borrower delivered to the Lender with respect to the fiscal year ended most recently prior to the Closing Date.

(b) In making any computation or determining any amount pursuant to Section 6.1 by reference to any item appearing on the balance sheet or other financial statement of the Consolidated Group, all adjustments to such computation or amount resulting from the application of FASB ASC Topic 815 shall be disregarded; provided that any realized gain or loss shall be included in such computations.

(c) If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Lender shall so request, the Borrower and the Lender shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP; provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Lender financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

(d) For each period of four fiscal quarters ending next following the date of any Material Acquisition or Material Disposition consummated after the Closing Date, for purposes of determining the Consolidated Leverage Ratio, the consolidated results of operations of the Consolidated Group shall include the results of operations of the Person or assets subject to such Material Acquisition or exclude the results of operations of the Person or assets subject to such Material Disposition, as the case may be, on a historical Pro Forma Basis to the extent information in sufficient detail concerning such historical results of such Person or assets is reasonably available, and which amounts shall include only adjustments reasonably satisfactory to the Lender.

(e) Notwithstanding anything to the contrary contained in Section 1.3(a) above or the definition of "Capital Lease Obligations", in the event of an accounting change requiring all leases to be capitalized, only those leases that would have constituted capital leases on the date hereof (assuming for purposes hereof that they were in existence on the date hereof) shall be considered capital or finance leases, and all calculations and deliverables under this Agreement or any other Loan Document shall be made in accordance therewith provided that all financial statements delivered to the Administrative Agent in accordance with the terms of this Agreement after the date of such accounting change shall contain a schedule showing the adjustments necessary to reconcile such financial statements with GAAP as in effect immediately prior to such accounting change).

## ARTICLE II - CREDIT TERMS

### SECTION 2.1. CREDIT FACILITY.

(a) Commitment. Subject to the terms and conditions of this Agreement, the Lender agrees to make revolving credit loans (collectively, the "Loans") to the Borrower from time to time during the period (the "Availability Period") from the date the conditions precedent to the initial extensions of credit set forth in Article IV have been satisfied (the "Closing Date") until August 23, 2022 (the "Maturity Date") or such earlier date on which the commitment of the Lender to make the Loans under this Section 2.1(a) is terminated pursuant to Section 2.1(c) or the Loans under this Agreement have been declared or have automatically become due and payable (whether by acceleration or otherwise)(the Maturity Date or such earlier date, the "Termination Date") in an aggregate principal amount not to exceed \$150,000,000 outstanding at any time, as such amount may be adjusted from time to time in accordance with this Agreement. The Lender's commitment to make such Loans, as adjusted from time to time is herein referred to as the "Commitment". The Borrower's obligation to repay the Loans shall be evidenced by a promissory note dated as of the Closing Date (together with any notes issued hereunder from time to time in replacement or substitution therefor, the "Note").

(b) Borrowing and Repayment. The Borrower may from time to time during the Availability Period borrow, reborrow and partially or wholly repay outstanding Loans, subject to all the limitations, terms and conditions contained herein. The outstanding principal balance of the Loans shall be due and payable in full on the Termination Date. If the aggregate outstanding amount of Loans and Letter of Credit Exposure incurred pursuant to Section 2.1(d) at any time exceeds the Commitment then in effect, the Borrower shall immediately prepay Loans or Cash Collateralize Letter of Credit Exposure in amounts sufficient to remedy such excess. Except with respect to Loans utilized to reimburse drawings paid under Letters of Credit and as otherwise permitted by the Lender (including pursuant to any Treasury Management Agreement), each advance of Loans shall (i) be in an amount of at least \$100,000, and, if greater than \$100,000, an integral multiple of \$25,000, and (ii) require the receipt by the Lender of a request therefor prior to 1:00 p.m. (x) 1 Business Day prior to an advance of a LIBOR Loan or (y) on the date of an advance of a Base Rate Loan. Any such request may be given by telephone (or such other electronic method as the Lender may permit) so long as, promptly upon request by the Lender, the Borrower provides to the Lender written confirmation thereof.

(c) Prepayment, Reduction and Termination of Commitment.

(i) Optional. The Borrower may prepay Loans at any time, in whole multiples of \$100,000 or, if less, in the amount of Loans then outstanding or such lesser amount as may occur pursuant to any Treasury Management Agreement, in each case subject to the payment of any breakage and redeployment costs of the Lender in the case of LIBOR Loans (calculated in accordance with the Lender's standard practices as in effect from time to time). The Borrower may irrevocably cancel the unutilized portion of the Commitment in whole or in part at any time upon 3 Business Days advance notice to the Lender; provided that any such reduction shall be in a whole multiple of \$100,000 or, if less, the amount of the remaining Commitment then in effect.

(ii) Mandatory. If for any reason the aggregate outstanding amount of Loans plus the Letter of Credit Exposure exceeds the Commitment then in effect, the Borrower shall immediately prepay Loans and/or Cash Collateralize Letters of Credit (without any corresponding reduction in the Commitment) in an aggregate amount equal to such excess.

(iii) Payment of Fees. All fees accrued until the effective date of any termination of the Commitment shall be paid on the effective date of such termination.

(d) Letter of Credit Sub-feature. As a sub-feature under the Commitment, the Lender hereby agrees from time to time during the Availability Period to issue (or, if requested by the Borrower, to cause an Affiliate to issue) standby letters of credit at the request of the Borrower (each, a "Letter of Credit" and collectively, "Letters of Credit"); provided that (i) the aggregate undrawn amount of all outstanding Letters of Credit shall not at any time exceed \$5,000,000 and (ii) at no time shall the aggregate outstanding principal amount of Loans and Letter of Credit Exposure exceed the Commitment. The form and substance of each Letter of Credit shall be subject to approval by the Lender, in its reasonable discretion. Each Letter of Credit shall be issued for a term not to exceed 365 days, as designated by the Borrower (subject to such automatic renewal provisions as may be acceptable to the Lender, in its sole discretion); provided that no Letter of Credit shall have an expiration date subsequent to the Maturity Date. The undrawn amount of all Letters of Credit shall be reserved under the Commitment and shall not be available for borrowings thereunder. Each Letter of Credit shall be subject to the additional terms and conditions of the letter of credit agreements, applications and any related documents required by the Lender in connection with the issuance thereof (each, a "Letter of Credit Agreement"). The Borrower shall reimburse the Lender for each drawing in full on the date such drawing is made. To the extent not reimbursed by the Borrower on the date of drawing, each drawing paid under a Letter of Credit shall be deemed to be repaid to the Lender through a Loan; provided that if Loans are not available for any reason at the time any drawing is paid, then the Borrower shall immediately reimburse to the Lender the full amount drawn, together with interest thereon from the date such drawing is paid to the date such amount is fully repaid by the Borrower, at the Default Rate applicable to Base Rate Loans. In such event the Borrower agrees that the Lender, in its sole discretion, may debit any account maintained by the Borrower with the Lender for the amount of any such drawing. If any Event of Default shall occur and be continuing or if any Letter of Credit Exposure is outstanding on the date that is 5 Business Days prior to the Maturity Date, on the Business Day that the Borrower receives notice from the Lender demanding same, the Borrower shall immediately Cash Collateralize the Letter of Credit Exposure as of such date; provided that the obligation to provide such Cash Collateral shall become effective immediately, without demand or other notice of any kind, (x) upon the occurrence of any Event of Default with respect to the Borrower described in clause (g) or (h) of Section 7.1, and (y) if any Letter of Credit Exposure remains outstanding on the Termination Date.

#### SECTION 2.2. INTEREST/FEEES.

(a) Rate. Subject to the provisions of Section 2.2(e) below, the outstanding principal balance of each Loan shall bear interest from the date such Loan is made to the date such amount is fully repaid by the Borrower, at either (i) LIBOR plus the Applicable Rate set forth in the pricing grid below or (ii) the Base Rate plus the Applicable Rate set forth in the pricing grid below, as selected by the Borrower in accordance with the interest rate selection provisions below.

As used herein, the term "Applicable Rate" means the following percentages per annum, based upon the Consolidated Leverage Ratio as set forth in the most recent compliance certificate received by the Lender pursuant to Section 5.2(c):



Tier	Consolidated Leverage Ratio	Applicable Rate for LIBOR Loans	Applicable Rate for Base Rate Loans
I	< 2.00 to 1.00	1.375%	0.375%
II	≥ 2.00 to 1.00	1.500%	0.500%

Any increase or decrease in the Applicable Rate resulting from a change in the Consolidated Leverage Ratio shall become effective as of the first Business Day immediately following the date a compliance certificate is delivered pursuant to Section 5.2(c); provided that (a) if a compliance certificate is not delivered when due in accordance with such Section, then Tier II shall apply as of the first Business Day after the date on which such compliance certificate was required to have been delivered until the first Business Day immediately following the date such compliance certificate is delivered and (b) if the Borrower does not appropriately complete the schedules attached to such compliance certificate (including indicating the appropriate Tier upon which the Applicable Rate shall be determined) indicating the Borrower is entitled to the benefit of a lower pricing Tier, then the Lender shall not be required to institute any decrease in the Applicable Rate until the first Business Day after the date on which the Lender receives notice from the Borrower indicating such lower pricing Tier should apply, together with any appropriate supporting information required by the Lender. Notwithstanding the foregoing, but subject to the proviso in the foregoing sentence the Applicable Rate in effect from the Closing Date until the first Business Day immediately following the date a compliance certificate is delivered for the fiscal quarter ending September 30, 2017 shall be determined based upon Tier I.

(b) **Payment Dates.** Interest on the principal amount of all Loans shall accrue from and including the date such Loans are made to but excluding the date of any repayment thereof. Interest on all outstanding Loans shall be payable at the end of each Interest Period in the case of LIBOR Loans, but no less frequently than quarterly, and quarterly in arrears on the last Business Day of each March, June, September and December, commencing on September 30, 2017, in the case of Base Rate Loans, and on the Termination Date. Interest on any Loan which is repaid or prepaid shall be payable on the date of such repayment or prepayment (on the amount repaid or prepaid) thereof.

(c) **Selection of Interest Rate Options.**

(i) Loans may be Base Rate Loans or LIBOR Loans. At such time as the Borrower requests a Loan hereunder or wishes to select a LIBOR option for all or a portion of the outstanding principal balance thereof, and at the end of each Interest Period, the Borrower shall give the Lender notice specifying: (x) the interest rate option selected by the Borrower; (y) the principal amount subject thereto; and (z) for each LIBOR selection, the length of the applicable Interest Period. Any such notice may be given by telephone (or such other electronic method as the Lender may permit) so long as, with respect to each LIBOR selection, (A) if requested by the Lender, the Borrower provides to the Lender written confirmation thereof not later than 1 Business Day after such notice is given, and (B) such notice is given to the Lender prior to 1:00 p.m. one Business Day prior to the first day of the Interest Period, or at a later time during any Business Day if the Lender, at its sole option but without obligation to do so, accepts the Borrower's notice and quotes a fixed rate to the Borrower. If the Borrower does not immediately accept a fixed rate when quoted by the Lender, the quoted rate shall expire and any subsequent LIBOR request from the Borrower shall be subject to a redetermination by the Lender of the applicable fixed rate. If no specific designation of interest is made at the time any advance is requested hereunder or at the end of any Interest Period, the Borrower shall be deemed to have made a Base Rate interest selection for such advance or the principal amount to which such Interest Period applied. Notwithstanding the foregoing or any other provision of this Agreement to the contrary, no portion of any Loan may be continued as a LIBOR Loan while any Event of Default exists without the consent of the Lender, which may be withheld in the Lender's sole discretion, and while any Event of Default exists any Loan that is a LIBOR Loan shall be converted to a Base Rate Loan immediately upon the request of the Lender.

(ii) Subject to the foregoing provisions, at any time a Loan (or any portion thereof) is a LIBOR Loan, it may be continued by the Borrower at the end of the Interest Period applicable thereto so that all or a portion thereof bears interest determined in relation to the Base Rate or to LIBOR for a new Interest Period designated by the Borrower. At any time a Loan (or any portion thereof) is a Base Rate Loan, the Borrower may convert all or a portion thereof so that it bears interest determined in relation to LIBOR for an Interest Period designated by the Borrower.

(iii) Notwithstanding anything to the contrary set forth herein, at any time during which an interest rate swap transaction between the Borrower and the Lender (a "Swap Transaction") is in effect with respect to all or a portion of the principal balance of the Loans outstanding hereunder, the following provisions shall apply with respect to a portion of the principal balance of outstanding Loans that is equal to the notional amount of the Swap Transaction or, if larger, such portion as may be mutually agreed between the Borrower and the Lender (either such portion, as applicable, the "Designated Hedge Portion"). With respect to the Designated Hedge Portion, the definition of "Interest Period" shall be defined as follows:

"Interest Period" means a period during which the Designated Hedge Portion bears interest determined in relation to LIBOR, with the understanding that (i) the initial Interest Period shall commence on the later of (A) the effective date of the Swap Transaction and (B) the date of the initial Loans hereunder and shall continue up to, but shall not include, the next occurring Designated Reset Date (as defined below), (ii) there shall be successive Interest Periods thereafter, each of which shall commence automatically, without notice to or consent from the Borrower, on a Designated Reset Date and continue up to, but shall not include, the subsequent Designated Reset Date and (iii) if, on the first day of an Interest Period there is less than one (1) month until the Maturity Date, said Interest Period shall be in effect only until the Maturity Date, if any Interest Period is scheduled to commence on a day which is not a New York Business Day, then such Interest Period shall commence on the next succeeding New York Business Day (and the preceding Interest Period shall continue up to, but shall not include, the first day of such Interest Period), unless the result of such extension would be to cause such Interest Period to begin in the next calendar month, in which event such Interest Period shall commence on the immediately preceding New York Business Day (and the preceding Interest Period shall continue up to, but shall not include, the first day of such Interest Period). As used above, the term "Designated Reset Date" means either (x) the interest rate reset date specified in the documentation for the Swap Transaction or (y) such other date as the Lender and the Borrower may otherwise mutually agree upon from time to time.

The Borrower understands and acknowledges that any Swap Transaction and all documents evidencing the Swap Transaction (collectively, the "Swap Agreement") constitute an independent agreement between the Borrower and the Lender and that nothing in this Agreement shall be construed as amending or modifying any Swap Agreement or be interpreted to create an obligation on the part of the Lender to amend or modify any Swap Transaction. The Borrower acknowledges that the Borrower is responsible for verifying the terms of any Swap Agreement and understands the effect of any Swap Transaction having payment dates or a termination date that are different from the payment dates or Maturity Date hereunder. The Borrower agrees that economic terms and characteristics of the Loans hereunder may differ from those of the Swap Transaction.

(d) Computation. Interest shall be computed on the basis of a 360-day year, actual days elapsed, except for Loans bearing interest based on the Base Rate (including Base Rate Loans determined by reference to LIBOR), which shall be computed on the basis of a 365/366-day year, actual days elapsed. When interest is determined in relation to the Base Rate, each change in the rate of interest hereunder shall become effective on the date each Base Rate change is announced within the Lender. The Lender shall determine each interest rate applicable to the Loans hereunder and shall promptly notify the Borrower upon request of such rate in writing (or by telephone, promptly confirmed in writing). Any such determination shall be conclusive and binding for all purposes, absent manifest error.

(c) Default Interest. While an Event of Default exists, the Borrower shall pay interest with respect to all Obligations hereunder at the Default Rate. All interest that has accrued at the Default Rate shall be payable on demand.

(f) Inability to Determine Interest Rates; Illegality. If the Lender shall have determined (which determination shall be conclusive and binding upon the Borrower) that (i) by reason of circumstances affecting the relevant interbank market, adequate means do not exist for ascertaining LIBOR on the first day of any Interest Period, (ii) in the Lender's good faith estimation, LIBOR does not adequately and fairly reflect the cost to the Lender of making, funding or maintaining its Loans as of such date, or (iii) it is unlawful or impossible for the Lender to make, maintain or fund any Loan as a LIBOR Loan, the Lender shall give written notice (or telephonic notice, promptly confirmed in writing) to the Borrower as soon as practicable thereafter. Until the Lender notifies the Borrower that the circumstances giving rise to such notice no longer exist, all affected Loans and all subsequent Loans hereunder shall bear interest at the Base Rate (disregarding the application of clause (b) of the definition thereof to the extent that either clause (i) or clause (iii) of the preceding sentence applies) plus the Applicable Rate.

(g) Unused Commitment Fee. The Borrower shall pay to the Lender a fee equal to 0.15% (computed on the basis of a 360-day year, actual days elapsed) on the average daily unused amount of the Commitment, which fee shall be calculated on a quarterly basis by the Lender and shall be due and payable by the Borrower in arrears on the last Business Day of each March, June, September and December and on the Termination Date.

(h) Letter of Credit Fees. The Borrower shall pay to the Lender for each Letter of Credit a Letter of Credit fee (the "Letter of Credit Fee") equal to the Applicable Rate for LIBOR Loans times the daily amount available to be drawn under such Letter of Credit. Letter of Credit Fees shall be (i) due and payable on the first Business Day after the end of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Termination Date and thereafter on demand and (ii) computed on a quarterly basis in arrears. If there is any change in the Applicable Rate during any quarter, the daily amount available to be drawn under each Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect. Notwithstanding anything to the contrary contained herein, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate. In addition, the Borrower shall pay to the Lender (i) fees upon the issuance, increase and extension of each Letter of Credit equal to 0.150% of the face amount thereof (or, in the case of any increase, of the amount of such increase), and (ii) fees upon the payment or negotiation of each drawing under any Letter of Credit and fees upon the occurrence of any other activity with respect to any Letter of Credit (including without limitation, the transfer, amendment or cancellation of any Letter of Credit) determined in accordance with the Lender's standard fees and charges then in effect for such activity.

SECTION 2.3. COLLECTION OF PAYMENTS. The Borrower will designate a deposit account with the Lender from which to collect all principal, interest and fees due under each credit subject hereto and, in absence of such designation the Lender is hereby authorized to charge any deposit account maintained by the Borrower with the Lender for the full amount thereof. Should there be insufficient funds in any designated deposit account to pay all such sums when due, the full amount of such deficiency shall be immediately due and payable by the Borrower.

SECTION 2.4. PAYMENTS GENERALLY. The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees or other amounts payable hereunder) prior to 1:00 p.m., on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Lender, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Lender at its Payment Office. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in

the case of any payment accruing interest, interest thereon shall be made payable for the period of such extension. All payments under the Loan Documents shall be made in Dollars and free and clear of, and without reduction by reason of, any withholdings, interest equalization taxes, stamp taxes or other taxes (except income and franchise taxes) imposed by any Governmental Authority with respect to such payments under the Loan Documents (collectively, "Applicable Taxes"). If the Borrower is obligated to make any deduction or withholding on account of Applicable Taxes from any amount payable to the Lender under any Loan Document, the Borrower shall promptly (w) notify the Lender of such fact, (x) make such deduction or withholding and pay the same to the relevant Governmental Authority, (y) pay such additional amount directly to the Lender as is necessary to result in the Lender receiving the amount that the Lender would have received under the applicable Loan Document absent such deduction or withholding and (z) after such payment, furnish to the Lender a copy of a receipt evidencing payment thereof, or other evidence of payment satisfactory to the Lender. The Borrower shall indemnify the Lender, immediately upon demand therefor, for the full amount of any Applicable Taxes (including for the full amount of any Applicable Taxes imposed or asserted on or attributable to amounts payable under this paragraph) paid by the Lender and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Applicable Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by the Lender shall be conclusive absent manifest error.

SECTION 2.5. COLLATERAL. As security for the Obligations the Borrower will, and will cause each Subsidiary (other than any Excluded Subsidiary) to, from time to time take such actions and execute and deliver such documents and instruments as the Lender shall require to ensure that the Lender shall have received currently effective Loan Documents pledging and granting security interests or other Liens acceptable to the Lender on substantially all of the such Person's assets now owned or hereafter acquired, including all accounts, chattel paper, commercial tort claims, deposit accounts, documents, equipment, general intangibles, instruments, inventory and investment property (each as defined in Article 9 of the UCC), but excluding all Excluded Assets, in each case subject to no prior Lien or other encumbrance or restriction on transfer except as expressly permitted hereunder. All of the foregoing shall be evidenced by and subject to the terms of such security agreements, financing statements and other documents as the Lender shall reasonably require, all in form and substance satisfactory to the Lender. The Borrower shall reimburse the Lender immediately upon demand for all costs and expenses incurred by the Lender in connection with any of the foregoing security, including without limitation, filing and recording fees.

SECTION 2.6. GUARANTIES. The Obligations shall be guaranteed jointly and severally by each Subsidiary of the Borrower (other than any Excluded Subsidiary), as evidenced by and subject to the terms of the Subsidiary Guaranty Agreement.

SECTION 2.7. INCREMENTAL LOANS. At any time so long as no Default has occurred and is continuing, the Borrower may by written notice to the Lender elect to request the establishment of one or more increases in the Commitment (any such increase, an "Incremental Commitment") to make revolving credit loans under the revolving credit facility established under Section 2.1(a) (any such increase, an "Incremental Increase"); provided that the total aggregate initial principal amount for all such Incremental Loan Commitments shall not exceed \$25,000,000. Each such notice shall specify the date (each, an "Increase Date") on which the Borrower proposes that any Incremental Commitment shall be effective, which shall be a date not less than ten (10) Business Days after the date on which such notice is delivered to the Lender (or such later date as may be approved by the Lender). The Lender may elect or decline, in its sole discretion, to provide such Incremental Commitment or any portion thereof, and any failure to affirmatively respond to any request to provide an Incremental Commitment shall be deemed to be a denial of such request. The terms of each Incremental Commitment shall be set forth in an amendment to this Agreement in form and substance satisfactory to the Lender, which will, among other things, set forth (x) the pricing therefor (it being understood that any Incremental Increase shall mature on the Maturity Date, shall bear interest and be entitled to fees, in each case at the rate applicable to the Loans, and shall be subject to the same terms and conditions as the Loans), and (y) such conditions precedent for the effectiveness of the applicable Incremental Commitment as the Lender may require. Each Incremental Commitment (and the Incremental Loans made

thereunder) shall constitute Obligations, and shall be secured and guaranteed with the other Loans and the Senior Note Indebtedness on a pari passu basis.

ARTICLE III - REPRESENTATIONS AND WARRANTIES

The Borrower makes the following representations and warranties to the Lender:

SECTION 3.1. LEGAL STATUS. The Borrower and each of its Subsidiaries (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) has all requisite corporate, partnership or limited liability company, as applicable, power and authority to carry on its business as now conducted, and (c) except where a failure to be so qualified could not reasonably be expected to result in a Material Adverse Effect, is duly qualified to do business, and is in good standing, in each jurisdiction where such qualification is required.

SECTION 3.2. ORGANIZATIONAL POWER; AUTHORIZATION; ENFORCEABILITY. The execution, delivery and performance by each Loan Party of the Loan Documents to which it is a party and the consummation of the transactions contemplated hereby are within such Loan Party's corporate, partnership or limited liability company, as applicable, powers and have been duly authorized by all necessary corporate, partnership or limited liability company, as applicable, action, and if required, shareholder, member, or partner action. This Agreement has been duly executed and delivered by the Borrower, and constitutes, and each other Loan Document to which any Loan Party is a party, when executed and delivered by such Loan Party, will constitute, valid and binding obligations of the Borrower or such Loan Party (as the case may be), enforceable against it in accordance with their respective terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity.

SECTION 3.3. GOVERNMENTAL APPROVALS; NO CONFLICTS. The execution, delivery and performance by the Borrower of this Agreement and by each Loan Party of the other Loan Documents to which it is a party and the consummation of the transactions contemplated hereby and thereby (a) do not require any consent or approval of, registration or filing with, or any action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect and except filings necessary to perfect Liens created under the Loan Documents, (b) will not violate any applicable law or regulation or the Organization Documents of the Borrower or any of its Subsidiaries or any order of any Governmental Authority applicable to the Borrower or any of its Subsidiaries, and (c) will not violate or result in a default under any indenture, instrument or other material agreement binding on the Borrower or any of its Subsidiaries (including any Material Contract then in effect) or any of its assets or give rise to a right thereunder to require any payment to be made by the Borrower or any of its Subsidiaries.

SECTION 3.4. LITIGATION. No litigation, investigation or proceeding of or before any arbitrators or Governmental Authorities is pending against or, to the knowledge of the Borrower, threatened against any member of the Consolidated Group or any of their respective assets or properties (a) that could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect or result in monetary judgments or Liens against any Loan Party or any Subsidiary, individually or in the aggregate, in excess of \$10,000,000 or (b) which in any manner draws into question the validity or enforceability of this Agreement or any other Loan Document or the transactions contemplated hereby.

SECTION 3.5. CORRECTNESS OF FINANCIAL STATEMENT; ABSENCE OF MATERIAL ADVERSE CHANGE; DISCLOSURE. The financial statements delivered by the Borrower to the Lender on or before the Closing Date, and all financial and other information supplied to the Lender after the Closing Date pursuant to Section 5.2, (a) are complete and correct and present fairly the financial condition of the Borrower, (b) disclose all liabilities of the Borrower that are required to be reflected or reserved against under GAAP, whether liquidated or unliquidated, fixed or contingent, and (c) have been prepared in accordance with GAAP consistently applied except as noted therein. Since December 31, 2016, there has been no event or circumstance, or series or events or circumstances, that, individually or in the aggregate, could

reasonably be expected to have a Material Adverse Effect. No report, financial statement, certificate or document delivered by the Borrower or any Subsidiary in connection with this Agreement or any other Loan Document nor any statement, representation, or warranty provided to the Lender in connection with the negotiation or preparation of the Loan Documents contains any misrepresentation or untrue statement of material fact or omits to state a material fact necessary, in light of the circumstances under which it was made, in order to make any such warranty, representation or statement contained therein not misleading; provided that, with respect to projections, estimates and other forward-looking information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed by it to be reasonable at the time.

SECTION 3.6. TAXES. The Borrower and its Subsidiaries and each other Person for whose taxes the Borrower or any Subsidiary is liable have timely filed or caused to be filed all federal income tax returns and all other material tax returns that are required to be filed by them, and have paid all taxes shown to be due and payable on such returns or on any material assessments made against it or its property and all other material taxes, fees or other charges imposed on it or any of its property by any Governmental Authority, except where the same are currently being contested in good faith by appropriate proceedings and for which the Borrower or such Subsidiary, as the case may be, has set aside on its books adequate reserves. The charges, accruals and reserves on the books of the Borrower and its Subsidiaries in respect of such taxes are adequate, and no tax liabilities that could be materially in excess of the amount so provided are anticipated. Without limitation of the foregoing, the Borrower has no knowledge of any pending assessments or adjustments of income tax payable with respect to any year, which, if adversely determined, could reasonably be expected to result in an assessment or unfavorable adjustment against it or any Subsidiary in excess of \$10,000,000.

SECTION 3.7. INTELLECTUAL PROPERTY MATTERS. The Borrower and each of its Subsidiaries owns or possesses rights to use all franchises, licenses, copyrights, copyright applications, patents, patent rights or licenses, patent applications, trademarks, trademark rights, service mark, service mark rights, trade names, trade name rights, copyrights and other rights with respect to the foregoing (collectively, "IP Rights") which are necessary to conduct its business, without conflict with the rights of any other Person, and Schedule 3.7 sets forth a complete and accurate list of all such IP Rights owned or used by the Borrower and each of its Subsidiaries (limited, in the case of trademarks, to those that are registered with the United States Patent and Trademark Office or otherwise material to the business of such Person). To the best knowledge of the Borrower, no slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by the Borrower or any of its Subsidiaries infringes upon any rights held by any other Person. No claim or litigation regarding any of the foregoing is pending or, to the best knowledge of the Borrower, threatened, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

SECTION 3.8. ERISA. In each case except as could not, individually or in the aggregate, reasonably be expected to result in liabilities of any Loan Party in excess of \$10,000,000, (i) the Borrower and each ERISA Affiliate is in compliance in all material respects with all applicable provisions of the Employee Retirement Income Security Act of 1974, as amended or recodified from time-to-time ("ERISA"); (ii) neither the Borrower nor any ERISA Affiliate has violated any provision of any Plan maintained or contributed to by the Borrower or any ERISA Affiliate; (iii) no ERISA Event has occurred and is continuing with respect to any Plan initiated by the Borrower or any ERISA Affiliate; (iv) the Borrower and each ERISA Affiliate has met its obligations under the Pension Funding Rules with respect to each Plan; each Plan will be able to fulfill its benefit obligations as they come due in accordance with the Plan documents and under GAAP; and (v) there is no pending or, to the best knowledge of the Borrower or any ERISA Affiliate, threatened ERISA Litigation.

SECTION 3.9. COMPLIANCE WITH LAWS AND AGREEMENTS; MATERIAL BRANDS. The Borrower and each Subsidiary is in compliance with all laws, regulations and orders of any Governmental Authority applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. No Default has occurred and is continuing. Without limitation

of the foregoing, the Borrower and each Subsidiary is in compliance in all material respects with each Material Contract then in effect, there is no known default by the Borrower or any Subsidiary under any such agreement and each such agreement is in full force and effect. Each Material Contract on the date hereof is listed on Schedule 3.9 hereto.

SECTION 3.10. ENVIRONMENTAL MATTERS. Except as set forth on Schedule 3.10, the Borrower and each Subsidiary is in compliance in all material respects with all applicable Environmental Laws. None of the operations of the Borrower or any Subsidiary is the subject of any federal or state investigation evaluating whether any remedial action involving a material expenditure is needed to respond to a Release of Hazardous Material into the environment. Except as set forth on Schedule 3.10, neither the Borrower nor any Subsidiary (i) has become subject to any material Environmental Liability, (ii) has received notice of any claim with respect to any material Environmental Liability or (iii) knows of any basis for any material Environmental Liability.

SECTION 3.11. COLLATERAL. (a) All of the Collateral is owned by the grantor of the security interest therein in favor of the Collateral Agent free of any material title defects or any Liens or interests of others, except for the Liens permitted hereunder. The Liens and security interests granted to the Collateral Agent (for the benefit of the Lender and certain affiliates of the Lender) are, or in the case of after acquired property, will be valid first priority Liens and security interests in the Collateral (subject only to Liens permitted hereunder), which Liens and security interests have been perfected in accordance with the requirements of all states in which any item of the collateral is located or any grantor is organized to the extent that the filing of Uniform Commercial Code financing statements is sufficient to perfect such lien or security interest. Schedule 3.11 sets forth the address of all real property that is owned or leased by the Borrower or any of its Subsidiaries or at which any Collateral (except goods in transit) is located as of the Closing Date, in each case after giving effect to the transactions occurring on the Closing Date. For the avoidance of doubt, Customer Owned Inventory shall not be considered an asset of the Borrower or any of its Subsidiaries for purposes of this Agreement or any of the other Loan Documents; it being understood and agreed that, for purposes of this Agreement and the other Loan Documents, Borrower's or any of its Subsidiaries' interest in any Customer Owned Inventory is limited to a bailee's interest or the like.

SECTION 3.12. USE OF PROCEEDS. The proceeds of the initial extension of credit will be used only for (a) the repayment of the Indebtedness described in Section 4.1(b) and (b) fees and expenses payable in connection with the negotiation, execution and delivery of the Loan Documents. In addition to the uses listed in the preceding sentence, the proceeds of subsequent extensions of credit will be used only for working capital needs, capital expenditures and for other general corporate purposes of the Borrower and its Subsidiaries. No part of the proceeds of any extension of credit will be used, whether directly or indirectly, for any purpose that entails a violation of any rule or regulation of the Board of Governors of the Federal Reserve System, including Regulations T, U or X.

SECTION 3.13. SUBSIDIARIES. As of the Closing Date, the Borrower has no Subsidiaries except those set forth on Schedule 3.13.

SECTION 3.14. INVESTMENT COMPANY ACT, ETC. Neither the Borrower nor any of its Subsidiaries is (a) an "investment company", as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended, or (b) otherwise subject to any other regulatory scheme limiting its ability to incur debt under this Agreement or the other Loan Documents.

SECTION 3.15. LEGAL NAME; JURISDICTION; ETC. Schedule 3.15 sets forth the following with respect to each Loan Party as of the Closing Date: (a) its exact legal name, (b) its jurisdiction of formation and form of organization, (c) the location of its chief executive office, (d) its federal tax identification number assigned by the Internal Revenue Service and (e) its identification number in its jurisdiction of formation (if any).

SECTION 3.16. PERMITS, FRANCHISES. The Borrower and each Subsidiary possesses, and will hereafter possess, all material permits, consents, approvals, franchises and licenses required and rights to all trademarks, trade names, patents, and fictitious names, if any, necessary to enable it to conduct the business in which it is now engaged in compliance in all material respects with applicable law, without known conflict with any trademark, trade names, patents or other proprietary right of any Person.

SECTION 3.17. ANTI-CORRUPTION LAWS AND SANCTIONS.

(a) None of any Loan Party, any Subsidiary thereof or, to the knowledge of the Borrower, any of the respective directors, officers, employees or Affiliates of any Loan Party or any Subsidiary thereof or any agent or representative of any Loan Party or any Subsidiary thereof that will act in any capacity in connection with, or benefit from, the credit facilities provided hereunder (i) is a Sanctioned Person or currently the subject or target of any Sanctions, (ii) has its assets located in a Sanctioned Country, (iii) directly or indirectly derives revenues from investments in, or transactions with, Sanctioned Persons or (iv) has taken any action, directly or indirectly, that would result in a violation by such Persons of any Anti-Corruption Laws. Each of the Loan Parties and their respective Subsidiaries has implemented and maintains in effect policies and procedures designed to promote and achieve compliance by the Loan Parties and their respective Subsidiaries and their respective directors, officers, employees, agents and Affiliates with the Anti-Corruption Laws. Each of the Loan Parties and their respective Subsidiaries, and to the knowledge of the Borrower, each director, officer, employee, agent and Affiliate of the Loan Parties and their respective Subsidiaries, is in compliance with Anti-Corruption Laws.

(b) No part of the proceeds of any Loan or Letter of Credit have been or will be used, whether directly or indirectly, by any Loan Party, any Subsidiary thereof or any of the respective directors, officers, employees, affiliates or agents of the foregoing (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, including any payments (directly or indirectly) to a Sanctioned Person or a Sanctioned Country or (iii) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

ARTICLE IV- CONDITIONS

SECTION 4.1. CONDITIONS OF THE INITIAL EXTENSIONS OF CREDIT. The obligation of the Lender to make the initial extension of credit contemplated by this Agreement is subject to the fulfillment to the Lender's satisfaction of all of the following conditions:

(a) Closing Deliveries. The Lender shall have received the closing deliveries referenced in the closing checklist attached hereto as Exhibit A, each of which shall be in form and substance satisfactory to the Lender and duly executed and acknowledged where appropriate by all parties thereto, and all legal matters incidental to such extension of credit shall be satisfactory to the Lender's counsel.

(b) Pay-Off. The Lender shall have received evidence satisfactory to it that, concurrently with the closing, all existing indebtedness of the Borrower or any Subsidiary (including Indebtedness under the Existing Credit Agreement but excluding Indebtedness permitted pursuant to Section 6.2) is paid in full, the related credit facilities thereunder are terminated and any Liens securing the same are released.

(c) Financial Condition. Since December 31, 2016, no event or circumstance has occurred, as determined by the Lender, that could reasonably be expected to have a Material Adverse Effect and the Lender shall not have learned of any material adverse fact or information regarding the Borrower or any other Loan Party, as represented to the date hereof, or of any material decline, as determined by the Lender,



in the market value of any Collateral required hereunder or a substantial or material portion of the assets of the Borrower or any other Loan Party.

(d) Fees and Expenses. The Borrower shall have delivered evidence of payment of all fees and expenses due the Lender and its counsel as of the date hereof.

SECTION 4.2. CONDITIONS OF EACH EXTENSION OF CREDIT. The obligation of the Lender to make each extension of credit requested by the Borrower hereunder shall be subject to the fulfillment to the Lender's satisfaction of each of the following conditions:

(a) Compliance. The representations and warranties contained herein and in each of the other Loan Documents shall be true in all material respects (or if already qualified by a materiality or Material Adverse Effect qualifier, in all respects) on and as of the date of this Agreement and on the date such extension of credit is made, with the same effect as though such representations and warranties had been made on and as of each such date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (or if already qualified by a materiality or Material Adverse Effect qualifier, in all respects) as of such earlier date, and on each such date no Default shall exist. The request for an extension of credit by the Borrower shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in this Section 4.2(a).

(b) Documentation. The Lender shall have received such other documents, certificates or information as it may reasonably request, all in form and substance satisfactory to the Lender, in connection with such extension of credit.

#### ARTICLE V - AFFIRMATIVE COVENANTS

The Borrower covenants that so long as the Commitment remains in effect or any Obligation remains unpaid or unsatisfied, the Borrower shall and shall cause each Subsidiary to:

SECTION 5.1. ACCOUNTING RECORDS. Maintain adequate books and records in accordance with GAAP consistently applied, and permit any representative of the Lender, at any reasonable time, to inspect, audit and examine such books and records, to make copies of the same, and to inspect the properties of the Borrower and its Subsidiaries.

SECTION 5.2. FINANCIAL STATEMENTS. Provide to the Lender all of the following, in form and detail satisfactory to the Lender:

(a) not later than 120 days after and as of the end of each fiscal year of the Borrower, its audited consolidated balance sheet and related statements of operations, equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by KPMG LLP, or another independent public accounting firm acceptable to the Lender (without any qualification or exception) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;

(b) not later than 45 days after and as of the end of each fiscal quarter (except the last fiscal quarter of each fiscal year), the Borrower's consolidated balance sheet and related statements of operations, equity and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by a Responsible Officer of the Borrower as presenting fairly in all material respects the financial condition and results of

operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(c) contemporaneously with each annual and quarterly financial statement of the Borrower and its Subsidiaries required hereby (except with respect to the financial statements delivered under Section 5.2(b) with respect to the last fiscal quarter of each fiscal year), a certificate of a Responsible Officer of the Borrower demonstrating compliance with Section 6.1, which certificate shall be substantially in the form of Exhibit B or such other form as may be acceptable to the Lender, together with such supporting information as is required by the Lender;

(d) on or before January 31 of each fiscal year, a budget for such fiscal year in form, substance and detail acceptable to the Lender, including, monthly operating and capital budgets, and projected monthly income statements and cash flows; and

(e) promptly, such other information as the Lender may reasonably request from time to time.

SECTION 5.3. COMPLIANCE. Preserve and maintain all material licenses, permits, government approvals, rights, privileges and franchises necessary for the conduct of its business; and comply in all material respects with (a) the provisions of all documents pursuant to which the Borrower and each Subsidiary is organized and/or which govern the Borrower's or any Subsidiary's continued existence, (b) all Material Contracts then in effect and (c) the requirements of all laws, rules, regulations and orders of any Governmental Authority applicable to the Borrower or any Subsidiary and/or its business, including Environmental Laws and ERISA.

SECTION 5.4. INSURANCE. Maintain and keep in force insurance of the types and in amounts customarily carried in lines of business similar to that of such Person, including but not limited to fire, extended coverage, public liability, flood (to the extent required by applicable law), property damage and workers' compensation, with all such insurance carried with companies and in amounts satisfactory to the Lender, and deliver to the Lender from time to time at the Lender's request evidence of all insurance then in effect. Such insurance shall (i) provide for not less than 30 days' prior notice to the Lender of termination, lapse or cancellation of such insurance (except in the case of the foregoing as a result of non-payment of premium in which case only 10 days' prior notice shall be required), (ii) have lender's loss payable (in the case of property policies insuring Collateral) and additional insured (in the case of liability policies) endorsements satisfactory to the Lender, and (iii) otherwise comply with the provisions of the Security Documents.

SECTION 5.5. FACILITIES; APPRAISAL. (a) Keep all properties useful or necessary to such Person's business in good repair and condition (ordinary wear and tear excepted), and from time to time make necessary repairs, renewals and replacements thereto so that such properties shall be fully and efficiently preserved and maintained and (b) permit the Lender to visit and inspect the Loan Parties' properties from time to time during normal business hours and reimburse the Lender for all charges, costs and expenses in connection with field examinations and appraisals of inventory, equipment or other Collateral deemed appropriate by the Lender; provided that the Lender shall have no more than one field exam or appraisal conducted per fiscal year.

SECTION 5.6. TAXES AND OTHER LIABILITIES. Pay and discharge when due any and all taxes, assessments and similar obligations, relating to both real or personal property, including without limitation federal and state income taxes and state and local property taxes and assessments, except (a) as such Person may in good faith contest or as to which a bona fide dispute may arise, and (b) for which such Person has made provision, to the Lender's satisfaction, for eventual payment thereof in the event such Person is obligated to make such payment.

SECTION 5.7. NOTICE TO THE LENDER. Promptly (but, except as otherwise provided below, in no event more than 15 days after a Responsible Officer becomes aware of the occurrence of each such

event or matter) give written notice to the Lender in reasonable detail of: (a) the occurrence of any Default; (b) any change in the name, jurisdiction or the organizational structure of the Borrower or any Subsidiary; (c) the occurrence and nature of any ERISA Event or Prohibited Transaction, each as defined in ERISA, or any failure to comply with the Pension Funding Rules with respect to any Plan, in each case that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; (d) any termination or cancellation of any insurance policy which the Borrower or any Subsidiary is required to maintain, any uninsured or partially uninsured loss through liability or property damage, or through fire, theft or any other cause affecting the Borrower's or any Subsidiary's property in excess of an aggregate amount of \$5,000,000; (e) the occurrence and nature of any notices, complaints, orders or other claim received by the Borrower or any Subsidiary relating to the violation by the Borrower or any Subsidiary of any applicable Environmental Laws, any Release by the Borrower or any Subsidiary of, or by any Person handling, transporting or disposing of, Hazardous Materials on its behalf into the environment except where occurring legally pursuant to a permit or license or except where such violation or Release could not, individually or the aggregate, reasonably be expected to have a Material Adverse Effect, or any material Environmental Liability; (f) any action, suit, proceeding, claim or dispute pending or, to the knowledge of the Borrower, threatened, or contemplated at law, in equity, in arbitration or before any Governmental Authority, arbitrator, court or administrative agency involving a claim in excess of \$10,000,000 against the Borrower, any Subsidiary or any of their respective assets; (g) any material change in accounting policies or practices by the Borrower or any Subsidiary; and (h) any development that results in, or could reasonably be expected to result in, a Material Adverse Effect; provided, that the time period for providing written notice with respect to any event or matter described in clause (a) or (h) above shall be 5 Business Days after a Responsible Officer becomes aware of the occurrence of such event or matter.

SECTION 5.8. SUBSIDIARIES. If any Subsidiary (other than an Excluded Subsidiary) is formed or acquired after the Closing Date or if any Subsidiary is required to become a Guarantor pursuant to the definition of "Immaterial Subsidiary", (a) notify the Lender thereof, (b) cause such Subsidiary to become a party to the Subsidiary Guaranty Agreement and the Security Agreement within 10 days after such Subsidiary is formed, acquired or otherwise required to become a Guarantor pursuant to the definition of "Immaterial Subsidiary" and promptly take such actions to create and perfect Liens on such Subsidiary's assets (other than Excluded Assets) to secure the Obligations as the Lender shall request (provided that no actions shall be required in any non-U.S. jurisdiction in order to perfect the Lender's security interests in any intellectual property), (c) cause the Equity Interests of such Subsidiary (to the extent not constituting Excluded Assets) to be pledged pursuant to the Pledge Agreement within 10 days after such Subsidiary is formed or acquired, and (d) cause such Subsidiary to deliver simultaneously therewith documentation with respect to such Subsidiary similar to the documentation required under Section 4.1(a) with respect to the Borrower and its Subsidiaries as requested by the Lender (including, if requested, opinions of counsel).

SECTION 5.9. FURTHER ASSURANCES. Execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements and other documents but excluding (a) the recordation or filing of any mortgages, fixture filings or similar security documents in any real property records and (b) any actions in any non-U.S. jurisdiction to perfect the Lender's security interests in any intellectual property), which may be required under any applicable law, or which the Lender may reasonably request, to effectuate the transactions contemplated by the Loan Documents or to grant, preserve, protect or perfect the Liens created or intended to be created by the Security Documents or the validity or priority of any such Lien. If any material assets are acquired by the Borrower or any Subsidiary after the Closing Date (other than (x) assets that have become subject to the Liens granted under the Security Documents upon acquisition thereof and (y) Excluded Assets), the Borrower will promptly notify the Lender thereof, and, if requested by the Lender, cause such assets to be subjected to a Lien securing the Obligations (and Senior Note Indebtedness) and take, and cause its Subsidiaries to take, such actions as shall be necessary or reasonably requested by the Lender to grant and perfect such Liens. Without limitation of the foregoing, the Borrower will, and will cause each Subsidiary to, at the expense of the Borrower, deliver to the Lender and the Collateral Agent such opinions of counsel and other documents as may be reasonably requested by the Lender from time to time in connection with the creation and perfection of Lien hereunder (which shall be, to the extent applicable, similar

to the opinions and other documentation required pursuant to Section 4.1(a) on the Closing Date), provided that no such opinions of counsel shall be required except if requested by Lender in connection with the joinder of any Subsidiary that is required to become a Guarantor pursuant to Section 5.8 above.

SECTION 5.10. COMPLIANCE WITH ANTI-CORRUPTION LAWS AND SANCTIONS. Conduct its businesses in compliance with all Anti-Corruption Laws and applicable Sanctions and maintain policies and procedures designed to promote and achieve compliance with all Anti-Corruption Laws and applicable Sanctions.

SECTION 5.11. DEPOSIT ACCOUNTS AND COLLECTIONS. Maintain its primary depository and operating accounts with the Lender and cause all collections and/or payments in respect of accounts or other Collateral and all other proceeds whatsoever of or from any Collateral to be promptly paid into one or more deposit accounts maintained with the Lender; provided that deposit accounts may be maintained with one or more other financial institutions so long as the aggregate amount of all balances therein do not exceed \$1,000,000 at any one time.

#### ARTICLE VI - NEGATIVE COVENANTS

The Borrower covenants that so long as the Commitment remains in effect or any Obligation remains unpaid or unsatisfied, the Borrower will not and will cause each Subsidiary to not:

##### SECTION 6.1. FINANCIAL COVENANTS.

- (a) Consolidated Leverage Ratio. Permit the Consolidated Leverage Ratio at the end of any fiscal quarter to be greater than 3.00 to 1.00.
- (b) Consolidated Fixed Charge Coverage Ratio. Permit the Consolidated Fixed Charge Coverage Ratio at the end of any fiscal quarter to be less than 1.25 to 1.00.

##### SECTION 6.2. OTHER INDEBTEDNESS. Create, incur, assume or permit to exist any Indebtedness, except:

- (a) Indebtedness to the Lender or any Affiliate of the Lender,
- (b) any Indebtedness existing on the date hereof and set forth on Schedule 6.2, together with any Permitted Refinancings thereof,
- (c) the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business,
- (d) Indebtedness incurred to make Capital Expenditures or acquire, construct or improve a fixed or capital asset so long as the aggregate outstanding principal amount of such Indebtedness does not at any time exceed \$15,000,000,
- (e) obligations (contingent or otherwise) under any Swap Contract entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with liabilities, commitments, investments or assets held or reasonably anticipated by such Person and not for purposes of speculation,
- (f) Indebtedness of a Loan Party owing to another Loan Party or, to the extent permitted by Section 6.6 below, of a Subsidiary of a Loan Party to a Loan Party,
- (g) Guarantees by any Loan Party of Indebtedness of another Loan Party that is otherwise permitted hereunder,

(h) 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 any Permitted Acquisition or any Disposition permitted hereunder,

(i) the Senior Note Indebtedness in an aggregate principal amount up to \$75,000,000, together with any increases thereto to the extent such increase satisfies the requirements for the incurrence of Incremental Equivalent Debt set forth in the proviso to clause (k) below and, in each case, any Permitted Refinancings thereof,

(j) unsecured Indebtedness of the Borrower owing to former employees, officers, or directors (or any spouses, ex-spouses, or estates of any of the foregoing) incurred in connection with the repurchase or redemption by the Borrower of its Equity Interests that have been issued to such Persons, so long as (A) no Default or Event of Default has occurred and is continuing or would result from the incurrence of such Indebtedness, and (B) the aggregate amount of all such Indebtedness outstanding at any one time does not exceed \$5,000,000,

(k) Indebtedness in respect of:

(i) one or more series of senior or subordinated notes issued by the Borrower that are either, at the option of the Borrower, (x) unsecured or (y) secured by Liens on the Collateral ranking junior to or *pari passu* with the Liens securing the Obligations and the Senior Note Indebtedness, and

(ii) senior or subordinated loans made to the Borrower that are either, at the option of the Borrower, (x) unsecured or (y) secured by Liens on Collateral ranking junior to or *pari passu* with the Liens securing the Obligations and the Senior Note Indebtedness (any such Indebtedness described in clause (i) above or this clause (ii), "Incremental Equivalent Debt") and any Permitted Refinancing of any Incremental Equivalent Debt; provided that

(1) no Incremental Equivalent Debt may be incurred unless, after giving effect to the incurrence of such Incremental Equivalent Debt, and after giving effect to any Permitted Acquisition, other Investment, or any sale, transaction or other Disposition or any incurrence of Indebtedness or repayment of Indebtedness consummated concurrently therewith, the Borrower has, on a Pro Forma Basis, a Consolidated Leverage Ratio not greater than 2.75 to 1.00;

(2) no Default shall have occurred and be continuing or would exist immediately after giving effect to the incurrence of such Incremental Equivalent Debt;

(3) the Borrower shall be in compliance with Section 6.1 on a Pro Forma Basis after giving effect to the incurrence of such Incremental Equivalent Debt, and after giving effect to any Permitted Acquisition, other Investment, or any sale, transaction or other Disposition or any incurrence of Indebtedness or repayment of Indebtedness consummated concurrently therewith, as of the end of the most recently ended fiscal quarter;

(4) the Weighted Average Life to Maturity of such Incremental Equivalent Debt shall be no shorter than the Weighted Average Life to Maturity of any Senior Note Indebtedness then outstanding or any Permitted Refinancings thereof;

(5) all other terms of such Indebtedness not covered in this clause (k) shall be determined by the Borrower and the investors or lenders of such Incremental Equivalent Debt and to the extent such Incremental Equivalent Debt takes the form of loans or senior notes and the terms and documentation for such loans or senior notes, taken as a whole, are not substantially the same as the Loans or Senior Note Indebtedness (other than, in each case, pricing, amortization and maturity) (as determined by the Borrower in good faith), such terms and conditions shall be reasonably acceptable to the Lender if they are adverse to the Borrower or more restrictive than the terms and conditions applicable to the Loans or any Senior Note Indebtedness (except for covenants and events of default applicable only to periods after the later of the Maturity Date in effect at the time such Incremental Equivalent Debt is entered into or the maturity date of any Senior Note Indebtedness that is outstanding at the time such Incremental Equivalent Debt is entered into);

(6) no Incremental Equivalent Debt shall be incurred by or subject to any Guarantee by any Person other than the Borrower and the Guarantors, respectively, and shall not be secured by any property or assets of any Loan Party other than Collateral;

provided, further, if such Incremental Equivalent Debt:

(x) is secured on a *pari passu* basis with the Loans and the Senior Note Indebtedness,

(1) the holders of such Indebtedness or a representative thereof will join in and become a party to the Intercreditor Agreement, or otherwise enter into an intercreditor agreement with the Lender and the holders of any outstanding Senior Note Indebtedness or a representative thereof, in each case in a manner or pursuant to such documentation as is reasonably acceptable to the Lender and the requisite holders of such Senior Note Indebtedness and

(2) such Indebtedness shall not require mandatory prepayments (except scheduled amortization permitted by clause (4) to the first proviso above) that are more restrictive than any mandatory prepayments applicable to the Loans and any Senior Note Indebtedness and may participate on a pro rata basis or on a less than pro rata basis (but not on a greater than pro rata basis) in any mandatory prepayments (except scheduled amortization permitted by clause (4) to the first proviso above) applicable to the Loans and any Senior Note Indebtedness, or

(y) is secured on a junior basis with the Loans and the Senior Note Indebtedness, (1) the holders of such indebtedness or a representative thereof will enter into an intercreditor agreement with the Lender and the holders of the Senior Note Indebtedness or a representative thereof that is reasonably acceptable to the Lender and the requisite holders of any Senior Note Indebtedness and (2) such Indebtedness shall not have any scheduled principal prepayments or be subject to any mandatory redemption or prepayment provisions (except for customary change of control provisions and customary asset sale provisions that permit application of the applicable proceeds to the payment of the Obligations and any Senior Note Indebtedness or other secured Incremental Equivalent Debt prior to application to such Indebtedness) due prior to the date

that is ninety-one (91) days after the later of the Maturity Date then in effect or the latest maturity date of any of the Senior Note Indebtedness then outstanding.

(z) is unsecured, such Indebtedness shall not have any scheduled principal prepayments (except scheduled amortization permitted by clause (4) to the first proviso above) or be subject to any mandatory redemption or prepayment provisions (except for customary change of control provisions and customary asset sale provisions that permit application of the applicable proceeds to the payment of the Obligations and any Senior Note Indebtedness or other secured Incremental Equivalent Debt prior to application to such Indebtedness) due prior to the date that is ninety-one (91) days after the later of the Maturity Date then in effect or the latest maturity date of any of the Senior Note Indebtedness then outstanding.

(l) Permitted IRB Financings, and Permitted Refinancings thereof, and

(m) other unsecured Indebtedness so long as the aggregate outstanding principal amount of such Indebtedness does not at any time exceed \$10,000,000.

SECTION 6.3. PLEDGE OF ASSETS. Mortgage, pledge, grant or permit to exist a Lien upon, all or any portion of the Borrower's or any Subsidiary's assets now owned or hereafter acquired, except:

(a) any Lien in favor of the Collateral Agent pursuant to the Security Documents,

(b) any Lien that is existing on the Closing Date and set forth on Schedule 6.3 including any renewals or replacements thereof, provided that (i) such Lien shall not apply to any other asset of the Borrower or any Subsidiary and (ii) such Lien shall secure only those obligations which it secures on the date hereof or any renewals or refinancings thereof which do not increase the principal amount of such obligations,

(c) Permitted Encumbrances,

(d) purchase money Liens upon or in any inventory or any fixed or capital asset (in each case including any proceeds thereof) to secure the purchase price thereof or, in the case of any fixed or capital asset, the cost of construction or improvement of such fixed or capital asset (including Liens securing any Capital Lease Obligations); provided that (i) such Lien secures Indebtedness permitted by Section 6.2(d) or, in the case of any Lien on inventory, the purchase price of such inventory and other inventory purchased from such supplier, (ii) such Lien attaches to such asset concurrently or within 90 days after the acquisition, improvement or completion of the construction thereof; (iii) such Lien does not extend to any other asset; and (iv) the Indebtedness secured thereby does not exceed the cost of acquiring, constructing or improving such asset,

(e) to the extent constituting a Lien, any lease of any Permitted Real Estate,

(f) Liens on property securing Indebtedness permitted to be incurred under Section 6.2(i) or 6.2(k) hereof, but only if the priority of such Liens is *pari passu* with or junior to the Lender's Liens on such property pursuant to an intercreditor agreement entered into in accordance with Sections 6.2(k) or, if applicable, the Intercreditor Agreement,

(g) Liens securing Permitted IRB Financings, including any Permitted Refinancings thereof, provided that such Liens encumber only the related IRB Property, and

(h) other Liens which do not secure Indebtedness for borrowed money or letters of credit and as to which the aggregate amount of the obligations secured thereby does not exceed \$10,000,000.

Notwithstanding anything to the contrary in this Agreement, the Borrower shall not, nor shall it permit any Subsidiary to, mortgage, pledge, grant or permit to exist a security interest in, or other Lien upon, any of its real property now owned or hereafter acquired, except, (w) Permitted Encumbrances, (x) any Lien that is existing on the Closing Date and set forth on Schedule 6.3, (y) to the extent constituting a Lien, any lease of any Permitted Real Estate, and (z) any lease of or Lien upon any IRB Property, in each case in connection with any Permitted IRB Financings or Permitted Refinancings thereof.

SECTION 6.4. MERGER, CONSOLIDATION, ETC. Merge into or consolidate with any other Person or enter into any other line of business other than those conducted as of the date hereof or businesses reasonably related thereto or Dispose of all or substantially all of its assets or liquidate or dissolve, except that, in each of the foregoing cases, if at the time thereof and immediately after giving effect thereto, no Default or Event of Default exists,

- (a) any Subsidiary may merge into the Borrower in a transaction in which the Borrower is the survivor,
- (b) any Subsidiary may merge into any other Subsidiary in a transaction in which the survivor is a Subsidiary and is a Loan Party, and any Subsidiary that is not a Loan Party may merge into any other Subsidiary that is not a Loan Party,
- (c) any Loan Party may transfer assets to any other Loan Party, and any Subsidiary that is not a Loan Party may transfer assets to any Loan Party and to any other Subsidiary that is not a Loan Party,
- (d) any Subsidiary may liquidate or dissolve if the Borrower determines in good faith that such liquidation or dissolution is in the best interests of the Borrower and is not disadvantageous to the Lender, and
- (e) any Subsidiary may merge into any Person or acquire all or substantially all of the assets of any other Person in a transaction permitted by Section 6.6 in which the survivor in any such merger or the acquirer of such assets is a wholly-owned Subsidiary and is a Loan Party.

SECTION 6.5. TRANSFER OF ASSETS. Dispose of any of its assets, whether now owned or hereafter acquired, including any Equity Interest owned by it, nor will the Borrower permit any of its Subsidiaries to issue any additional Equity Interest in such Subsidiary other than to a Loan Party, except:

- (a) the Disposition for fair market value of obsolete or worn out equipment or other fixed assets not necessary for operations Disposed of in the ordinary course of business,
- (b) the sale of inventory and Eligible Investments in the ordinary course of business,
- (c) Dispositions solely between or among Loan Parties,
- (d) transfers of assets by any Loan Party to any Subsidiary that is not a Loan Party, provided that (i) no Default or Event of Default exists at the time of each such transfer or would occur as a result of such transfer, (ii) such transferred assets do not include any Equity Interests of any Loan Party, and (iii) the sum of (A) the aggregate amount transferred to all such Subsidiaries by all Loan Parties in any fiscal year plus (B) any Investments made under Section 6.6(n) does not exceed \$5,000,000 in any fiscal year,
- (e) so long as no Default or Event of Default exists or would occur as a result thereof, the sale, lease or other disposition of Permitted Real Estate,



- (f) to the extent constituting Dispositions, transactions permitted by Sections 6.3, 6.4, 6.6 and 6.7 and the expenditure or other transfer or use of cash or cash equivalents in transactions not otherwise prohibited by this Agreement,
- (g) the lease of equipment and other transactions described in the ICM Lease, as initially in effect and as it may be subsequently amended with the written consent of the Lender,
- (h) the licensing, on a non-exclusive basis, of patents, trademarks, copyrights and other intellectual property in the ordinary course of business or consistent with customary industry practices,
- (i) the abandonment of trademarks and other intellectual property which the Borrower in good faith determines are no longer useful to its or a Subsidiary's business,
- (j) any involuntary loss, damage or destruction of property, including the abandonment or other Disposition of stale, spoiled or otherwise nonconforming inventory,
- (k) any involuntary condemnation, seizure or taking, by exercise of the power of eminent domain or otherwise, or confiscation or requisition or use of property, and
- (l) any sale, lease or other Disposition of any IRB Property in connection with any Permitted IRB Financings, and

(m) other Dispositions of assets (other than Equity Interests in a Subsidiary that is a Loan Party) that are not permitted by any other clause of this Section; provided that the aggregate fair market value of all assets Disposed of in reliance upon this clause (m) shall not exceed \$5,000,000 in any fiscal year;

provided, further, that all Dispositions permitted by clauses (a), (b) (e), (h) and (m) shall be made for fair value.

SECTION 6.6. LOANS, INVESTMENTS, ACQUISITIONS. Purchase, hold or acquire (including pursuant to any merger with any Person that was not a wholly-owned Subsidiary prior to such merger), any Equity Interests, Indebtedness or other securities (including any option, warrant, or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, Guarantee any obligations of, or make or permit to exist any investment or any other interest in, any other Person (all of the foregoing being collectively called "Investments"), or make any Acquisition, except:

- (a) Investments existing on the date hereof and set forth on Schedule 6.6,
- (b) Eligible Investments,
- (c) Investments by a Loan Party in another Loan Party,
- (d) Guarantees permitted pursuant by Section 6.2, and any Guarantees by a Loan Party of any obligations otherwise permitted to be incurred by another Loan Party (and without regard to whether the obligations guaranteed constitute Indebtedness),
- (e) accounts receivable arising and trade credit granted in the ordinary course of business and any securities received in satisfaction or partial satisfaction thereof in connection with accounts of financially troubled Persons to the extent reasonably necessary in order to prevent or limit loss,

(f) loans and advances to employees who are not holders of Equity Interests of the Borrower in the ordinary course of business for travel, relocation and similar expenses so long as the aggregate outstanding principal amount of such loans and advances does not at any time exceed \$1,000,000,

(g) Swap Contracts otherwise permitted hereunder,

(h) Permitted Acquisitions occurring after the Closing Date,

(i) Investments in joint ventures, corporate collaborations and strategic alliances in the ordinary course of the Borrower's or a Subsidiary's business (including the acquisition of non-controlling Equity Interests in a Person); provided that (i) such Investments do not interfere in any material respect with the ordinary conduct of the business of the Borrower or its Subsidiaries or result in a material diminution in the value of the Collateral as security for the Obligations other than by virtue of any assets invested pursuant to such Investment ceasing to be Collateral, and (ii) the aggregate amount of any Investments made by the Borrower or any Subsidiary in connection with all such joint ventures collaborations and alliances shall not exceed \$50,000,000 in the aggregate at any time outstanding (it being understood that (x) for purposes of determining the amount of any Investment outstanding under this clause (i), such amount shall be deemed to be the amount of such Investment when made purchased or acquired without adjustment for subsequent increases or decreases in the value of such Investment less any amount realized in respect of such Investment upon the sale, collection or return of capital (not to exceed the original amount invested), and (y) if any subsequent Investment in a Person results in the Acquisition by the Borrower or a Subsidiary of a Controlling Equity Interests in such Person in a transaction that constitutes a Permitted Acquisition under clause (h) above, the amount of any prior Investments in such acquired Person pursuant to this clause (i) shall be deemed to be no longer outstanding);

(j) 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,

(k) promissory notes and other non-cash consideration received in connection with any sale, transfer or other Disposition permitted hereunder,

(l) the purchase of Equity Interests of the Borrower for distribution to directors, officers or employees of the Consolidated Group in connection with restricted stock units or similar rights issued to such directors, officers or employees pursuant to employee compensation or similar plans consistent with the plans in effect on the Closing Date,

(m) Investments consisting of bonds or the like issued pursuant to or in connection with Permitted IRB Financings, including any Permitted Refinancings thereof, and

(n) any other Investments so long as (i) no Event of Default has occurred and is continuing or would result therefrom and (ii) the sum of (A) the aggregate amount of Investments made under this clause (n) plus (B) the aggregate amount of Dispositions made under Section 6.5(d) does not exceed \$5,000,000 in any fiscal year of the Borrower.

SECTION 6.7. RESTRICTED PAYMENTS. Make any Restricted Payment or apply or set apart any of their assets therefor or agree to do any of the foregoing other than:

(a) Restricted Payments made by any Subsidiary to the Borrower or any other Loan Party,

(b) distributions to former employees, officers, or directors of the Borrower (or any spouses, ex-spouses, or estates of any of the foregoing) on account of redemptions of Equity Interests of the Borrower held by such Persons, provided, that the aggregate amount of such redemptions made by the Borrower does not exceed \$2,000,000 in any fiscal year of the Borrower,

(c) the Borrower may make distributions to former employees, officers, or directors of the Borrower (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 the Borrower on account of repurchases of the Equity Interests of the Borrower held by such Persons; provided that such Indebtedness was incurred by such Persons solely to acquire Equity Interests of the Borrower, and

(d) so long as no Default exists or will exist after giving effect thereto on the date thereof and on a Pro Forma Basis as if such Restricted Payment occurred on the last day of the most recently ended four-fiscal quarter period of the Borrower, other Restricted Payments made in cash by the Borrower in respect of its Equity Interests.

SECTION 6.8. TRANSACTIONS WITH AFFILIATES. Dispose of any asset to, or purchase, lease or otherwise acquire any asset from, or otherwise engage in any other transactions with, any of its Affiliates, except:

(a) in the ordinary course of business at prices and on terms and conditions not less favorable to the Borrower or such Subsidiary than could be obtained on an arm's-length basis from unrelated third parties,

(b) transactions between or among the Loan Parties not involving any other Affiliates and transactions permitted under [Section 6.5\(d\)](#), and

(c) any Restricted Payment permitted by [Section 6.7](#).

SECTION 6.9. BURDENSOME AGREEMENTS. Enter into or cause, suffer or permit to exist any agreement with any Person that:

(a) limits the ability of any Subsidiary to make Restricted Payments to the Borrower,

(b) limits the ability of any Subsidiary to Guarantee the Obligations; provided that the foregoing shall not apply to restrictions or conditions imposed under any of the Loan Documents or, to the extent no more restrictive than the Loan Documents, any document or agreement pertaining to any Indebtedness permitted by [Section 6.2\(i\)](#) or [6.2\(k\)](#), or

(c) restricts the ability of the Borrower or any Subsidiary to create, incur or permit any Lien upon any of its assets, whether now owned or hereafter acquired: provided that (i) the foregoing shall not apply to restrictions or conditions imposed by applicable law, under the Loan Documents or, with respect to IRB Property, pursuant to Permitted IRB Financings, or, to the extent no more restrictive than the Loan Documents, any document or agreement pertaining to any Indebtedness permitted by [Section 6.2\(i\)](#) or [6.2\(k\)](#), and (ii) this clause (c) shall not apply to:

(1) restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions and conditions apply only to assets the acquisition of which was financed by such Indebtedness,

(2) customary restrictions that arise in connection with any Disposition permitted by [Section 6.5](#) and relate solely to the assets or Person subject to such Disposition,

- (3) customary provisions in joint venture agreements and other similar agreements applicable to joint ventures permitted under Section 6.6 and applicable solely to such joint venture and its equity entered into in the ordinary course of business,
- (4) customary provisions restricting subletting, transfer or assignment of any lease,
- (5) customary provisions in commercial contracts entered into in the ordinary course of business restricting the assignment or transfer thereof,
- (6) restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business,
- (7) restrictions regarding licensing or sublicensing by the Borrower or any Subsidiary of intellectual property in the ordinary course of business, and
- (8) restrictions on cash earnest money deposits in favor of sellers in connection with Acquisitions not prohibited hereunder.

SECTION 6.10. AMENDMENT OF CERTAIN AGREEMENTS. Amend or modify, or waive any of its rights under any of its Organization Documents or any Material Contract, in any case in a manner that is material and adverse to the Lender; provided, that nothing in this Agreement shall require any member of the Consolidated Group to maintain or to renew, or shall prohibit any member of the Consolidated Group from terminating, any Material Contract, so long as the failure to maintain or renew or the termination of such Material Contract (and, if applicable, after giving effect to any new contract entered or to be entered into in full or partial replacement of such Material Contract) could not reasonably be expected to have a Material Adverse Effect.

SECTION 6.11. USE OF FUNDS.

(a) Use any of the proceeds of any Loan or any Letter of Credit except for the purposes stated in Section 3.12.

(b) Use any of the proceeds of any Loan or any Letter of Credit, whether directly or indirectly, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other Person, (i) in furtherance of an offer, payment, promise to pay or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country or (iii) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

SECTION 6.12. ACCOUNTING CHANGES. Make any significant change in accounting treatment or reporting practices, except as required by GAAP, or change its fiscal year, except to change the fiscal year of a Subsidiary to conform its fiscal year to that of the Borrower.

SECTION 6.13. SALE-LEASEBACKS. Enter into any arrangement, directly or indirectly, whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereinafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property sold or transferred in each case excluding any sale-leaseback of Permitted Real Estate or property subject to a Disposition pursuant to Sections 6.5(i), or (m).

SECTION 6.14. RESTRICTIONS PERTAINING TO CERTAIN DEBT. (a) Amend or modify any loan agreement, note purchase agreement or other material document governing any Indebtedness incurred

pursuant to Section 6.2(k) that is subordinated in right of payment to the Obligations or is secured on a junior lien basis to the Liens securing the Obligations (collectively, " Junior Financing") in any manner that is adverse to the Lender, or (b) prepay, redeem, purchase, defease or otherwise satisfy any Junior Financing prior to the scheduled maturity thereof in any manner except (i) the refinancing thereof with any Indebtedness that constitutes a Permitted Refinancing or is permitted pursuant to Section 6.2(k), and (ii) regularly scheduled payments of interest and other amounts (other than principal) to the extent permitted by the applicable intercreditor or subordination agreement entered into in connection with such Junior Financing.

ARTICLE VII- EVENTS OF DEFAULT; REMEDIES

SECTION 7.1. EVENTS OF DEFAULT. The occurrence of any of the following shall constitute an "Event of Default":

- (a) Any member of the Consolidated Group or Guarantor shall fail to pay (i) any principal when due, or (ii) any other amounts payable under any of the Loan Documents within three Business Days after the due date thereof.
- (b) (i) The Borrower shall fail to observe or perform any covenant or agreement contained in Section 5.2, 5.3(a) (with respect to the Borrower's existence), 5.7, 5.8, 5.10 or Article VI (other than Section 6.9(b) and 6.9(c)) or (ii) any event shall occur that constitutes an "Event of Default" (as defined in any Security Document) or (iii) any Guarantor shall fail to observe or perform any covenant or agreement contained in any Guaranty Agreement to which it is a party beyond any applicable grace, cure or notice period.
- (c) Any default in the performance of or compliance with any obligation, agreement or other provision contained herein or in any other Loan Document (other than those referred to in clauses (a) and (b) above), and with respect to any such default which by its nature can be cured, such default shall continue for a period of 30 days from the earlier to occur of the date (i) on which any Responsible Officer obtains knowledge of such default or (ii) that the Lender provides the Borrower written notice of such default.
- (d) Any financial statement or certificate furnished to the Lender in connection with, or any representation or warranty made by or on behalf of any member of the Consolidated Group or Guarantor under this Agreement or any other Loan Document shall prove to be incorrect, false or misleading in any material respect when furnished or made.
- (e) Any member of the Consolidated Group or Guarantor (whether as primary obligor or as guarantor or other surety) shall fail to pay any principal or premium or interest on (i) the Senior Note Indebtedness, (ii) any Indebtedness (whether individually or in the aggregate but excluding extensions of credit hereunder) or (iii) obligations in respect of one or more Swap Contracts, in each case of clauses (i) and (ii), in an aggregate principal amount exceeding \$10,000,000 (whether singly or in the aggregate, "Material Indebtedness") that is outstanding, when and as the same shall become due and payable (whether at scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument evidencing such Material Indebtedness; or any other event shall occur or condition shall exist under any agreement or instrument relating to such Material Indebtedness and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such event or condition is to accelerate, or permit the acceleration of, the maturity of such Material Indebtedness; or any such Material Indebtedness shall be declared to be due and payable; or required to be prepaid or redeemed (other than by a regularly scheduled required payment or redemption), purchased or defeased, or any offer to prepay, redeem, purchase or defease such Material Indebtedness shall be required to be made, in each case prior to the stated maturity thereof.

(f) Any judgment or order for the payment of money in excess of \$10,000,000 in the aggregate (net of independent third-party insurance as to which the insurance carrier does not dispute the coverage of such payment) shall be rendered against any member of the Consolidated Group or Guarantor, and either (i) enforcement proceedings shall have been commenced by any creditor upon such judgment or order or (ii) there shall be a period of 30 consecutive days during which a stay of enforcement of such judgment or order (if not otherwise satisfied or discharged before the end of such period), by reason of a pending appeal or otherwise, shall not be in effect.

(g) Any member of the Consolidated Group or Guarantor shall (i) commence a voluntary case or other proceeding or file any petition seeking liquidation, reorganization or other relief under any federal, state or foreign bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a custodian, trustee, receiver, liquidator or other similar official of it or any substantial part of its property, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in the preceding clause (i), (iii) apply for or consent to the appointment of a custodian, trustee, receiver, liquidator or other similar official for such Person or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors, (vi) take any action for the purpose of effecting any of the foregoing, or (vii) admit in writing its inability to pay its debts as they become due.

(h) An involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of any member of the Consolidated Group or Guarantor or any such Person's debts, or any substantial part of any such Person's assets, under any federal, state or foreign bankruptcy, insolvency or other similar law now or hereafter in effect or (ii) the appointment of a custodian, trustee, receiver, liquidator or other similar official for any member of the Consolidated Group or Guarantor or for a substantial part of any such Person's assets, and in any such case, such proceeding or petition shall remain undismissed for a period of 60 days or an order or decree approving or ordering any of the foregoing shall be entered.

(i) Any Change of Control shall occur or exist.

(j) Any provision of any Loan Document shall for any reason cease to be valid and binding on, or enforceable against, or any member of the Consolidated Group or any Guarantor that is party thereto or any such Person shall so state in writing or seek to terminate its obligations thereunder.

(k) Any Lien purported to be created under any Security Document shall cease to be, or shall be asserted by any member of the Consolidated Group or Guarantor not to be, a valid and perfected Lien on any Collateral, with the priority required by the applicable Security Document, except as a result of the Disposition of the applicable Collateral in a transaction permitted under the Loan Documents.

(l) (i) An ERISA Event occurs with respect to a Plan which has resulted or could reasonably be expected to result in liability of any member of the Consolidated Group or any Guarantor under Title IV of ERISA in an aggregate amount in excess of \$10,000,000, or (ii) any member of the Consolidated Group or any Guarantor fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Plan in an aggregate amount in excess of \$10,000,000.

SECTION 7.2. REMEDIES. Upon the occurrence of any Event of Default: (a) all Obligations of the Borrower under each Loan Document, any term thereof to the contrary notwithstanding, shall at the Lender's option and without notice become immediately due and payable without presentment, demand, notice of nonperformance, notice of protest, protest, notice of dishonor or other notice of any kind, all of which are expressly waived by the Borrower; (b) the obligation, if any, of the Lender to extend any further credit under any of the Loan Documents shall immediately terminate; and (c) the Lender shall have all rights,

powers and remedies available under each Loan Document, or accorded by law, including without limitation the right to resort to any Collateral and to exercise any or all of the rights of a beneficiary or secured party pursuant to applicable law; provided that upon the occurrence of any Event of Default described in clause (g) or (h) of Section 7.1, the Commitment shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon, and all fees and other Obligations under the Loan Documents shall automatically become due and payable, without presentment, demand, notice of nonperformance, notice of protest, protest, notice of dishonor or other notice of any kind, all of which are waived. All rights, powers and remedies of the Lender may be exercised by the Lender at any time while an Event of Default exists, are cumulative and not exclusive, and shall be in addition to any other rights, powers or remedies provided by law or equity. Notwithstanding any other provision of any Loan Document to the contrary, while any Event of Default exists, any amounts received on account of the Obligations shall be applied by the Lender in such order as it elects in its sole discretion, but subject to any provisions of any Security Document that expressly establishes the priority of the application of the proceeds from any disposition of Collateral.

ARTICLE VIII - MISCELLANEOUS

SECTION 8.1. NO WAIVER. No delay, failure or discontinuance of the Lender in exercising any right, power or remedy under any Loan Document shall affect or operate as a waiver of such right, power or remedy; nor shall any single or partial exercise of any such right, power or remedy preclude, waive or otherwise affect any other or further exercise thereof or the exercise of any other right, power or remedy. Any waiver, permit, consent or approval of any kind by the Lender of any breach of or default under any Loan Document must be in writing and shall be effective only to the extent set forth in such writing. Without limiting the generality of the foregoing, no credit extension shall be construed as a waiver of any Default, regardless of whether the Lender may have had notice or knowledge of such Default at the time.

SECTION 8.2. NOTICES. All notices, requests and demands which any party is required or may desire to give to any other party under any provision of this Agreement must be in writing delivered to each party at the following address:

THE BORROWER: MGP Ingredients, Inc.  
100 Commercial Street  
PO Box 130  
Atchison, Kansas 66002  
Attn: Tom Pigott  
Phone: (913) 360-5435  
Facsimile: (913) 360-5635  
Electronic Mail: #####@mgpingredients.com

*With a copy (which shall not constitute notice) to:*

Stinson Leonard Street, LLP  
1201 Walnut Street, Suite 2900  
Kansas City, Missouri 64106  
Attn: Mark Ovington  
Facsimile: (816) 412-8148  
Electronic Mail: #####@stinson.com

THE LENDER: WELLS FARGO BANK, NATIONAL ASSOCIATION  
1100 Abernathy Road, Suite 1130  
MAC G0189-112  
Sandy Springs, Georgia 30328  
Attn: Ken Washington  
Phone: (470) 307-4453  
Facsimile: (470) 307-4482  
Electronic Mail: #####@wellsfargo.com

or to such other address as any party may designate by written notice to all other parties. Each such notice, request and demand shall be deemed given or made as follows: (a) if sent by hand delivery, upon delivery; (b) if sent by mail, upon the earlier of the date of receipt or 3 days after deposit in the U.S. mail, first class and postage prepaid; and (c) if sent by facsimile or email, upon acknowledgement of receipt by the recipient thereof. Notwithstanding the foregoing, notices, requests and demands related to borrowing requests, Loan repayments or other matters relating to the ordinary course administration of the Loans need not be delivered to any legal counsel noted above.

SECTION 8.3. COSTS, EXPENSES AND ATTORNEYS' FEES; INDEMNITY.

(a) The Borrower shall pay to the Lender the full amount of all payments, advances, charges, costs and expenses, including reasonable attorneys' fees, expended or incurred by the Lender in connection with (i) the negotiation and preparation of the Loan Documents, the Lender's continued administration thereof, and the preparation of any amendments and waivers thereto, (ii) the enforcement of the Lender's rights and/or the collection of any amounts which become due to the Lender under any Loan Document, and (iii) the prosecution or defense of any action in any way related to any Loan Document, including without limitation, any action for declaratory relief, whether incurred at the trial or appellate level, in an arbitration proceeding or otherwise, and including any of the foregoing incurred in connection with any bankruptcy proceeding (including without limitation, any adversary proceeding, contested matter or motion brought by the Lender or any other Person) relating to the Borrower or any other Person.

(b) The Borrower shall indemnify the Lender and each Related Party of the Lender (each, an "Indemnitee") against, and hold each of them harmless from, any and all costs, losses, liabilities, claims, damages and related expenses, including the fees, charges and disbursements of any counsel for any Indemnitee, which may be incurred by or asserted against any Indemnitee arising out of, in connection with or as a result of (i) the execution or delivery of any Loan Document, the performance by the parties thereto of their respective obligations thereunder or the consummation of any of the transactions contemplated thereby, (ii) any extensions of credit hereunder or any actual or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned by any member of the Consolidated Group or any Guarantor or any Environmental Liability related in any way to any member of the Consolidated Group or any Guarantor or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, in each case whether based on contract, tort, or any other theory, whether brought by a third party or by any member of the Consolidated Group, any Guarantor or any Affiliate thereof, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of such Indemnitee as evidenced by a final and non-appealable judgment in favor of the Borrower.

(c) The Borrower shall pay, and hold the Lender harmless from and against, any and all present and future stamp, documentary and other similar taxes with respect to any Loan Document, any payments due thereunder or any Collateral, and save the Lender harmless from and against any and all liabilities with respect to or resulting from any delay or omission to pay such taxes.



(d) To the extent permitted by applicable law, the Borrower shall not assert and waives any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to actual or direct damages) arising out of, in connection with or as a result of, any Loan Document, the transactions contemplated hereby, any extension of credit hereunder or the use of proceeds thereof.

(e) All amounts due under this Section 8.3 shall be payable promptly (and in any event within 10 Business Days) after written demand therefor. The provisions of this Section 8.3 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the extensions of credit hereunder, the expiration or termination of the Commitment or the termination of this Agreement or any provision hereof.

**SECTION 8.4. CHANGE IN LAW.** If the Lender determines that any law, request, rule, guideline or directive of any Governmental Authority (whether or not having the force of law) (including the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III), or compliance therewith by the Lender (or any corporation controlling the Lender), has the effect of increasing the Lender's cost of making, issuing, funding or maintaining any extension of credit hereunder or committing to do any of the foregoing, or increasing the amount of capital or liquidity required or expected to be maintained by the Lender (or such corporation) or reducing the rate of return on capital (taking into consideration the Lender's (or such corporation's) policies with respect to capital adequacy, liquidity and the Lender's desired return on capital) as a consequence of its obligations under any Loan Document, then, in each case, the Borrower agrees, upon demand by the Lender (which demand shall be accompanied by a written statement setting forth the basis for such demand and a statement as to the method of the calculation of the amount thereof in reasonable detail), to pay to the Lender additional amounts sufficient to compensate the Lender for such increased costs, increased capital or liquidity requirements or reduced rate of return, as the case may be; provided that in no event shall the Borrower be obligated to pay any amounts pursuant to this Section 8.4 incurred or suffered more than six months before the Lender provides the Borrower written notice of such amounts, as contemplated above, except if the change of law or similar event giving rise to any such amount is retroactive, in which event such six month period with respect to such amount shall include the period of retroactive effect.

**SECTION 8.5. SUCCESSORS, ASSIGNMENT.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties; provided that the Borrower may not assign or transfer its interest hereunder without the Lender's prior written consent. The Lender reserves the right to sell, assign, transfer, negotiate or grant participations in all or any part of, or any interest in, the Lender's rights and benefits under each of the Loan Documents. In connection therewith, the Lender may disclose all documents and information which the Lender now has or may hereafter acquire relating to any credit subject hereto, the Borrower or its business, any Guarantor or its business or any Collateral.

**SECTION 8.6. ENTIRE AGREEMENT; AMENDMENT.** The Loan Documents constitute the entire agreement between the Borrower and the Lender with respect to the credit facility provided hereunder and supersede all prior negotiations, communications, discussions and correspondence concerning the subject matter hereof. This Agreement may be amended or modified only in writing signed by each party hereto.

**SECTION 8.7. NO THIRD PARTY BENEFICIARIES.** This Agreement is made and entered into for the sole protection and benefit of the parties hereto and their respective permitted successors and assigns, and no other Person (other than an Indemnitee) shall be a third party beneficiary of, or have any direct or indirect cause of action or claim in connection with, any Loan Documents to which it is not a party.

**SECTION 8.8. TIME.** Time is of the essence of each provision of each Loan Document.

SECTION 8.9. SEVERABILITY OF PROVISIONS. If any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or any remaining provisions of this Agreement.

SECTION 8.10. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, and all of which when taken together shall constitute one and the same agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart executed by the party against whom enforcement is sought. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or electronic transmission (including .pdf file) shall be effective as delivery of a manually executed counterpart hereof.

SECTION 8.11. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of New York (excluding any conflicts of law rules which would otherwise cause this Agreement to be governed by the laws of any other jurisdiction).

SECTION 8.12. SET OFF. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, the Lender shall have the right, at any time or from time to time when an Event of Default exists, without prior notice to the Borrower, any such notice being expressly waived by the Borrower to the extent permitted by applicable law, to set off and apply against all deposits (general or special, time or demand, provisional or final) of the Borrower at any time held or other obligations at any time owing by the Lender to or for the credit or the account of the Borrower against any and all Obligations, irrespective of whether the Lender shall have made demand hereunder and although such Obligations may be unmatured. The Lender agrees promptly to notify the Borrower after any such set-off and any application made by the Lender; provided that the failure to give such notice shall not affect the validity of such set-off and application.

SECTION 8.13. USURY. In no event shall the amount of interest due or payable under this Agreement or any other Loan Document exceed the maximum rate of interest allowed by applicable law and if any such payment is inadvertently paid by the Borrower or inadvertently received by the Lender, then such excess sum shall be credited as a payment of principal, unless the Borrower shall notify the Lender in writing that the Borrower elects to have such excess sum returned to it forthwith. It is the express intent of the parties hereto that the Borrower not pay and the Lender not receive, directly or indirectly, in any manner whatsoever, interest in excess of that which may be lawfully paid by the Borrower under applicable law. EACH PARTY HERETO AGREES AND STIPULATES THAT THE ONLY CHARGE IMPOSED UPON THE BORROWER FOR THE USE OF MONEY IN CONNECTION WITH THIS AGREEMENT AND ANY OTHER LOAN DOCUMENT IS AND SHALL BE THE INTEREST DESCRIBED HEREIN AND THEREIN, AND FURTHER AGREES AND STIPULATES THAT ALL OTHER CHARGES IMPOSED BY THE LENDER ON THE BORROWER IN CONNECTION WITH THIS AGREEMENT AND ANY OTHER LOAN DOCUMENT, INCLUDING WITHOUT LIMITATION, ALL DEFAULT CHARGES, LATE CHARGES, PREPAYMENT FEES AND ATTORNEYS' FEES, ARE CHARGES MADE TO COMPENSATE THE LENDER FOR UNDERWRITING OR ADMINISTRATIVE SERVICES AND COSTS OR LOSSES PERFORMED OR INCURRED, AND TO BE PERFORMED OR INCURRED, BY THE LENDER IN CONNECTION WITH THIS AGREEMENT AND/OR THE OTHER LOAN DOCUMENTS AND SHALL UNDER NO CIRCUMSTANCES BE DEEMED TO BE CHARGES FOR THE USE OF MONEY. ALL CHARGES OTHER THAN CHARGES FOR THE USE OF MONEY SHALL BE FULLY EARNED AND NONREFUNDABLE WHEN DUE.

SECTION 8.14. SUBMISSION TO JURISDICTION; WAIVER OF VENUE; SERVICE OF PROCESS AND WAIVER OF JURY TRIAL.

(a) Submission to Jurisdiction. EACH OF THE PARTIES HERETO, FOR ITSELF AND ITS PROPERTY, CONSENTS TO THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN AND OF THE UNITED STATES DISTRICT COURT OF THE

SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF AND TO THE COURTS OF ITS CORPORATE DOMICILE IN RESPECT OF ACTIONS BROUGHT AGAINST IT AS A DEFENDANT, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH COURTS. 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.

(b) Waiver of Venue. EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT IN ANY COURT REFERRED TO IN PARAGRAPH (a) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT AND TO THE JURISDICTION OF ANY OTHER COURTS TO WHICH IT MAY BE ENTITLED BY REASON OF ITS PRESENT OR FUTURE DOMICILE OR OTHERWISE.

(c) Service of Process. EACH OF THE PARTIES HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO SUCH PARTY AT ITS ADDRESS PROVIDED FOR NOTICES IN ACCORDANCE WITH SECTION 8.2 HEREOF. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW. NOTICES HEREUNDER SHALL BE CONCLUSIVELY PRESUMED RECEIVED AS EVIDENCED BY A DELIVERY RECEIPT FURNISHED BY THE UNITED STATES POSTAL SERVICE OR ANY REPUTABLE COMMERCIAL DELIVERY SERVICE.

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

SECTION 8.15. USA PATRIOT ACT NOTICE. The Lender notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow the Lender to identify the Borrower in accordance with the Act.

SECTION 8.16. NO ADVISORY OR FIDUCIARY RESPONSIBILITY. The Borrower acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (a)(i) the transactions contemplated by the Loan Documents are arm's-length commercial transactions between the Borrower and its Affiliates, on the one hand, and the Lender and its Affiliates, on the other hand, (ii) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the Borrower is capable of evaluating, understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (b)(i) the Lender and its Affiliates each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not

been, is not, and will not be acting as an advisor, agent or fiduciary, for the Borrower or any of its Affiliates, or any other Person and (ii) neither the Lender nor any of its Affiliates has any obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (c) the Lender and its Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and neither the Lender nor any of its Affiliates has any obligation to disclose any of such interests to the Borrower or its Affiliates. To the fullest extent permitted by law, the Borrower waives and releases any claims that it may have against the Lender and its Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

SECTION 8.17. SURVIVAL. All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any extensions of credit hereunder, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any extension of credit hereunder or any fee or any other amount payable under this Agreement is outstanding and unpaid and so long as any Commitment has not expired or terminated. All representations and warranties made herein, in the certificates, reports, notices, and other documents delivered pursuant to this Agreement shall survive the execution and delivery of this Agreement and the other Loan Documents, and the making of the extensions of credit hereunder.

SECTION 8.18. CONFIDENTIALITY. The Lender agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective Related Parties (including accountants, legal counsel and other advisors) in connection with the credit facility provided hereby, this Agreement, the transactions contemplated hereby or in connection with marketing of services by such Affiliate or Related Party to the Borrower or any of its Subsidiaries (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent required or requested by, or required to be disclosed to, any regulatory or similar authority purporting to have jurisdiction over the Lender or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners) or in accordance with the Lender's regulatory compliance policy if the Lender deems such disclosure to be necessary for the mitigation of claims by those authorities against the Lender or any of its Related Parties (in which case, the Lender shall use commercially reasonable efforts to, except with respect to any audit or examination conducted by bank accountants or any governmental bank regulatory authority exercising examination or regulatory authority or routine compliance related disclosures, promptly notify the Borrower, in advance, to the extent practicable and otherwise permitted by applicable law), (c) as required by applicable laws or regulations or in any legal, judicial, administrative proceeding or other compulsory process, (d) in connection with the exercise of any remedies under this Agreement, under any other Loan Document or under any Related Credit Arrangement, or any action or proceeding relating to this Agreement, any other Loan Document or any Related Credit Arrangement, or the enforcement of rights hereunder or thereunder, (e) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or participant in, or any prospective assignee of or participant in, any of its rights and obligations under this Agreement or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder, (f) on a confidential basis to any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facility provided hereby, (g) with the consent of the Borrower, (h) in the case of deal terms and other information customarily reported to Thomson Reuters, other bank market data collectors and similar service providers to the lending industry and service providers to the Lender in connection with the administration of the Loan Documents, to such service providers, (i) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Lender or any of its Affiliates from a third party that is not, to the Lender's knowledge, subject to confidentiality obligations to

the Borrower, (j) to the extent that such information is independently developed by such Person, or (k) for purposes of establishing a "due diligence" defense. For purposes of this Section, "Information" means all information received from any Loan Party or any Subsidiary thereof relating to any Loan Party or any Subsidiary thereof or any of their respective businesses, other than any such information that is available to the Lender on a non-confidential basis prior to disclosure by any Loan Party or any Subsidiary thereof; provided that, in the case of information received from a Loan Party or any Subsidiary thereof after the date hereof, such information (other than information delivered pursuant to Section 5.2(c) or (d)) is identified at the time of its delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as it would accord to its own confidential information.

[Signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Credit Agreement to be executed under seal as of the day and year first written above.

BORROWER:

MGP INGREDIENTS, INC.

By: /s/ Thomas K. Pigott  
Name: Thomas K. Pigott  
Title: CFO

CREDIT AGREEMENT  
Signature Page

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LENDER:

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: /s/ Ken Washington  
Name: Ken Washington  
Title: Senior Vice President

CREDIT AGREEMENT  
Signature Page

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## United States Patents:

Debtor	Patent Number	Patent Application Number	Date Patent Issued	Date Patent Applied
MGPI Processing, Inc.	6517625	9754469	02/11/2003	01/03/2001
MGPI Processing, Inc.	6552171	9841552	04/22/2003	04/23/2001
MGPI Processing, Inc.	6605367	10324340	08/12/2003	12/18/2002
MGPI Processing, Inc.	6649177	9841544	11/18/2003	04/23/2001
MGPI Processing, Inc.	6716599	10057214	04/06/2004	04/24/2002
MGPI Processing, Inc.	6800736	10431549	10/05/2004	05/07/2003
MGPI Processing, Inc.	6809197	10459191	06/11/2003	10/26/2004
MGPI Processing, Inc.	7534459	10284552	05/19/2009	10/30/2002
MGPI Processing, Inc.	7166305	10459167	01/23/2007	06/11/2003
MGPI Processing, Inc.	7989592	11777176	08/02/2011	07/12/2007
MGPI Processing, Inc.	8309152	11059166	11/13/2012	02/16/2005
MGPI Processing, Inc.	8741370	11115441	06/03/2014	04/27/2005
MGPI Processing, Inc.	8753705	11146623	06/17/2014	06/07/2005
MGPI Processing, Inc.	8758845	13673641	06/24/2014	11/09/2012
MGPI Processing, Inc.	8802754	11339367	08/12/2014	01/25/2006
MGPI Processing, Inc.	9125431	12580755	09/08/2015	10/16/2009
MGPI Processing, Inc.	9238618	14516414	01/19/2016	10/16/2014
MGPI Processing, Inc.		14/256,243		04/18/2014
MGPI Processing, Inc.		11/689620		03/22/2007



International Patents:

Debtor	Registration Number	Application Number	Country/State
MGPI Processing, Inc.	1758461		GB
MGPI Processing, Inc.	1758461		LU
MGPI Processing, Inc.	1758461		MC
MGPI Processing, Inc.	1758461		CH
MGPI Processing, Inc.	1758461		IE
MGPI Processing, Inc.	1758461		FR
MGPI Processing, Inc.	1758461		DE
MGPI Processing, Inc.	2532285		CA
MGPI Processing, Inc.	1648237		SI
MGPI Processing, Inc.	1648237		DE
MGPI Processing, Inc.	1648237		FR
MGPI Processing, Inc.	1648237		IE
MGPI Processing, Inc.	1648237		SE
MGPI Processing, Inc.	1648237		CH
MGPI Processing, Inc.	1648237		LU
MGPI Processing, Inc.	1648237		MC
MGPI Processing, Inc.	1648237		NL
MGPI Processing, Inc.	1648237		DK
MGPI Processing, Inc.	1648237		GB
MGPI Processing, Inc.	2004253169		Australia

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MGPI Processing, Inc.	2005267599		Australia
MGPI Processing, Inc.	1643841		DE
MGPI Processing, Inc.	1643841		FR
MGPI Processing, Inc.	1643841		GB
MGPI Processing, Inc.	3866289		JP
MGPI Processing, Inc.	4229236		JP
MGPI Processing, Inc.	4839213		JP
MGPI Processing, Inc.	5238495		JP
MGPI Processing, Inc.	1888650		Europe
MGPI Processing, Inc.	602006033350.1		DE
MGPI Processing, Inc.	1888650		GB
MGPI Processing, Inc.	2006254932		Australia
MGPI Processing, Inc.		2011124186	JP
MGPI Processing, Inc.		2011164823	Japan
MGPI Processing, Inc.		2007275271	Australia
MGPI Processing, Inc.		2661310	Canada
MGPI Processing, Inc.		7813110.9	Europe
MGPI Processing, Inc.		2009-521909	Japan
MGPI Processing, Inc.		2 611431	Canada
MGPI Processing, Inc.		2007 556375	Japan
MGPI Processing, Inc.		6720893.4	Europe
MGPI Processing, Inc.		2598089	Canada
MGPI Processing, Inc.		2006214040	Australia
MGPI Processing, Inc.		2570902	Canada
MGPI Processing, Inc.		2005 267599	Australia
MGPI Processing, Inc.		2006 520157	Japan

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**Patent Licenses:**

LICENSEE	LICENSOR	COUNTRY/STATE	REGISTRATION/ APPLICATION NUMBER, IF ANY	DESCRIPTION
MGPI Processing, Inc.	Kansas State University Research Foundation	Australia and International	5,855,946 and 6,299,907	Plant Based Starches

**TRADEMARKS AND TRADEMARK APPLICATIONS**

Mark	Country	Status	Application Number	Registration Number	Application Date	Registration Date
MGP	USA	Registered	86/953,445	5,207,519		3/25/2016
VISCOMAX	USA	Registered	86/088,833	4,739,919		5/19/2015
TILL AMERICAN WHEAT VODKA	USA	Registered	86/822,946	5,196,525		11/17/2015
TILL KANSAS ESTATE WHEAT VODKA	USA	Request for extension granted	86/603,185		4/20/2015	
TILL WHEAT GIN	USA	Request for extension granted	86/603,172		4/20/2015	
TILL	USA	Request for extension granted	86/822,944		11/17/2015	
TILL	USA	Request for extension granted	86/749,823		9/8/2015	
TILL DISTILLING COMPANY	USA	Request for extension granted	86/749,821		9/8/2015	

MGP	USA	Suspended to await entry of Madd Gear cancellation order	86/953,449		3/25/2016	
MGP SPIRITS	USA	Application under examination	86/953,447		3/25/2016	
TILL	USA	Registered	86/980,271	5,075,227	11/17/2015	11/1/2016
TILL	USA	Registered	86/980,233	5,075,224	9/8/2015	11/1/2016
TILL VODKA	USA	Registered	86/603,719	5,028,029	4/20/2015	8/23/2016
TILL WHEAT VODKA	USA	Registered	86/603,204	5,028,028	4/20/2015	8/23/2016
TILL KANSAS WHEAT VODKA	USA	Registered	86/603,198	5,028,027	4/20/2015	8/23/2016
TILL AMERICAN WHEAT VODKA	USA	Registered	86/603,719	5,028,026	4/20/2015	8/23/2016
TRUTEX	USA	Registered	85/688,614	4,556,537	7/27/2012	6/24/2014
OPTEIN	USA	Registered	85/885,492	4,472,546	3/25/2013	1/21/2014
FIBERRITE	USA	Registered	78/777,970	3,259,490	12/21/2005	07/03/2007
FIBERSYM	USA	Registered	78/448,572	3,086,500	7/9/2004	4/25/2006
FIBERSYM	USA	Registered	78/426,375	3,143,069	5/27/2004	09/12/2006
MGP INGREDIENTS, INC.	USA	Registered	78/448,141	3,020,190	7/9/2004	11/29/2005
ARISE	USA	Registered	78/086,949	2,681,958	10/4/2001	1/28/2003
WHEATEX	USA	Registered	77/169,737	3,450,542	5/1/2007	6/17/2008
MGP INGREDIENTS	USA	Registered	76/416,336	3,032,619	6/3/2002	12/20/2005
FOAM PRO	USA	Registered	75/080,773	2,083,385	3/29/1996	7/29/1997
WHEATEX	USA	Registered	74/567,025	2,076,023	8/29/1994	7/1/1997
REMUS REPEAL RESERVE	USA	Application under examination	87/382,464		3/23/2017	

GR	USA	Application published for opposition	87/382,468		3/23/2017	
KING OF THE BOOTLEGGERS	USA	Application published for opposition	87/362,742		3/8/2017	
GR	USA	Application awaiting review	87/497,404		6/20/2017	
ROSSVILLE UNION	USA	Application awaiting review	87/497,402		6/20/2017	
LAWRENCEBURG DISTILLERS INDIANA	USA	Abandoned	87/238,793		11/16/2016	
ROSSVILLE	USA	Application under examination	86/953,450		3/25/2016	
ROSSVILLE RYE	USA	Application under examination	86/953,448		3/25/2016	
TANNER'S CREEK	USA	Application under examination	86/953,446		3/25/2016	
B UR BN	USA	Application under examination	86/953,443		3/25/2016	
LDI	USA	Application under examination	86/651,279		6/4/2015	
MERIWETHER GIN	USA	Application under examination	86/603,161		4/20/2015	
MERIWETHER LEWIS GIN	USA	Application under examination	86/603,150		4/20/2015	

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ROSSVILLE DISTILLERY	USA	Application under examination	86/794,384		10/21/2015	
IMOGENE REMUS	USA	Application under examination	86/149,340		12/20/2013	
GEORGE REMUS	USA	Registered	86/149,348	4,634,131	12/20/2013	11/4/2014
LIMITED EDITION METZE'S SELECT INDIANA STRAIGHT BOURBON WHISKEY	USA	Registered	86/642,679	5,074,263	5/27/2015	11/1/2016
METZE'S SELECT	USA	Registered	86/642,657	5,074,262	5/27/2015	11/1/2016
CLOUD'S BATCH '41	USA	Registered	85/777,791	5,008,349	11/13/2012	7/26/2016

**TRADEMARKS LICENSES**

None.

**COPYRIGHTS**

None.

**COPYRIGHT LICENSES**

None.

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Material Contracts

1. Note Purchase and Private Shelf Agreement, dated August 23, 2017, among the Borrower, PGIM, Inc. and the Series A Purchasers referred to therein.
2. Grain Supply Agreement, dated December 22, 2014, between MGPI Processing, Inc. and Bunge Milling, Inc.
3. Grain Supply Agreement, dated January 1, 2015, between MGPI of Indiana, LLC and Consolidated Grain and Barge.
4. Supply Agreement, dated July 10, 2015 between Ardent Mills, LLC and MGPI Processing, Inc.
5. Distillate Supply Agreement, dated July 1, 2013, between Diageo Americas Supply, Inc. and MGPI of Indiana, LLC.

## Environmental Matters

1. On December 21, 2016, the U.S. Environmental Protection Agency ("EPA") issued a Notice of Violation to the Company alleging the Company commenced construction of new aging warehouses for whiskey at its facility in Lawrenceburg, Indiana, without first applying for or obtaining a Clean Air Act permit and without adequately demonstrating to the EPA that emissions control equipment did not need to be installed to meet applicable air quality standards. The Company notes that neither EPA nor the State of Indiana have required emission control equipment for aging whiskey warehouses and, to our knowledge, no other whiskey distillers in the U.S. have been required to install emissions control equipment in their aging whiskey warehouses. No demand for a penalty has been made in connection with the Notice of Violation, but the Company believes it is probable that a penalty will be assessed. Although it is not possible to reasonably estimate a loss or range of loss at the date of this filing, the Company currently does not expect that the amount of any such penalty or related remedies would have a material adverse effect on the Company's business, financial condition or results of operations.
2. A chemical release occurred at the Company's Atchison facility on October 21, 2016, which resulted in emissions venting into the air. The Company reported the event to the EPA, the Occupational, Safety, and Health Administration ("OSHA"), and to Kansas and local authorities on that date, and is cooperating fully to investigate and ensure that all appropriate response actions are taken. The Company has also engaged outside experts to assist the investigation and response. The Company believes it is probable that a fine or penalty may be imposed by regulatory authorities, but it is currently unable to reasonably estimate the amount thereof for Kansas and local authorities since some investigations are not complete and could take several months up to a few years to complete. Private plaintiffs have initiated, and additional private plaintiffs may initiate, legal proceedings for damages resulting from the emission, but the Company is currently unable to reasonably estimate the amount of any such damages that might result. The Company's insurance is expected to provide coverage of any damages to private plaintiffs, subject to a deductible of \$250,000 but certain regulatory fines or penalties may not be covered and there can be no assurance to the amount or timing of possible insurance recoveries if ultimately claimed by the Company. There was no significant damage to the Company's Atchison plant as a result of this incident. No other MGP facilities, including the distillery in Lawrenceburg, Indiana, were affected by this incident.  
OSHA completed its investigation and, on April 19, 2017, issued its penalty to the Company in the amount of \$138,000. Management settled this assessment with OSHA in full for \$75,000 which was paid on May 16, 2017. A portion, or all, of the penalty amount may be covered by insurance.  
The EPA informed the Company on August 1, 2017, that it intends to seek civil penalties of approximately \$250,000 in connection with its investigation, while offering the Company the opportunity to settle the matter prior to the EPA proceeding with a formal enforcement action. The Company is seeking a negotiated settlement with the EPA. Since negotiations are ongoing and EPA-proposed penalties are not material to the quarter ended June 30, 2017, the Company has not included an accrual in its results. A portion, or all, of the settled penalty amount may be covered by insurance.

Notes: For purposes of this Schedule 3.10, the term "Company" refers to MGP Ingredients, Inc. and its subsidiaries. Disclosure of any item above is made out of an abundance of caution, and does not necessarily imply that any such item is material or could have or result in a Material Adverse Effect.



Real Property  
(Collateral Locations)

Owned:

Loan Party	Collateral Locations
MGP Ingredients, Inc.	100 Commercial, Atchison, Kansas
MGPI Processing, Inc.	100 Commercial, Atchison, Kansas 101 Commercial, Atchison, Kansas 200 Commercial, Atchison, Kansas 16 Kansas Avenue, Kansas City, Kansas 1100 Main Street, Atchison, Kansas 1200 Main Street, Atchison, Kansas 1300 Main Street, Atchison, Kansas
MGPI of Indiana, LLC	7 Ridge Avenue, Lawrenceburg, Indiana

Leased:

Loan Party	Collateral Locations
MGPI Processing, Inc.	8801 Renner Avenue, Lenexa, Kansas
MGPI Processing, Inc.	Space Center Inc. 5555 W. Geospace Drive, Independence, MO 64056
MGPI Processing, Inc.	Zumbro River Brand, Inc. 590 W 14th St. Albert Lea, MN 56007
MGPI of Indiana, LLC	Meier's Wine Cellar Inc. 6955 Plainfield Rd., Cincinnati, OH 45236
MGPI Processing, Inc. & MGPI of Indiana, LLC	Crown Valley Distilling 13326 State Route FSTE. Genevieve, MO 63670
MGPI Processing, Inc. & MGPI of Indiana, LLC	Strong Spirits 999 Withrow Ct. Bardstown, KY 40004

MGPI Processing, Inc. & MGPI of Indiana, LLC	LiDestri Spirits 1050 Lee Road, Rochester, NY 14606
MGPI Processing, Inc. & MGPI of Indiana, LLC	Western Carriers - Park Street 8501 Westside Avenue North Bergen, NJ 07047
MGPI Processing, Inc. & MGPI of Indiana, LLC	Western Wine Services -Park Street 1275 Commerce Blvd., American Canyon, CA 94503
MGPI Processing, Inc. & MGPI of Indiana, LLC	State of Iowa – Warehouse 1918 SE Hulsizer Road, Ankeny, IA 50021
MGPI Processing, Inc. & MGPI of Indiana, LLC	State of Ohio – Warehouse 3005 East Kemper Road Cincinnati, OH 45241

<b>Other Collateral Locations</b>	
ICP, 1301 Front Street, Pekin, IL 61555	
MO - KAN Underground, 6675 Sherman Rd., Atchison, KS 66002	
Reckitt Benckiser, 799 Route 206, Belle Meade, NJ 08502	
Cone Solvents, 6185 Cockrill Bend Circle, Nashville, TN 37209	
Frontier Logistics Services, 1830 Linder Industrial Drive, Nashville, TN 37209	
Chemisphere, 2102 Clifton Avenue, Saint Louis, MO 63139	

## Subsidiaries

Schedule 3.13

Name of Subsidiary	Authorized Shares	Number of Shares/ Units Issued	% of Outstanding Shares/Units directly owned by MGP Ingredients, Inc.
MGPI Processing, Inc.	common stock: 1,000 shares of with no par value	1,000	100%
	preferred stock: 10 shares with par value of \$10.00	10	100%
MGPI Pipeline, Inc.	common stock: 100,000 shares with par value of \$1.00	5,000 shares	100%
MGPI of Indiana, LLC	membership units	single member LLC	100%
Thunderbird Real Estate Holdings, LLC	membership units	single member LLC	100%

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## Loan Party Information

<b>Loan Party Name</b>	<b>Jurisdiction of Formation</b>	<b>Form of Organization</b>	<b>Location of Chief Executive Office</b>	<b>Federal Tax ID number</b>	<b>Organizational ID Number from Secretary of State (if applicable)</b>
MGP Ingredients, Inc.	Kansas	Corporation	100 Commercial Street, Atchison, KS 66002	45-4082531	4554606
MGPI Processing, Inc.	Kansas	Corporation	100 Commercial Street, Atchison, KS 66002	48-0531200	83220
MGPI Pipeline, Inc.	Kansas	Corporation	100 Commercial Street, Atchison, KS 66002	48-1076698	1569474
MGPI of Indiana, LLC	Delaware	Single Member LLC	100 Commercial Street, Atchison, KS 66002	26-2330535	4527045

Existing Indebtedness

1. Aircraft financing Indebtedness of MGPI Pipeline, Inc. due U.S. Bank National Association, acting through its division, U.S. Bank Equipment Finance, in an outstanding principal amount not to exceed \$2.1 million. The aircraft is owned by MGPI Pipeline, Inc. and is leased by it to MGPI Processing, Inc. Indebtedness guaranteed by the Borrower.
2. To the extent constituting Indebtedness, the obligations secured by or related to the equipment lease or purchase-money financing statements described in Schedule 6.3.

Existing Liens

Liens evidenced by the UCC financing statements listed below:

- 1. Debtor – **MGP Ingredients, Inc.**\* (f/k/a MGPI Holdings, Inc.)

Jurisdiction	UCC Number	Filing Date	Secured Party	Collateral**
Kansas	6954606	2012-12-13	General Electric Capital Corporation	Equipment Lease Agreement No. 7665240-0002

\* See item no. 2 below (MGPI Processing, Inc.) for UCC financing statements filed against MGP Ingredients, Inc. before it changed its name to MGPI Processing, Inc.

\*\* See related UCC financing statement for complete collateral description

2. Debtor – MGPI Processing, Inc. (f/k/a MGP Ingredients, Inc., Midwest Grain Products, Inc. and Midwest Solvents Company, Inc.)

Jurisdiction	UCC Number	Filing Date	Secured Party	Collateral*
Kansas	<b>5729033</b> (originally filed against MGP Ingredients, Inc. as debtor)	2004-01-22	Winthrop Resources Corporation	Lease Agreement No. MG011204, Schedule #001
	70621029 - Continuation	2009-01-05		
	7037542 - Continuation	2013-10-28		
Kansas	<b>6172803</b> (originally filed against MGP Ingredients, Inc. as debtor)	2006-06-05	Winthrop Resources Corporation	Lease Agreement No. MG011204, Schedule #B02
	70933721 - Continuation	2011-04-27		
	72203743 - Continuation	2016-04-28		
Kansas	<b>6395701</b> (originally filed against MGP Ingredients, Inc. as debtor)	2007-08-07	Winthrop Resources Corporation	Lease Agreement No. MG011204, Schedule #003R
	71210871 - Continuation	2012-07-27		
	72522266 - Continuation	2017-07-12		
Kansas	<b>6502512</b> (originally filed against MGP Ingredients, Inc. as debtor)	2008-06-25	Winthrop Resources Corporation	Lease Agreement No. MG011204, Schedule #005R
	71348788 - Continuation	2013-02-13		
Kansas	<b>6538847</b> (originally filed against MGP Ingredients, Inc. as debtor)	2008-10-23	Winthrop Resources Corporation	Lease Agreement No. MG011204, Schedule #006R
	7005762 - Continuation	2013-06-21		
Kansas	<b>6812317</b> (originally filed against MGP Ingredients, Inc. as debtor)	2011-07-01	U.S. Bancorp Equipment Finance, Inc.	Master Lease Agreement dated 06/28/11, specific assets
	72171262 - Continuation	2016-03-18		

Kansas	<b>6954606</b>	2012-12-13	General Electric Capital Corporation	Specific equipment
Kansas	<b>72498376</b>	2017-06-07	Canon Financial Services, Inc.	Specific equipment
Kansas	<b>6977383</b>	2013-03-11	GE Capital Commercial Inc.	Specific equipment
Kansas	<b>6993224</b>	2013-05-03	Passchendaele Capital Fund	Lease Agreement #CG-5593 Lease Schedule No. 1
	7006091 - Assignment	2013-06-21	Sterling National Bank	
	7010739 - Amendment	2013-07-10		Amend to more fully describe equipment/collateral
Kansas	<b>7003551</b>	2013-06-12	CSI Leasing, Inc.	Master Lease 242997, Equipment Schedule 5
Kansas	<b>71618552</b>	2014-02-18	CSI Leasing, Inc.	Master Lease 242997, Equipment Schedule 6
Kansas	<b>7091911</b>	2014-06-19	GE Capital Commercial Inc.	Specific equipment
Kansas	<b>7100571</b>	2014-07-31	GE Capital Commercial Inc.	Specific equipment
Kansas	<b>103482289</b>	2015-05-27	Deere Credit, Inc.	Specific equipment
Kansas	<b>72021434</b>	2015-08-11	General Electric Credit Corporation of Tennessee	Specific equipment
Kansas	<b>7191224</b>	2015-11-12	U.S. Bank National Association acting through its division U.S. Bank Equipment Finance [Assignor secured party is MGPI Pipeline, Inc.]	One Cessna aircraft, two aircraft engines, and related items, agreements, contracts, chattel paper, etc.

Kansas	<b>7191489</b>	2015-11-12	Harcros Chemicals Inc.	Bulk Storage Equipment
Kansas	<b>72237675</b>	2016-06-09	CSI Leasing, Inc.	Specific equipment

\* See related UCC financing statement for complete collateral description



3. Debtor – MGPI Pipeline, Inc. (f/k/a Midwest Grain Pipeline, Inc.)

Jurisdiction	UCC Number	Filing Date	Secured Party	Collateral*
Kansas	72086031	2015-11-11	U.S. Bank National Association acting through its division U.S. Bank Equipment Finance	One Cessna aircraft, two aircraft engines, and related items, agreements, contracts, chattel paper, etc.

\* See related UCC financing statement for complete collateral description

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4. Debtor – **MGPI of Indiana, LLC** (f/k/a Firebird Acquisitions, LLC)

Jurisdiction	UCC Number	Filing Date	Secured Party	Collateral*
Delaware	2014 4944062	2014-12-08	Ultra Pure, LLC	All barrels of whiskey as set forth in Warehouse Service Agreement dated 10/29/2012, as amended

\* See related UCC financing statement for complete collateral description

5. Debtor – **Thunderbird Real Estate Holdings, LLC**

None.

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Existing Investments

1. Investments by the Borrower in its Subsidiaries.
2. Minority equity investments made by the Borrower in the following local (Atchison, Kansas) entities:

Bellevue Country Club	\$22,000
Right on Track	\$53,680

Closing Checklist

See attached.

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**Index of Closing Documents**

**CREDIT AGREEMENT**

Dated as of August 23, 2017  
between

**MGP INGREDIENTS, INC.**,  
as Borrower,

and

**WELLS FARGO BANK, NATIONAL ASSOCIATION,**

as Lender

\$150,000,000 revolving credit facility

**PARTIES:**

**Borrower:** MGP Ingredients, Inc., a Kansas corporation

**Subsidiary Guarantors:** MGPI Processing, Inc., a Kansas corporation  
MGPI Pipeline, Inc., a Kansas corporation  
MGPI of Indiana, LLC, a Delaware limited liability company

**Lender:** Wells Fargo Bank, National Association

**MW:** McGuireWoods LLP, counsel to the Lender

**BC:** Stinson Leonard Street LLP, counsel to the Loan Parties



Description	Responsible Party
<b>Documents</b>	
<p>1. Credit Agreement between the Borrower and the Lender</p> <p><u>Schedules</u>  3.7 Intellectual Property  3.9 Material Contracts  3.10 Environmental Matters  3.11 Real Property  3.13 Subsidiaries  3.15 Loan Party Information  6.2 Existing Indebtedness  6.3 Existing Liens  6.6 Existing Investments</p> <p><u>Exhibits</u>  A Closing Checklist  B Compliance Certificate</p>	<p>MW</p> <p>MW</p> <p>Borrower  Borrower  Borrower  Borrower  Borrower  Borrower</p> <p>MW  MW</p>
<p>2. Note from the Borrower in favor of the Lender</p>	<p>MW</p>
<p>3. Subsidiary Guaranty Agreement</p>	<p>MW</p>
<p>4. Security Agreement</p> <p><u>Schedules</u>  1 Debtor Information  2 Collateral Locations  3 Intellectual Property  4 Commercial Tort Claims</p>	<p>MW</p>
<p>5. Pledge Agreement</p> <p><u>Schedules</u>  1 Pledged Interests  2 Debtor Information</p>	<p>MW</p>
<p>6. Original Stock Certificates and Transfer Powers</p>	<p>Borrower</p>
<p>7. Intellectual Property Security Agreements (if applicable)  (a) Patent  (b) Trademark</p>	<p>MW</p>
<p>8. Collateral Agency and Intercreditor Agreement</p>	<p>MW</p>

Description	Responsible Party
9. Entity documents of the Borrower, including: a. Certificate of Secretary certifying as to: (1) Certificate of Formation <u>certified as of recent date</u> by the Kansas Secretary of State (2) Bylaws (3) Authorizing consents/resolutions (4) Incumbency Certificate b. Certificate of Existence/Good Standing (Kansas)	Borrower
10. Entity documents of MGPI Processing, Inc., including: a. Certificate of Secretary certifying as to: (1) Certificate of Formation <u>certified as of recent date</u> by the Kansas Secretary of State (2) Bylaws (3) Authorizing consents/resolutions (4) Incumbency Certificate b. Certificate of Existence/Good Standing (Kansas)	Borrower
11. Entity documents of MGPI Pipeline, Inc., including: a. Certificate of Secretary certifying as to: (1) Certificate of Formation <u>certified as of recent date</u> by the Kansas Secretary of State (2) Bylaws (3) Authorizing consents/resolutions (4) Incumbency Certificate b. Certificate of Existence/Good Standing (Kansas)	Borrower
12. Entity documents of MGPI of Indiana, LLC, including: a. Certificate of Secretary certifying as to: (1) Certificate of Formation <u>certified as of recent date</u> by the Delaware Secretary of State (2) Operating Agreement (3) Authorizing consents/resolutions (4) Incumbency Certificate b. Certificate of Existence/Good Standing (Delaware)	Borrower
13. Opinion of Counsel to the Loan Parties	BC
14. UCC Preclosing Search Results	MW
15. UCC Financing Statements as set forth on <u>Appendix A</u> attached hereto	MW
16. Certificate of a Responsible Officer of the Borrower, including certification as to copies of all Material Contracts listed on <u>Schedule 3.9</u> of the Credit Agreement	Borrower
17. Evidence of Insurance with lender's loss payee and additional insured endorsements	Borrower

Description	Responsible Party
18. Financial Information	Borrower/ WF
19. Evidence of payment of existing indebtedness, including: <ul style="list-style-type: none"> <li>a. Payoff Letter</li> <li>b. UCC Termination Statements</li> <li>c. IP Releases</li> <li>d. Mortgage releases</li> <li>e. Deposit Account Control Agreement termination(s)</li> </ul>	WF/Borrower
20. Funds Flow Memorandum	MW



APPENDIX A  
UCC Financing Statements

Debtor	Jurisdiction	File Date	File Number
MGP Ingredients, Inc.	Kansas		
MGPI Processing, Inc.	Kansas		
MGPI Pipeline, Inc.	Kansas		
MGPI of Indiana, LLC	Delaware		

Form of Compliance Certificate

Financial Statement Date: \_\_\_\_\_, \_\_\_\_\_

To: Wells Fargo Bank, National Association

Ladies and Gentlemen:

Reference is made to that certain Credit Agreement, dated as of August 23, 2017 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the " Agreement"; the terms defined therein being used herein as therein defined), between MGP Ingredients, Inc., a Kansas corporation (the "Borrower"), and Wells Fargo Bank, National Association (the "Lender").

The undersigned officer hereby certifies as of the date hereof that he/she is the [President/Chief Financial Officer/Controller/Treasurer] of the Borrower, and that, as such, he/she is authorized to execute and deliver this Compliance Certificate to the Lender on the behalf of the Borrower, and that:

[Use following paragraph 1 for fiscal year-end financial statements]

1. Attached hereto as Schedule 1 are the year-end audited financial statements required by Section 5.2(a) of the Agreement for the fiscal year of the Borrower ended as of the above date, together with the report and opinion of an independent certified public accountant required by such section.

[Use following paragraph 1 for fiscal quarter-end financial statements]

1. Attached hereto as Schedule 1 are the unaudited financial statements required by Section 5.2(b) of the Agreement for the fiscal quarter of the Borrower ended as of the above date. Such financial statements fairly present in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP as at such date and for such period, subject only to normal year-end audit adjustments and the absence of footnotes.

2. The undersigned has reviewed and is familiar with the terms of the Agreement and has made, or has caused to be made under his/her supervision, a detailed review of the transactions and condition (financial or otherwise) of the Borrower during the accounting period covered by the attached financial statements.

3. A review of the activities of the Borrower during such fiscal period has been made under the supervision of the undersigned with a view to determining whether during such fiscal period the Borrower performed and observed all its obligations under the Loan Documents, and

[select one:]

[to the best knowledge of the undersigned during such fiscal period, the Borrower performed and observed each covenant and condition of the Loan Documents applicable to it.]

--or--

[the following covenants or conditions have not been performed or observed and the following is a list of each such default and its nature and status:]

4. The representations and warranties of the Borrower contained in Article III of the Agreement, or which are contained in any document furnished at any time under or in connection with the Loan Documents,

are true and correct in all material respects (or if already qualified by a materiality or Material Adverse Effect qualifier, in all respects) on and as of the date hereof, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in all material respects (or if already qualified by a materiality or Material Adverse Effect qualifier, in all respects) as of such earlier date, and except that for purposes of this Compliance Certificate, the representations and warranties contained in Section 3.5 of the Agreement shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) or (b), as applicable, of Section 5.2 of the Agreement, including the statements in connection with which this Compliance Certificate is delivered.

5. The financial covenant analyses and information set forth on Schedule 2 attached hereto are true and accurate in all material respects on and as of the date of this Compliance Certificate.

*IN WITNESS WHEREOF*, the undersigned has executed this Compliance Certificate as of \_\_\_\_\_, \_\_\_\_.

MGP INGREDIENTS, INC.

By: \_\_\_

Name:

Title: **[President/Chief Financial Officer/ Controller/Treasurer]**

For the Quarter/Year ended \_\_\_\_\_ ("Statement Date")

**SCHEDULE 2**  
to the Compliance Certificate  
(\$ in 000's)

CONSOLIDATED LEVERAGE RATIO EXHIBIT

Consolidated Leverage Ratio:

A. Consolidated Funded Indebtedness:  
\$ \_\_\_\_\_

B. Consolidated EBITDA:

- (1) Consolidated Net Income \$ \_\_\_\_\_
- (2) + income taxes \$ \_\_\_\_\_
- (3) + Consolidated Interest Expense \$ \_\_\_\_\_
- (4) + depreciation and amortization \$ \_\_\_\_\_
- (5) + non-cash charges (except to the extent that such non-cash charges are reserved for cash charges to be taken in the future) \$ \_\_\_\_\_
- (6) - non-cash gains or non-cash items
- (7) = Consolidated EBITDA \$ \_\_\_\_\_

Consolidated Leverage Ratio = A + B(7): \_\_\_\_\_ to 1.00

Maximum permitted ratio is: 3.00 to 1.00

The Applicable Rate is to be calculated at Tier \_\_\_\_.

Tier	Consolidated Leverage Ratio
I	< 2.00 to 1.00
II	≥ 2.00 to 1.00

## CONSOLIDATED FIXED CHARGE COVERAGE RATIO EXHIBIT

Consolidated Fixed Charge Coverage Ratio:

## 1. Cash Flow Available to Pay Fixed Charges:

- (A) Consolidated EBITDA (see B(7) of the Consolidated Leverage Ratio Exhibit) \$ \_\_\_\_\_
- (B) - non-financed Capital Expenditures \$ \_\_\_\_\_
- (C) - dividend and distributions (excluding from ICP sale proceeds) \$ \_\_\_\_\_
- (D) - income taxes paid in cash during such period \$ \_\_\_\_\_
- (E) - share repurchases (in each case excluding share repurchases and other acquisitions of stock of the Borrower or securities convertible therefor required to be purchased pursuant to employee stock compensation plans consistent with the plans in effect on the Closing Date in an aggregate amount not to exceed (x) \$7,500,000 in any period other than the 2019 fiscal year, or (y) \$14,200,000 in the 2019 fiscal year): \$ \_\_\_\_\_
- (F) = Cash Flow available to pay fixed charges \$ \_\_\_\_\_

## 2. Consolidated Fixed Charges:

- (A) Consolidated Interest Expense \$ \_\_\_\_\_
- (B) + scheduled principal payments of Consolidated Funded Indebtedness \$ \_\_\_\_\_
- (C) = Consolidated Fixed Charges \$ \_\_\_\_\_

Consolidated Fixed Charge Coverage Ratio = 1(F) ÷ 2(C): \_\_\_\_ to 1.00

Minimum permitted ratio is: 1.25 to 1.00

**MGP INGREDIENTS, INC.**

**\$20,000,000**

**3.53% Senior Secured Notes, Series A, due August 23, 2027**

**\$55,000,000**

**Private Shelf Facility**

\_\_\_\_\_

**NOTE PURCHASE AND PRIVATE SHELF AGREEMENT**

\_\_\_\_\_

**Dated August 23, 2017**

\_\_\_\_\_

\_\_\_\_\_

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MGP INGREDIENTS, INC.

100 Commercial Street  
Atchison, Kansas 66002

Attn: Tom Pigott

\$20,000,000 3.53% Senior Secured Notes, Series A, due August 23, 2027

\$55,000,000 Private Shelf Facility

August 23, 2017

To Each of the Purchasers Listed in  
Schedule B Hereto (each a “**Series  
A Purchaser**”)

To PGIM, Inc. (“**Prudential**”)

To each other Prudential Affiliate which becomes  
bound by this Agreement as hereinafter  
provided (together with the Series A Purchasers, each,  
a “**Purchaser**” and collectively, the “**Purchasers**”):

Ladies and Gentlemen:

MGP Ingredients, Inc., a Kansas corporation (the “**Company**”), agrees with each of the Purchasers as follows:

**Section 1. Authorization of Notes.**

**Section 1.1. Authorization of Issue of Series A Notes.** The Company will authorize the issue and sale of \$20,000,000 aggregate principal amount of its 3.53% Senior Secured Notes, Series A, due August 23, 2027 (as amended, restated or otherwise modified from time to time pursuant to Section 17 and including any such notes issued in substitution therefor pursuant to Section 13, the “**Series A Notes**”). The Series A Notes shall be substantially in the form set out in Schedule 1(a). *Certain capitalized and other terms used in this Agreement are defined in Schedule A, and, for purposes of this Agreement, the rules of construction set forth in Section 22.4 shall govern.*

**Section 1.2. Authorization of Issue of Shelf Notes.** The Company will authorize the issue of its additional senior promissory notes (the “**Shelf Notes**”, such term to include any such notes issued in substitution thereof pursuant to Section 13) in the aggregate principal amount of \$55,000,000, to be dated the date of issue thereof, to mature, in the case of each Shelf Note so issued, no more than 10 years after the date of original issuance thereof, to have an average life, in the case of each Shelf Note so issued, of no more than 10 years after the date of original issuance thereof, to bear interest on the unpaid balance thereof from the date thereof at the rate per annum, and to have such other particular terms, as shall be set forth, in the case of each Shelf Note so issued, in the Confirmation of Acceptance with respect to such Note delivered pursuant to Section 2.2(f),

and to be substantially in the form of Schedule 1(b) attached hereto. The terms “**Note**” and “**Notes**” as used herein shall include each Series A Note and each Shelf Note delivered pursuant to any provision of this Agreement and each Note delivered in substitution or exchange for any such Note pursuant to any such provision. Notes which have (i) the same final maturity, (ii) the same principal prepayment dates, (iii) the same principal prepayment amounts (as a percentage of the original principal amount of each Note), (iv) the same interest rate, (v) the same interest payment periods and (vi) the same date of issuance (which, in the case of a Note issued in exchange for another Note, shall be deemed for these purposes the date on which such Note’s ultimate predecessor Note was issued), are herein called a “**Series**” of Notes.

**Section 2. Sale and Purchase of Notes.**

**Section 2.1. Sale and Purchase of Series A Notes.** Subject to the terms and conditions of this Agreement, the Company will issue and sell to each Series A Purchaser and each Series A Purchaser will purchase from the Company, at the Series A Closing provided for in Section 3.1, Series A Notes in the principal amount specified opposite such Series A Purchaser's name in Schedule B at the purchase price of 100% of the principal amount thereof. The Purchasers' obligations hereunder are several and not joint obligations and no Purchaser shall have any liability to any Person for the performance or non-performance of any obligation by any other Purchaser hereunder.

**Section 2.2. Sale and Purchase of Shelf Notes.**

(a) *Facility.* Prudential is willing to consider, in its sole discretion and within limits which may be authorized for purchase by Prudential Affiliates from time to time, the purchase of Shelf Notes pursuant to this Agreement. The willingness of Prudential to consider such purchase of Shelf Notes is herein called the "**Facility**". At any time, the aggregate principal amount of Shelf Notes stated in Section 1.2, minus the aggregate principal amount of Shelf Notes purchased and sold pursuant to this Agreement prior to such time, minus the aggregate principal amount of Accepted Notes which have not yet been purchased and sold hereunder prior to such time, is herein called the "**Available Facility Amount**". **NOTWITHSTANDING THE WILLINGNESS OF PRUDENTIAL TO CONSIDER PURCHASES OF SHELF NOTES BY PRUDENTIAL AFFILIATES, THIS AGREEMENT IS ENTERED INTO ON THE EXPRESS UNDERSTANDING THAT NEITHER PRUDENTIAL NOR ANY PRUDENTIAL AFFILIATE SHALL BE OBLIGATED TO MAKE OR ACCEPT OFFERS TO PURCHASE SHELF NOTES, OR TO QUOTE RATES, SPREADS OR OTHER TERMS WITH RESPECT TO SPECIFIC PURCHASES OF SHELF NOTES, AND THE FACILITY SHALL IN NO WAY BE CONSTRUED AS A COMMITMENT BY PRUDENTIAL OR ANY PRUDENTIAL AFFILIATE.**

(b) *Issuance Period.* Shelf Notes may be issued and sold pursuant to this Agreement until the earlier of (i) the third anniversary of the date of this Agreement (or if such anniversary date is not a Business Day, the Business Day next preceding such anniversary) and (ii) the 30th day after Prudential shall have given to the Company, or the Company shall have given to Prudential, a written notice stating that it elects to terminate the issuance and sale of Shelf Notes pursuant to this Agreement (or if such 30th day is not a Business Day, the Business Day next preceding such 30th day). The period during which Shelf Notes may be issued and sold pursuant to this Agreement is herein called the "**Issuance Period**".

(c) *Periodic Spread Information.* Provided no Default or Event of Default exists, not later than 9:30 A.M. (New York City local time) on a Business Day during the Issuance Period if there is an Available Facility Amount on such Business Day, the Company may request by telecopier, telephone or e-mail, and Prudential will, to the extent reasonably practicable, provide to the Company on such Business Day (or, if such request is received after 9:30 A.M. (New York City local time) on such Business Day, on the following Business

Day), information (by telecopier, telephone or e-mail) with respect to various spreads at which Prudential Affiliates might be interested in purchasing Notes of different average lives; *provided, however*, that the Company may not make such requests more frequently than once in every five Business Days or such other period as shall be mutually agreed to by the Company and Prudential. The amount and content of information so provided shall be in the sole discretion of Prudential but it is the intent of Prudential to provide information which will be of use to the Company in determining whether to initiate procedures for use of the Facility. Information so provided shall not constitute an offer to purchase Notes, and neither Prudential nor any Prudential Affiliate shall be obligated to purchase Notes at the spreads specified. Information so provided shall be representative of potential interest only for the period commencing on the day such information is provided and ending on the earlier of the fifth Business Day after such day and the first day after such day on which further spread information is provided. Prudential may suspend or terminate providing information pursuant to this Section 2.2(c) for any reason, including its determination that the credit quality of the Company has declined since the date of this Agreement.

(d) Request for Purchase. The Company may from time to time during the Issuance Period make requests for purchases of Shelf Notes (each such request being a “**Request for Purchase**”). Each Request for Purchase shall be made to Prudential by telecopier, e-mail or overnight delivery service, and shall (i) specify the aggregate principal amount of Shelf Notes covered thereby, which shall not be less than \$10,000,000 and not be greater than the Available Facility Amount at the time such Request for Purchase is made, (ii) specify the principal amounts, final maturities, principal prepayment dates and amounts and interest payment periods (which shall be quarterly in arrears) of the Shelf Notes covered thereby, (iii) specify the use of proceeds of such Shelf Notes, (iv) specify the proposed day for the closing of the purchase and sale of such Shelf Notes, which shall be a Business Day during the Issuance Period not less than 10 Business Days and not more than 25 Business Days after the making of such Request for Purchase, (v) specify the number of the account and the name and address of the depository institution to which the purchase prices of such Shelf Notes are to be transferred on the Closing for such purchase and sale, (vi) certify that (x) the representations and warranties contained in Section 5 are true on and as of the date of such Request for Purchase, (y) there exists on the date of such Request for Purchase no Event of Default or Default and (z) the Company will not use any proceeds from such Shelf Notes for the purposes of financing a Hostile Tender Offer, and (vii) be substantially in the form of Schedule 2.2(d) attached hereto. Each Request for Purchase shall be in writing signed by the Company and shall be deemed made when received by Prudential.

(e) Rate Quotes. Not later than five Business Days after the Company shall have given Prudential a Request for Purchase pursuant to Section 2.2(d), Prudential may, but shall be under no obligation to, provide to the Company by telephone, telecopier or e-mail, in each case between 9:30 A.M. and 1:30 P.M. New York City local time (or such later time as Prudential may elect) interest rate quotes for the several principal amounts, maturities, principal prepayment schedules, and interest payment periods of Shelf Notes specified in such Request for Purchase. Each quote shall represent the interest rate per annum payable

on the outstanding principal balance of such Shelf Notes at which a Prudential Affiliate would be willing to purchase such Shelf Notes at 100% of the principal amount thereof.

(f) Acceptance. Within the Acceptance Window with respect to any interest rate quotes provided pursuant to Section 2.2(e), the Company may, subject to Section 2.2(g), elect to accept such interest rate quotes as to not less than \$10,000,000 aggregate principal amount of the Shelf Notes specified in the related Request for Purchase. Such election shall be made by an Authorized Officer of the Company notifying Prudential by telephone, telecopier or e-mail within the Acceptance Window that the Company elects to accept such interest rate quotes, specifying the Shelf Notes (each such Shelf Note being an “**Accepted Note**”) as to which such acceptance (an “**Acceptance**”) relates. The day the Company notifies Prudential of an Acceptance with respect to any Accepted Notes is herein called the “**Acceptance Day**” for such Accepted Notes. Any interest rate quotes as to which Prudential does not receive an Acceptance within the Acceptance Window shall expire, and no purchase or sale of Shelf Notes hereunder shall be made based on such expired interest rate quotes. Subject to Section 2.2(g) and the other terms and conditions hereof, the Company agrees to sell to a Prudential Affiliate, and Prudential agrees to cause the purchase by a Prudential Affiliate of, the Accepted Notes at 100% of the principal amount of such Notes. As soon as practicable following the Acceptance Day, the Company, Prudential and each Prudential Affiliate which is to purchase any such Accepted Notes will execute a confirmation of such Acceptance substantially in the form of Schedule 2.2(f) attached hereto (a “**Confirmation of Acceptance**”). If the Company should fail to execute and return to Prudential within three Business Days following the Company’s receipt thereof a Confirmation of Acceptance with respect to any Accepted Notes, Prudential may at its election at any time prior to Prudential’s receipt thereof cancel the closing with respect to such Accepted Notes by so notifying the Company in writing.

(g) Market Disruption. Notwithstanding the provisions of Section 2.2(f), if Prudential shall have provided interest rate quotes pursuant to Section 2.2(e) and thereafter prior to the time an Acceptance with respect to such quotes shall have been notified to Prudential in accordance with Section 2.2(f) the domestic market for U.S. Treasury securities or derivatives shall have closed or there shall have occurred a general suspension, material limitation, or significant disruption of trading in securities generally on the New York Stock Exchange or in the domestic market for U.S. Treasury securities or derivatives, then such interest rate quotes shall expire, and no purchase or sale of Shelf Notes hereunder shall be made based on such expired interest rate quotes. If the Company thereafter notifies Prudential of the Acceptance of any such interest rate quotes, such Acceptance shall be ineffective for all purposes of this Agreement, and Prudential shall promptly notify the Company that the provisions of this Section 2.2(g) are applicable with respect to such Acceptance.

(h) Fees.

(h)(i) Structuring Fee. In consideration for the time, effort and expense involved in the preparation, negotiation and execution of this Agreement, at the time



of the execution and delivery of this Agreement by the Company and Prudential, the Company will pay to Prudential in immediately available funds a fee (the “**Structuring Fee**”) in the amount of \$25,000.

(h)(ii) [Reserved.]

(h)(iii) Delayed Delivery Fee. If the closing of the purchase and sale of any Accepted Note is delayed for any reason beyond the original Closing Day for such Accepted Note, the Company will pay to each Purchaser which shall have agreed to purchase such Accepted Note on the Cancellation Date or actual closing date of such purchase and sale a fee (the “**Delayed Delivery Fee**”) calculated as follows:

$$(BEY - MMY) \times DTS/360 \times PA$$

where “**BEY**” means Bond Equivalent Yield, *i.e.*, the bond equivalent yield per annum of such Accepted Note; “**MMY**” means Money Market Yield, *i.e.*, the yield per annum on a commercial paper investment of the highest quality selected by Prudential on the date Prudential receives notice of the delay in the closing for such Accepted Note having a maturity date or dates the same as, or closest to, the Rescheduled Closing Day or Rescheduled Closing Days for such Accepted Note (a new alternative investment being selected by Prudential each time such closing is delayed); “**DTS**” means Days to Settlement, *i.e.*, the number of actual days elapsed from and including the original Closing Day with respect to such Accepted Note (in the case of the first such payment with respect to such Accepted Note) or from and including the date of the next preceding payment (in the case of any subsequent delayed delivery fee payment with respect to such Accepted Note) to but excluding the date of such payment; and “**PA**” means Principal Amount, *i.e.*, the principal amount of the Accepted Note for which such calculation is being made. In no case shall the Delayed Delivery Fee be less than zero. Nothing contained herein shall obligate any Purchaser to purchase any Accepted Note on any day other than the Closing Day for such Accepted Note, as the same may be rescheduled from time to time in compliance with Section 3.3.

(h)(iv) Cancellation Fee. If the Company at any time notifies Prudential in writing that the Company is canceling the closing of the purchase and sale of any Accepted Note, or if Prudential notifies the Company in writing under the circumstances set forth in the last sentence of Section 2.2(f) or the penultimate sentence of Section 3.3 that the closing of the purchase and sale of such Accepted Note is to be canceled, or if the closing of the purchase and sale of such Accepted Note is not consummated on or prior to the last day of the Issuance Period (the date of any such notification, or the last day of the Issuance Period, as the case may be, being the “**Cancellation Date**”), the Company will pay to each Purchaser which shall have agreed to purchase such Accepted Note no later than one day after the Cancellation Date in immediately available funds an amount (the “**Cancellation Fee**”) calculated as follows:

where “PI” means Price Increase, *i.e.*, the quotient (expressed in decimals) obtained by dividing (a) the excess of the ask price (as determined by Prudential) of the Hedge Treasury Note(s) on the Cancellation Date over the bid price (as determined by Prudential) of the Hedge Treasury Notes(s) on the Acceptance Day for such Accepted Note by (b) such bid price; and “PA” has the meaning in Section 2.2(h)(iii). The foregoing bid and ask prices shall be as reported by TradeWeb LLC (or, if such data for any reason ceases to be available through TradeWeb LLC, any publicly available source of similar market data). Each price shall be based on a U.S. Treasury security having a par value of \$100.00 and shall be rounded to the second decimal place. In no case shall the Cancellation Fee be less than zero.

(h)(v) Rate Lock Cancellation Fee; Rate Lock Delayed Delivery Fee. The Company will pay to Prudential the Rate Lock Cancellation Fee and the Rate Lock Delayed Delivery Fee for the Series A Notes if and when required by the Commitment Letter.

### Section 3. Closing.

**Section 3.1. Series A Closing.** The sale and purchase of the Series A Notes to be purchased by each Series A Purchaser shall occur at the offices of Baker Botts L.L.P., 2001 Ross Avenue, Dallas, TX 75201, at 10:00 a.m., Central time, at a closing (the “**Series A Closing**”) on August 23, 2017 (the day of the Series A Closing being the “**Series A Closing Day**”). At the Series A Closing the Company will deliver to each Series A Purchaser the Series A Notes to be purchased by such Series A Purchaser in the form of a single Series A Note (or such greater number of Series A Notes in denominations of at least \$100,000 as such Purchaser may request) dated the date of the Series A Closing and registered in such Series A Purchaser’s name (or in the name of its nominee), against delivery by such Series A Purchaser to the Company or its order of immediately available funds in the amount of the purchase price therefor by wire transfer of immediately available funds for the account of the Company to account number \*\*\*\*\* at Wells Fargo Bank, PO Box 310263, Des Moines, IA 50331-0263, Account Name: \*\*\*\*\*, ABA number: \*\*\*\*\*. If at the Series A Closing the Company shall fail to tender such Series A Notes to any Series A Purchaser as provided above in this Section 3.1, or any of the conditions specified in Section 4 shall not have been fulfilled to such Series A Purchaser’s satisfaction, such Series A Purchaser shall, at its election, be relieved of all further obligations under this Agreement, without thereby waiving any rights such Series A Purchaser may have by reason of any of the conditions specified in Section 4 not having been fulfilled to such Series A Purchaser’s satisfaction or such failure by the Company to tender such Notes. The Series A Closing and each Shelf Closing are referred to as a “**Closing**”.

**Section 3.2. Facility Closings.** Not later than 11:30 A.M. (New York City local time) on the Closing Day for any Accepted Notes, the Company will deliver to each Purchaser listed in the Confirmation of Acceptance relating thereto at the offices of Baker Botts L.L.P., 2001 Ross Avenue, Dallas, TX 75201 or at such other place pursuant to the directions of Prudential, the Accepted Notes to be purchased by such Purchaser in the form of one or more Notes in authorized denominations as such Purchaser may request for each Series of Accepted Notes to be purchased on the Closing

Day, dated the Closing Day and registered in such Purchaser's name (or in the name of its nominee), against payment of the purchase price thereof by transfer of immediately available funds for credit to the Company's account specified in the Request for Purchase of such Notes.

**Section 3.3. Rescheduled Facility Closings.** If the Company fails to tender to any Purchaser the Accepted Notes to be purchased by such Purchaser on the scheduled Closing Day for such Accepted Notes as provided above in Section 3.2, or any of the conditions specified in Section 4 shall not have been fulfilled by the time required on such scheduled Closing Day, the Company shall, prior to 1:00 P.M., New York City local time, on such scheduled Closing Day notify Prudential (which notification shall be deemed received by each Purchaser) in writing whether (i) such closing is to be rescheduled (such rescheduled date to be a Business Day during the Issuance Period not less than one Business Day and not more than 10 Business Days after such scheduled Closing Day (the "Rescheduled Closing Day")) and certify to Prudential (which certification shall be for the benefit of each Purchaser) that the Company reasonably believes that it will be able to comply with the conditions set forth in Section 4 on such Rescheduled Closing Day and that the Company will pay the Delayed Delivery Fee in accordance with Section 2.2(h)(iii) or (ii) such closing is to be canceled. In the event that the Company shall fail to give such notice referred to in the preceding sentence, Prudential (on behalf of each Purchaser) may at its election, at any time after 1:00 P.M., New York City local time, on such scheduled Closing Day, notify the Company in writing that such closing is to be canceled. Notwithstanding anything to the contrary appearing in this Agreement, the Company may not elect to reschedule a closing with respect to any given Accepted Notes on more than one occasion, unless Prudential shall have otherwise consented in writing.

#### **Section 4. Conditions to Closing.**

Each Purchaser's obligation to purchase and pay for the Notes to be sold to such Purchaser at the Closing for such Notes is subject to the fulfillment to such Purchaser's satisfaction, prior to or at such Closing, of the following conditions:

**Section 4.1. Representations and Warranties.** The representations and warranties of the Company in this Agreement and of each of the Note Parties in each other Note Document shall be correct when made and at the applicable Closing (except to the extent of changes caused by the transactions herein contemplated).

**Section 4.2. Performance; No Default.** Each Note Party shall have performed and complied with all agreements and conditions contained in the Note Documents required to be performed or complied with by it prior to or at such Closing. Before and after giving effect to the issue and sale of the Notes (and the application of the proceeds thereof as contemplated by Section 5.14), no Default or Event of Default shall have occurred and be continuing.

#### **Section 4.3. Certificates.**

(a) *Officer's Certificate.* The Company shall have delivered to such Purchaser an Officer's Certificate or Officer's Certificates, dated the date of such Closing, certifying as to the following:

(i) that the conditions specified in Sections 4.1, 4.2 and 4.9 have been fulfilled;

(ii) copies of the documents governing each Material Credit Facility in existence at the time of such Closing; and

(iii) on behalf of the Note Parties as to the solvency of the Note Parties and their Subsidiaries, taken as a whole, and as to the solvency of the Company, individually, as of the date of such Closing, after giving effect to the sale of the Notes on such date and the funding of any loans to be made under the Credit Agreement on such date.

(b) *Secretary's Certificate*. Each Note Party shall have delivered to such Purchaser a certificate of its Secretary or Assistant Secretary and one other officer, dated the date of such Closing, certifying as to the following:

(i) the resolutions of the board of directors (or equivalent governing body) of such Note Party authorizing the execution and delivery of the Note Documents to which such Note Party is, or is to be, a party, and, with respect to the Company, the issuance of the Notes, and of all documents evidencing other necessary company action and governmental approvals, if any, with respect to the Note Documents (*provided*, that for any Closing other than the Series A Closing, the Secretary or an Assistant Secretary, as attested by one other officer of such Note Party, may certify that there has been no change to any applicable authorization or approval since the date on which it was most recently delivered to such Purchaser under this Section 4 as an alternative to the further delivery thereof);

(ii) the names and true signatures of the officers of such Note Party authorized to sign the Note Documents to which such Note Party is, or is to be, a party, and the other documents to be delivered hereunder and thereunder (*provided*, that for any Closing other than the Series A Closing, the Secretary or an Assistant Secretary, as attested by one other officer of such Note Party, may certify that there has been no change to the officers of such Note Party authorized to sign the Note Documents to which such Note Party is, or is to be, a party, and any other documents to be delivered hereunder or thereunder since the date on which a certificate setting forth the names and true signatures of such officers, as described above, was most recently delivered to such Purchaser under this Section 4 as an alternative to the further delivery thereof); and

(iii) the certificate of incorporation (or equivalent formation document) and bylaws (or equivalent governing document) of such Note Party (*provided*, that for any Closing other than the Series A Closing, the Secretary or an Assistant Secretary, as attested by one other officer of such Note Party, may certify that there has been no change to any applicable constitutive document since the date on which it was most recently delivered to such Purchaser under this Section 4 as an alternative to the further delivery thereof).

**Section 4.4. Opinions of Counsel.** Such Purchaser shall have received opinions in form and substance satisfactory to such Purchaser, dated the date of such Closing (a) from Stinson Leonard Street LLP, counsel for the Note Parties, covering the matters set forth in Schedule 4.4(a) (and the

Company hereby instructs its counsel to deliver such opinion to the Purchasers) and (b) from Baker Botts L.L.P., the Purchasers' special counsel in connection with such transactions, covering such matters incident to such transactions as such Purchaser may reasonably request.

**Section 4.5. Purchase Permitted by Applicable Law, Etc.** On the date of such Closing such Purchaser's purchase of Notes shall (a) be permitted by the laws and regulations of each jurisdiction to which such Purchaser is subject, without recourse to provisions (such as section 1405(a)(8) of the New York Insurance Law) permitting limited investments by insurance companies without restriction as to the character of the particular investment, (b) not violate any applicable law or regulation (including, without limitation, Regulation T, U or X of the Board of Governors of the Federal Reserve System) and (c) not subject such Purchaser to any tax, penalty or liability under or pursuant to any applicable law or regulation, which law or regulation was not in effect on the date hereof. If requested by such Purchaser, such Purchaser shall have received an Officer's Certificate certifying as to such matters of fact as such Purchaser may reasonably specify to enable such Purchaser to determine whether such purchase is so permitted.

**Section 4.6. Sale of Other Notes.** Contemporaneously with such Closing, the Company shall sell to each other Purchaser and each other Purchaser shall purchase the Notes to be purchased by it at such Closing as specified in Schedule B (in the case of the Series A Notes) or the applicable Confirmation of Acceptance (in the case of Shelf Notes).

**Section 4.7. Payment of Fees.**

(a) Without limiting Section 15.1, the Company shall have paid to Prudential and each Purchaser on or before such Closing any fees due it pursuant to or in connection with this Agreement, including any Structuring Fee due pursuant to Section 2.2(h)(i), any Delayed Delivery Fee due pursuant to Section 2.2(h)(iii) and any Rate Lock Delayed Delivery Fee due pursuant to Section 2.2(h)(v).

(b) Without limiting Section 15.1, the Company shall have paid on or before such Closing the fees, charges and disbursements of the Purchasers' special counsel referred to in Section 4.4 to the extent reflected in a statement of such counsel rendered to the Company at least one Business Day prior to such Closing.

**Section 4.8. Private Placement Number.** A Private Placement Number issued by Standard & Poor's CUSIP Service Bureau (in cooperation with the SVO) shall have been obtained for such Notes.

**Section 4.9. Changes in Corporate Structure; Material Adverse Effect.** Other than as permitted by this Agreement, the Company shall not have changed its jurisdiction of incorporation or organization, as applicable, or been a party to any merger or consolidation or succeeded to all or any substantial part of the liabilities of any other entity, at any time following the date of the most recent financial statements referred to in Schedule 5.5. Since December 31, 2016, (a) no event or circumstance has occurred, as determined by such Purchaser, that could reasonably be expected to have a Material Adverse Effect, and (b) such Purchaser shall not have learned of (i) any material adverse fact or information regarding the Company or any other Note Party or (ii) of any material

decline, as determined by such Purchaser, in the market value of (A) any Collateral required hereunder or (B) a substantial or material portion of the assets of the Company or any other Note Party.

**Section 4.10. Funding Instructions.** With respect to the Series A Closing only, at least three Business Days prior to the date of such Closing, each Purchaser shall have received written instructions signed by a Responsible Officer on letterhead of the Company confirming the information specified in Section 3.1 including (i) the name and address of the transferee bank, (ii) such transferee bank's ABA number and (iii) the account name and number into which the purchase price for the Notes is to be deposited.

**Section 4.11. Proceedings and Documents.** All corporate and other proceedings of any Note Party in connection with the transactions contemplated by this Agreement, the other Note Documents and all documents and instruments incident to such transactions shall be satisfactory to such Purchaser and its special counsel, and such Purchaser and its special counsel shall have received all such counterpart originals or certified or other copies of such documents as such Purchaser or such special counsel may reasonably request.

**Section 4.12. Certain Documents.**

Such Purchaser shall have received the following, in each case in form and substance satisfactory to such Purchaser:

(i) The Note(s) to be purchased by such Purchaser at such Closing.

(ii) A good standing certificate (or equivalent) for each Note Party from the Secretary of State of the jurisdiction of organization of such Note Party dated of a recent date prior to such Closing and such other evidence of the status of such Note Party as such Purchaser may reasonably request.

(iii) Subject to Section 9.7, the Subsidiary Guaranty Agreement and any other Guaranty Agreement required pursuant to this Agreement, duly executed and delivered by each party required to be a Guarantor pursuant to the Note Documents.

(iv) Subject to Section 9.8, the Security Documents, in each case duly executed and delivered by each party required to be a party thereto pursuant to the Note Documents.

(v) Subject to Section 9.8, the Intercreditor Agreement and/or any other intercreditor agreement required pursuant to Section 10.3(e) of this Agreement, in each case duly executed and delivered by each party required to be a party thereto pursuant to the Note Documents.

(vi) Subject to Section 9.8, evidence of all such actions as such Purchaser shall reasonably require to perfect the Liens created pursuant to the Security Documents,

including the filing of appropriately completed and duly authorized Uniform Commercial Code financing statements.

(vii) Subject to Section 9.8, evidence that the Liens created by the Security Documents constitute first priority liens (except for any Liens expressly permitted by Section 10.3), including satisfactory Uniform Commercial Code or other applicable search reports and satisfactory authorizations to file releases of Liens or termination statements with respect to any existing prior liens to be released.

(viii) Certificates of insurance satisfactory to such Purchaser in all respects evidencing the existence of all insurance required to be maintained by the Note Parties pursuant to the Note Documents, together with, subject to Section 9.8, all lender's loss payable endorsements in favor of the Collateral Agent and additional insured endorsements in favor of the Collateral Agent and the holders of Notes as such Purchaser may request.

(ix) Evidence that substantially simultaneously with the Series A Closing, all Indebtedness of the Company and any Subsidiary (including Indebtedness under the Existing Credit Agreement, but excluding any Indebtedness permitted pursuant to Section 10.2) is paid in full, the related credit facilities thereunder, if any, are terminated and any Liens securing the same are released.

(x) In respect of the Series A Closing, evidence that the Credit Agreement is (or substantially simultaneously shall be) in full force and effect, together with a fully executed copy thereof and of each other Credit Document requested by such Purchaser.

(xi) All other documents, certificates or information as such Purchaser may reasonably request.

## **Section 5. Representations and Warranties of the Company.**

The Company represents and warrants to each Purchaser that:

**Section 5.1. Organization; Power and Authority.** The Company is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation, and the Company is duly qualified as a foreign corporation and is in good standing in each jurisdiction in which such qualification is required by law, other than those jurisdictions as to which the failure to be so qualified or in good standing could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Each of the Company and the other Note Parties has the corporate, limited liability company or partnership power and authority to own or hold under lease the properties it purports to own or hold under lease, to transact the business it transacts and proposes to transact, to execute and deliver the Note Documents to which it is a party and to perform the provisions hereof and thereof.

**Section 5.2. Authorization, Etc.** The execution, delivery and performance by each Note Party of each Note Document to which such Note Party is a party are within such Note Party's corporate, limited liability company or partnership, as applicable, power and have been duly

authorized by all necessary corporate, limited liability company or limited partnership, as applicable, action on the part of such Note Party. This Agreement, the Notes and the other Note Documents each constitute, or upon the execution and delivery thereof, will constitute, a legal, valid and binding obligation of each Note Party party thereto, enforceable against such Note Party in accordance with its terms, except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

**Section 5.3. Disclosure.** This Agreement and the documents, certificates or other writings (including the financial statements listed in Schedule 5.5 and the financial statements provided pursuant to the terms hereof) delivered to the Purchasers by or on behalf of the Company in connection with the transactions contemplated hereby and identified in Schedule 5.3 (this Agreement and such documents, certificates or other writings and such financial statements delivered to each Purchaser prior to the applicable Closing being referred to, collectively, as the “**Disclosure Documents**”), taken as a whole, do not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein not misleading in light of the circumstances under which they were made; *provided*, that with respect to projections, estimates and other forward-looking information, the Company represents only that such information was prepared in good faith based upon assumptions believed by it to be reasonable at the time they were made. Except as disclosed in the Disclosure Documents, since the end of the most recent fiscal year for which audited financial statements have been furnished to the holders of Notes, there has been no change in the financial condition, operations, business, properties or prospects of the Company or any Subsidiary except changes that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. There is no fact known to the Company that could reasonably be expected to have a Material Adverse Effect that has not been set forth herein or in the Disclosure Documents.

**Section 5.4. Organization and Ownership of Shares of Subsidiaries; Affiliates.** (a) Schedule 5.4 contains (except as noted therein), as of the date of this Agreement, complete and correct lists of (i) the Company's Subsidiaries, showing, as to each Subsidiary, the name thereof, the jurisdiction of its organization, and the percentage of shares of each class of its capital stock or similar equity interests outstanding owned by the Company and each other Subsidiary and whether such Subsidiary is a Guarantor, (ii) the Company's Affiliates, other than Subsidiaries, and (iii) the Company's directors and senior officers.

(b) All of the outstanding shares of Equity Interests of each Subsidiary shown in Schedule 5.4 as being owned by the Company and its Subsidiaries have been validly issued, are fully paid and non-assessable and are owned by the Company or another Subsidiary free and clear of any Lien that is prohibited by this Agreement.

(c) Each Subsidiary is a corporation or other legal entity duly organized, validly existing and, where applicable, in good standing under the laws of its jurisdiction of organization, and is duly qualified as a foreign corporation or other legal entity and, where applicable, is in good standing in each jurisdiction in which such qualification is required



by law, other than those jurisdictions as to which the failure to be so qualified or in good standing could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Each such Subsidiary has the corporate or other entity power and authority to own or hold under lease the properties it purports to own or hold under lease and to transact the business it transacts and proposes to transact.

(d) No Subsidiary is subject to any legal, regulatory, contractual or other restriction (other than the agreements listed on Schedule 5.4 and customary limitations imposed by corporate law or similar statutes) restricting the ability of such Subsidiary to pay dividends out of profits or make any other similar distributions of profits to the Company or any of its Subsidiaries that owns outstanding shares of capital stock or similar equity interests of such Subsidiary.

**Section 5.5. Financial Statements; Material Liabilities.** The Company has made available to (a) each Purchaser of the Series A Notes copies of the financial statements of the Company and its Subsidiaries listed on Schedule 5.5 and (b) each Purchaser of any Accepted Notes copies of the financial statements listed on Schedule 5.5 and/or delivered pursuant to Section 7 of this Agreement, as applicable, with respect to (i) the three fiscal years of the Company and its Subsidiaries most recently completed prior to the date as of which this representation is made or repeated to such Purchaser and (ii) each of the quarterly periods (if any) most recently completed prior to the date as of which this representation is made or repeated to such Purchaser and after the date of the most recently delivered financial statements referred to in the above clause (i). All of such financial statements (including in each case the related schedules and notes) fairly present in all material respects the consolidated financial position of the Company and its Subsidiaries as of the respective dates thereof and the consolidated results of their operations and cash flows for the respective periods indicated and have been prepared in accordance with GAAP consistently applied throughout the periods involved except as set forth in the notes thereto (subject, in the case of any interim financial statements, to normal year-end adjustments). The Company and its Subsidiaries do not have any Material liabilities that are not disclosed in the Disclosure Documents.

**Section 5.6. Compliance with Laws, Other Instruments, Etc.** The execution, delivery and performance by each Note Party of each Note Document to which it is a party will not (a) contravene, result in any breach of, or constitute a default under, or result in the creation of any Lien in respect of any property of the Company or any Subsidiary under, any indenture, mortgage, deed of trust, loan, purchase or credit agreement, lease, corporate charter or by-laws, shareholders agreement or any other agreement or instrument to which the Company or any Subsidiary is bound or by which the Company or any Subsidiary or any of their respective properties may be bound or affected (including any Material Contract then in effect), (b) conflict with or result in a breach of any of the terms, conditions or provisions of any order, judgment, decree or ruling of any court, arbitrator or Governmental Authority applicable to the Company or any Subsidiary or (c) violate any provision of any statute or other rule or regulation of any Governmental Authority applicable to the Company or any Subsidiary. Without limitation of the foregoing, (i) the Company and each Subsidiary is in compliance in all material respects with each Material Contract then in effect, (ii) there is no known default by the Company or any Subsidiary under any such Material Contract and

(iii) each such Material Contract is in full force and effect. Each Material Contract on the date of this Agreement is listed on Schedule 5.6.

**Section 5.7. Governmental Authorizations, Etc.** No consent, approval or authorization of, or registration, filing or declaration with, any Governmental Authority is required in connection with the execution, delivery or performance by any Note Party of Note Document to which it is a party.

**Section 5.8. Litigation; Observance of Agreements, Statutes and Orders.** (a) There are no actions, suits, investigations or proceedings pending or, to the best knowledge of the Company, threatened against or affecting the Company or any Subsidiary or any property of the Company or any Subsidiary in any court or before any arbitrator of any kind or before or by any Governmental Authority that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Neither the Company nor any Subsidiary is (i) in default under any agreement or instrument to which it is a party or by which it is bound, (ii) in violation of any order, judgment, decree or ruling of any court, arbitrator or Governmental Authority or (iii) in violation of any applicable law, ordinance, rule or regulation of any Governmental Authority (including, without limitation, Environmental Laws, the USA PATRIOT Act or any of the other laws and regulations that are referred to in Section 5.16), which default or violation could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**Section 5.9. Taxes.** The Company and its Subsidiaries have filed all tax returns that are required to have been filed in any jurisdiction, and have paid all taxes shown to be due and payable on such returns and all other taxes and assessments levied upon them or their properties, assets, income or franchises, to the extent such taxes and assessments have become due and payable and before they have become delinquent, except for any taxes and assessments (i) the amount of which, individually or in the aggregate, is not Material or (ii) the amount, applicability or validity of which is currently being contested in good faith by appropriate proceedings and with respect to which the Company or a Subsidiary, as the case may be, has established adequate reserves in accordance with GAAP. The Company knows of no basis for any other tax or assessment that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The charges, accruals and reserves on the books of the Company and its Subsidiaries in respect of U.S. federal, state or other taxes for all fiscal periods are adequate. The U.S. federal income tax liabilities of the Company and its Subsidiaries have been finally determined (whether by reason of completed audits or the statute of limitations having run) for all fiscal years up to and including the fiscal year ended December 31, 2013.

**Section 5.10. Title to Property; Leases.** The Company and its Subsidiaries have good and sufficient title to their respective properties that individually or in the aggregate are Material, including all such properties reflected in the most recent audited balance sheet referred to in Section 5.5 or purported to have been acquired by the Company or any Subsidiary after such date, in each case free and clear of Liens prohibited by this Agreement, except (a) as sold or otherwise disposed of in the ordinary course of business or as otherwise disposed of in compliance with Section 10.5

hereof, and (b) in the case of the audited balance sheet dated December 31, 2016, the disposition on or about July 3, 2017 of equity interests of ICP previously owned by MGPI Processing, Inc. All leases that individually or in the aggregate are Material are valid and subsisting and are in full force and effect in all material respects. For the avoidance of doubt, Customer Owned Inventory shall not be considered an asset of the Company or any of its Subsidiaries for purposes of this Agreement or any of the other Note Documents; it being understood and agreed that, for purposes of this Agreement and the other Note Documents, the Company's or any of its Subsidiaries' interest in any Customer Owned Inventory is limited to a bailee's interest or the like.

**Section 5.11. Licenses, Permits, Etc.** (a) The Company and its Subsidiaries own or possess all licenses, permits, franchises, authorizations, patents, copyrights, proprietary software, service marks, trademarks and trade names, or rights thereto, that individually or in the aggregate are Material, without known conflict with the rights of others.

(b) To the best knowledge of the Company, no product or service of the Company or any of its Subsidiaries infringes in any material respect any license, permit, franchise, authorization, patent, copyright, proprietary software, service mark, trademark, trade name or other right owned by any other Person.

(c) To the best knowledge of the Company, there is no Material violation by any Person of any right of the Company or any of its Subsidiaries with respect to any license, permit, franchise, authorization, patent, copyright, proprietary software, service mark, trademark, trade name or other right owned or used by the Company or any of its Subsidiaries.

**Section 5.12. Compliance with ERISA.** (a) The Company and each ERISA Affiliate have operated and administered each Plan in compliance with all applicable laws except for such instances of noncompliance as have not resulted in and could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. Neither the Company nor any ERISA Affiliate has incurred any liability pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans (as defined in section 3 of ERISA), and no event, transaction or condition has occurred or exists that could, individually or in the aggregate, reasonably be expected to result in the inurrence of any such liability by the Company or any ERISA Affiliate, or in the imposition of any Lien on any of the rights, properties or assets of the Company or any ERISA Affiliate, in either case pursuant to Title I or IV of ERISA or to section 430(k) of the Code or to any such penalty or excise tax provisions under the Code or federal law or section 4068 of ERISA or by the granting of a security interest in connection with the amendment of a Plan, other than such liabilities or Liens as would not be individually or in the aggregate Material.

(b) The present value of the aggregate benefit liabilities under each of the Plans (other than Multiemployer Plans), determined as of the end of such Plan's most recently ended plan year on the basis of the actuarial assumptions specified for funding purposes in such Plan's most recent actuarial valuation report, did not exceed the aggregate current value of the assets of such Plan allocable to such benefit liabilities by more than \$10,000,000 in the case of any single Plan and by more than \$10,000,000 in the aggregate for all Plans. The term "**benefit liabilities**" has the meaning specified in section 4001 of ERISA and the

terms “**current value**” and “**present value**” have the meaning specified in section 3 of ERISA.

(c) The Company and its ERISA Affiliates have not incurred withdrawal liabilities (and are not subject to contingent withdrawal liabilities) under section 4201 or 4204 of ERISA in respect of Multiemployer Plans that individually or in the aggregate are Material.

(d) The expected postretirement benefit obligation (determined as of the last day of the Company’s most recently ended fiscal year in accordance with Financial Accounting Standards Board Accounting Standards Codification Topic 715-60, without regard to liabilities attributable to continuation coverage mandated by section 4980B of the Code) of the Company and its Subsidiaries is not Material.

(e) The execution and delivery of this Agreement and the issuance and sale of the Notes hereunder will not involve any transaction that is subject to the prohibitions of section 406 of ERISA or in connection with which a tax could be imposed pursuant to section 4975(c)(1)(A)-(D) of the Code. The representation by the Company to each Purchaser in the first sentence of this Section 5.12(e) is made in reliance upon and subject to the accuracy of such Purchaser’s representation in Section 6.2 as to the sources of the funds to be used to pay the purchase price of the Notes to be purchased by such Purchaser.

(f) Neither the Company nor any of its Subsidiaries have any Non-U.S. Plans.

**Section 5.13. Private Offering by the Company.** Neither the Company nor anyone acting on its behalf has offered the Notes or any similar Securities for sale to, or solicited any offer to buy the Notes or any similar Securities from, or otherwise approached or negotiated in respect thereof with, any Person other than the Purchasers and not more than five other Institutional Investors, each of which has been offered the Notes at a private sale for investment. Neither the Company nor anyone acting on its behalf has taken, or will take, any action that would subject the issuance or sale of the Notes to the registration requirements of section 5 of the Securities Act or to the registration requirements of any Securities or blue sky laws of any applicable jurisdiction.

**Section 5.14. Use of Proceeds; Margin Regulations.** The Company will apply the proceeds of the sale of the Series A Notes hereunder to refinance outstanding Indebtedness of the Note Parties, to pay expenses relating to the transactions contemplated hereby and for working capital and other general corporate purposes and will apply the proceeds of the sale of the Shelf Notes as set forth in the applicable Request for Purchase. No part of the proceeds from the sale of the Notes hereunder will be used, directly or indirectly, for the purpose of buying or carrying any margin stock in violation of Regulation U of the Board of Governors of the Federal Reserve System (12 CFR 221), or for the purpose of buying or carrying or trading in any Securities under such circumstances as to involve the Company in a violation of Regulation X of said Board (12 CFR 224) or to involve any broker or dealer in a violation of Regulation T of said Board (12 CFR 220). Margin stock does not constitute more than 25% of the value of the consolidated assets of the Company and its Subsidiaries and the Company does not have any present intention that margin stock will constitute more than 25% of the value of such assets. As used in this Section 5.14, the

terms “margin stock” and “purpose of buying or carrying” shall have the meanings assigned to them in said Regulation U.

**Section 5.15. Existing Indebtedness; Future Liens.** (a) Schedule 5.15 sets forth a complete and correct list of all outstanding Indebtedness of the Company and its Subsidiaries as of the date of the Series A Closing (including descriptions of the principal amounts outstanding and, other than in the case of the Credit Agreement Obligations, the obligors and obligees, any collateral therefor and any Guaranty thereof) and except for Indebtedness outstanding under this Agreement. Neither the Company nor any of its Subsidiaries has outstanding any Indebtedness except as permitted by Section 10.2. Neither the Company nor any Subsidiary is in default and no waiver of default is currently in effect, in the payment of any principal or interest on any Indebtedness of the Company or such Subsidiary and no event or condition exists with respect to any Indebtedness of the Company or any Subsidiary that would permit (or that with notice or the lapse of time, or both, would permit) one or more Persons to cause such Indebtedness to become due and payable before its stated maturity or before its regularly scheduled dates of payment.

(b) Except as disclosed in Schedule 5.15, neither the Company nor any Subsidiary has agreed or consented to cause or permit any of its property, whether now owned or hereafter acquired, to be subject to a Lien that secures Indebtedness or to cause or permit in the future (upon the happening of a contingency or otherwise) any of its property, whether now owned or hereafter acquired, to be subject to a Lien that secures Indebtedness, except in each case in respect of any Liens permitted after the Series A Closing Day to the extent such Liens are permitted under Section 10.3 hereof.

(c) Neither the Company nor any Subsidiary is a party to, or otherwise subject to any provision contained in, any instrument evidencing Indebtedness of the Company or such Subsidiary, any agreement relating thereto or any other agreement (including, but not limited to, its charter or any other organizational document) which limits the amount of, or otherwise imposes restrictions on the incurring of, Indebtedness of the Company, except (i) as disclosed in Schedule 5.15 and (ii) any such instrument or agreement that becomes effective after the Series A Closing Day to the extent the Indebtedness evidenced or governed by such instrument or agreement is permitted to be incurred pursuant to clause (k) of Section 10.2 hereof.

**Section 5.16. Foreign Assets Control Regulations, Etc.** (a) Neither the Company nor any Controlled Entity (i) is a Blocked Person, (ii) has been notified that its name appears or may in the future appear on a State Sanctions List or (iii) is a target of sanctions that have been imposed by the United Nations or the European Union.

(b) Neither the Company nor any Controlled Entity (i) has violated, been found in violation of, or been charged or convicted under, any applicable U.S. Economic Sanctions Laws, Anti-Money Laundering Laws or Anti-Corruption Laws or (ii) to the Company’s knowledge, is under investigation by any Governmental Authority for possible violation of any U.S. Economic Sanctions Laws, Anti-Money Laundering Laws or Anti-Corruption Laws.

(c) No part of the proceeds from the sale of the Notes hereunder:

(i) constitutes or will constitute funds obtained on behalf of any Blocked Person or will otherwise be used by the Company or any Controlled Entity, directly or indirectly, (A) in connection with any investment in, or any transactions or dealings with, any Blocked Person, (B) for any purpose that would cause any Purchaser to be in violation of any U.S. Economic Sanctions Laws or (C) otherwise in violation of any U.S. Economic Sanctions Laws;

(ii) will be used, directly or indirectly, in violation of, or cause any Purchaser to be in violation of, any applicable Anti-Money Laundering Laws; or

(iii) will be used, directly or indirectly, for the purpose of making any improper payments, including bribes, to any Governmental Official or commercial counterparty in order to obtain, retain or direct business or obtain any improper advantage, in each case which would be in violation of, or cause any Purchaser to be in violation of, any applicable Anti-Corruption Laws.

(d) The Company has established procedures and controls which it reasonably believes are adequate (and otherwise comply with applicable law) to ensure that the Company and each Controlled Entity is and will continue to be in compliance with all applicable U.S. Economic Sanctions Laws, Anti-Money Laundering Laws and Anti-Corruption Laws.

**Section 5.17. Status under Certain Statutes.** Neither the Company nor any Subsidiary is subject to regulation under the Investment Company Act of 1940, as amended, the Public Utility Holding Company Act of 2005, as amended, the ICC Termination Act of 1995, as amended, or the Federal Power Act, as amended.

**Section 5.18. Environmental Matters.** (a) Neither the Company nor any Subsidiary has knowledge of any claim or has received any notice of any claim and no proceeding has been instituted asserting any claim against the Company or any of its Subsidiaries or any of their respective real properties or other assets now or formerly owned, leased or operated by any of them, alleging any damage to the environment or violation of any Environmental Laws, except, in each case, such as could not reasonably be expected to result in a Material Adverse Effect.

(b) Neither the Company nor any Subsidiary has knowledge of any facts which would give rise to any claim, public or private, of violation of Environmental Laws or damage to the environment emanating from, occurring on or in any way related to real properties now or formerly owned, leased or operated by any of them or to other assets or their use, except, in each case, such as could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(c) Neither the Company nor any Subsidiary has stored any Hazardous Materials on real properties now or formerly owned, leased or operated by any of them in a manner

which is contrary to any Environmental Law that could, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(d) Neither the Company nor any Subsidiary has disposed of any Hazardous Materials in a manner which is contrary to any Environmental Law that could, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(e) All buildings on all real properties now owned, leased or operated by the Company or any Subsidiary are in compliance with applicable Environmental Laws, except where failure to comply could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

**Section 5.19. Hostile Tender Offers.** None of the proceeds of the sale of any Notes will be used to finance a Hostile Tender Offer.

**Section 5.20. Labor Matters.** Except as set forth on Schedule 5.20 or, after the Series A Closing Day, as the Company may from time to time have otherwise notified the holders of Notes in writing, no Note Party is subject to any labor or collective bargaining agreement. There are no existing or threatened strikes, lockouts or other labor disputes involving any Note Party that singly or in the aggregate could reasonably be expected to have a Material Adverse Effect.

**Section 5.21. Security Documents.** The provisions of the executed and delivered Security Documents are, subject to Section 9.8, effective to create in favor of the Collateral Agent for the benefit of the holders of Notes legal, valid and enforceable first priority Liens, subject only to Liens permitted by Section 10.3, on all right, title and interest of the respective Note Parties party thereto in the Collateral. Except for filings completed on the date of the Series A Closing, and as otherwise contemplated hereby and by the Security Documents, no filing or other action is necessary to perfect such Liens.

## **Section 6. Representations of the Purchasers.**

**Section 6.1. Purchase for Investment.** Each Purchaser severally represents that (a) it is purchasing the Notes for its own account or for one or more separate accounts maintained by such Purchaser or for the account of one or more pension or trust funds and not with a view to the distribution thereof, *provided* that the disposition of such Purchaser's or their property shall at all times be within such Purchaser's or their control and (b) at the time such Purchaser was offered the Notes, and as of the date it purchased the Notes, it was an "accredited investor" as defined in Rule 501(a) under the Securities Act. Each Purchaser understands that the Notes have not been registered under the Securities Act and may be resold only if registered pursuant to the provisions of the Securities Act or if an exemption from registration is available, except under circumstances where neither such registration nor such an exemption is required by law, and that the Company is not required to register the Notes.

**Section 6.2. Source of Funds.** Each Purchaser severally represents that at least one of the following statements is an accurate representation as to each source of funds (a "Source") to be

used by such Purchaser to pay the purchase price of the Notes to be purchased by such Purchaser hereunder:

(a) the Source is an “insurance company general account” (as the term is defined in the United States Department of Labor’s Prohibited Transaction Exemption (“**PTE**”) 95-60) in respect of which the reserves and liabilities (as defined by the annual statement for life insurance companies approved by the NAIC (the “**NAIC Annual Statement**”)) for the general account contract(s) held by or on behalf of any employee benefit plan together with the amount of the reserves and liabilities for the general account contract(s) held by or on behalf of any other employee benefit plans maintained by the same employer (or affiliate thereof as defined in PTE 95-60) or by the same employee organization in the general account do not exceed 10% of the total reserves and liabilities of the general account (exclusive of separate account liabilities) plus surplus as set forth in the NAIC Annual Statement filed with such Purchaser’s state of domicile; or

(b) the Source is a separate account that is maintained solely in connection with such Purchaser’s fixed contractual obligations under which the amounts payable, or credited, to any employee benefit plan (or its related trust) that has any interest in such separate account (or to any participant or beneficiary of such plan (including any annuitant)) are not affected in any manner by the investment performance of the separate account; or

(c) the Source is either (i) an insurance company pooled separate account, within the meaning of PTE 90-1 or (ii) a bank collective investment fund, within the meaning of the PTE 91-38 and, except as disclosed by such Purchaser to the Company in writing pursuant to this clause (c), no employee benefit plan or group of plans maintained by the same employer or employee organization beneficially owns more than 10% of all assets allocated to such pooled separate account or collective investment fund; or

(d) the Source constitutes assets of an “investment fund” (within the meaning of Part VI of PTE 84-14 (the “**QPAM Exemption**”)) managed by a “qualified professional asset manager” or “QPAM” (within the meaning of Part VI of the QPAM Exemption), no employee benefit plan’s assets that are managed by the QPAM in such investment fund, when combined with the assets of all other employee benefit plans established or maintained by the same employer or by an affiliate (within the meaning of Part VI(c)(1) of the QPAM Exemption) of such employer or by the same employee organization and managed by such QPAM, represent more than 20% of the total client assets managed by such QPAM, the conditions of Part I(c) and (g) of the QPAM Exemption are satisfied, neither the QPAM nor a person controlling or controlled by the QPAM maintains an ownership interest in the Company that would cause the QPAM and the Company to be “related” within the meaning of Part VI(h) of the QPAM Exemption and (i) the identity of such QPAM and (ii) the names of any employee benefit plans whose assets in the investment fund, when combined with the assets of all other employee benefit plans established or maintained by the same employer or by an affiliate (within the meaning of Part VI(c)(1) of the QPAM Exemption) of such employer or by the same employee organization, represent 10% or more of the assets of



such investment fund, have been disclosed to the Company in writing pursuant to this clause (d); or

(e) the Source constitutes assets of a “plan(s)” (within the meaning of Part IV(h) of PTE 96-23 (the “**INHAM Exemption**”)) managed by an “in-house asset manager” or “INHAM” (within the meaning of Part IV(a) of the INHAM Exemption), the conditions of Part I(a), (g) and (h) of the INHAM Exemption are satisfied, neither the INHAM nor a person controlling or controlled by the INHAM (applying the definition of “control” in Part IV(d)(3) of the INHAM Exemption) owns a 10% or more interest in the Company and (i) the identity of such INHAM and (ii) the name(s) of the employee benefit plan(s) whose assets constitute the Source have been disclosed to the Company in writing pursuant to this clause (e); or

(f) the Source is a governmental plan; or

(g) the Source is one or more employee benefit plans, or a separate account or trust fund comprised of one or more employee benefit plans, each of which has been identified to the Company in writing pursuant to this clause (g); or

(h) the Source does not include assets of any employee benefit plan, other than a plan exempt from the coverage of ERISA.

As used in this Section 6.2, the terms “**employee benefit plan**,” “**governmental plan**,” and “**separate account**” shall have the respective meanings assigned to such terms in section 3 of ERISA.

## **Section 7. Information as to Company.**

### **Section 7.1. Financial and Business Information. The Company shall deliver to each holder of a Note that is an Institutional Investor:**

(a) *Quarterly Statements* — within 45 days (or such shorter period as is the earlier of (x) 15 days greater than the period applicable to the filing of the Company’s Quarterly Report on Form 10-Q (the “**Form 10-Q**”) with the SEC regardless of whether the Company is subject to the filing requirements thereof and (y) the date by which such financial statements are required to be delivered under any Material Credit Facility or the date on which such corresponding financial statements are delivered under any Material Credit Facility if such delivery occurs earlier than such required delivery date) after the end of each quarterly fiscal period in each fiscal year of the Company (other than the last quarterly fiscal period of each such fiscal year), duplicate copies of,

(i) a consolidated balance sheet of the Company and its Subsidiaries as at the end of such quarter, and

(ii) consolidated statements of income, changes in shareholders' equity and cash flows of the Company and its Subsidiaries, for such quarter and (in the case of the second and third quarters) for the portion of the fiscal year ending with such quarter,

setting forth in each case in comparative form the figures for the corresponding periods in the previous fiscal year, all in reasonable detail, prepared in accordance with GAAP applicable to quarterly financial statements generally, and certified by a Senior Financial Officer as fairly presenting, in all material respects, the financial position of the companies being reported on and their results of operations and cash flows, subject to changes resulting from year-end adjustments; *provided*, that delivery within the time period specified above of copies of the Company's Form 10-Q prepared in compliance with the requirements therefor and filed with the SEC shall be deemed to satisfy the requirements of this Section 7.1(a) with respect to financial statements;

(b) *Annual Statements* — within 120 days (or such shorter period as is the earlier of (x) 15 days greater than the period applicable to the filing of the Company's Annual Report on Form 10-K (the "**Form 10-K**") with the SEC regardless of whether the Company is subject to the filing requirements thereof and (y) the date by which such financial statements are required to be delivered under any Material Credit Facility or the date on which such corresponding financial statements are delivered under any Material Credit Facility if such delivery occurs earlier than such required delivery date) after the end of each fiscal year of the Company, duplicate copies of

(i) a consolidated balance sheet of the Company and its Subsidiaries as at the end of such year, and

(ii) consolidated statements of income, changes in shareholders' equity and cash flows of the Company and its Subsidiaries for such year,

setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail, prepared in accordance with GAAP, and accompanied by an opinion thereon (without a "going concern" or similar qualification or exception and without any qualification or exception as to the scope of the audit on which such opinion is based) of independent public accountants of recognized national standing, which opinion shall state that such financial statements present fairly, in all material respects, the financial position of the companies being reported upon and their results of operations and cash flows and have been prepared in conformity with GAAP, and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards, and that such audit provides a reasonable basis for such opinion in the circumstances; *provided*, that the delivery within the time period specified above of the Company's Form 10-K for such fiscal year (together with the Company's annual report to its shareholders, if any, prepared pursuant to Rule 14a-3 under the Exchange Act) prepared in accordance with the requirements therefor and filed with the SEC, shall be deemed to satisfy the requirements of this Section 7.1(b) with respect to financial statements;

(c) *SEC and Other Reports* — promptly upon their becoming available, one copy of (i) each financial statement, report, notice, proxy statement or similar document sent by the Company or any Subsidiary (x) to its creditors under any Material Credit Facility (excluding information sent to such creditors in the ordinary course of administration of a credit facility, such as information relating to pricing and borrowing availability) or (y) to its public Securities holders generally, and (ii) each regular or periodic report, each registration statement (without exhibits except as expressly requested by such holder), and each prospectus and all amendments thereto filed by the Company or any Subsidiary with the SEC and of all press releases and other statements made available generally by the Company or any Subsidiary to the public concerning developments that are Material;

(d) *Budget* — on or before January 31 of each fiscal year of the Company, a budget of the Consolidated Group for such fiscal year in form, substance and detail acceptable to the Required Holders, including monthly operating and capital budgets, and projected monthly income statements and cash flows;

(e) *Notice of Default or Event of Default* — promptly, and in any event within five Business Days after a Responsible Officer becoming aware of the existence of any Default or Event of Default or that any Person has given any notice or taken any action with respect to a claimed default hereunder or that any Person has given any notice or taken any action with respect to a claimed default of the type referred to in Section 11(f), a written notice specifying the nature and period of existence thereof and what action the Company is taking or proposes to take with respect thereto;

(f) *ERISA Matters* — promptly, and in any event within 15 days after a Responsible Officer becoming aware of any of the following, a written notice setting forth the nature thereof and the action, if any, that the Company or an ERISA Affiliate proposes to take with respect thereto:

(i) with respect to any Plan, any reportable event, as defined in section 4043(c) of ERISA and the regulations thereunder, for which notice thereof has not been waived pursuant to such regulations as in effect on the date hereof; or

(ii) the taking by the PBGC of steps to institute, or the threatening by the PBGC of the institution of, proceedings under section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan, or the receipt by the Company or any ERISA Affiliate of a notice from a Multiemployer Plan that such action has been taken by the PBGC with respect to such Multiemployer Plan; or

(iii) any event, transaction or condition that could result in the incurrence of any liability by the Company or any ERISA Affiliate pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans, or in the imposition of any Lien on any of the rights, properties or assets of the Company or any ERISA Affiliate pursuant to Title I or IV of ERISA or such penalty or excise tax provisions, if such liability or Lien, taken together with any other such liabilities or Liens then existing, could reasonably be expected to have a Material Adverse Effect;

(g) Notices from Governmental Authority— promptly, and in any event within 15 days of receipt thereof, copies of any notice to the Company or any Subsidiary from any federal or state Governmental Authority relating to any order, ruling, statute or other law or regulation that could reasonably be expected to have a Material Adverse Effect;

(h) Resignation or Replacement of Auditors— within 15 days following the date on which the Company’s auditors resign or the Company elects to change auditors, as the case may be, notification thereof, together with such supporting information as the Required Holders may request;

(i) Change in Nature, Accounting, Etc.— promptly, and in any event within 15 days after a Responsible Officer becoming aware of such change, (i) any change in the name, jurisdiction of organization or organizational structure of the Company or any Subsidiary and (ii) any material change in accounting policies or practices by the Company or any Subsidiary;

(j) Insurance— promptly, and in any event within fifteen days after a Responsible Officer becoming aware of such termination, cancellation or loss, (i) any termination or cancellation of any insurance policy that the Company or any Subsidiary is required to maintain pursuant to the Note Documents or (ii) any uninsured or partially uninsured loss through liability or property damage, or through fire, theft or any other cause affecting the Company’s or any Subsidiary’s property in excess of an aggregate amount of \$5,000,000;

(k) Environmental Liability— promptly, and in any event within 15 days after a Responsible Officer’s receipt of such notice, complaint, order or other claim, the occurrence and nature of any notices, complaints, orders or other claim received by the Company or any Subsidiary relating to (i) the violation by the Company or any Subsidiary of any applicable Environmental Laws, any Release by the Company or any Subsidiary of, or by any Person handling, transporting or disposing of, Hazardous Materials on its behalf into the environment except where occurring legally pursuant to a permit or license or except where such violation or Release could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, or (ii) any Material Environmental Liability;

(l) Litigation— promptly, and in any event within 15 days after a Responsible Officer becoming aware of such action, suit, proceeding, claim or dispute, any action, suit, proceeding, claim or dispute pending or, to the knowledge of the Company, threatened, or contemplated at law, in equity, in arbitration or before any Governmental Authority, arbitrator, court or administrative agency involving a claim in excess of \$10,000,000 against the Company, any Subsidiary or any of their respective assets;

(m) Material Adverse Effect— promptly, and in any event within five Business Days after a Responsible Officer becoming aware of such development, any development that results in, or could reasonably be expected to result in, a Material Adverse Effect; and

(n) Requested Information — with reasonable promptness, such other data and information relating to the business, operations, affairs, financial condition, assets or properties of the Company or any of its Subsidiaries (including, but without limitation, actual copies of the Company's Form 10-Q and Form 10-K) or relating to the ability of the Company to perform its obligations hereunder and under the Notes as from time to time may be reasonably requested by any such holder of a Note.

**Section 7.2. Officer's Certificate.** Each set of financial statements delivered to a holder of a Note pursuant to Section 7.1(a) or Section 7.1(b) shall be accompanied by a certificate of a Senior Financial Officer:

(a) Covenant Compliance — setting forth the information from such financial statements that is required in order to establish whether the Company was in compliance with the requirements of Section 10 during the quarterly or annual period covered by the statements then being furnished, (including with respect to each such provision that involves mathematical calculations, the information from such financial statements that is required to perform such calculations) and detailed calculations of the maximum or minimum amount, ratio or percentage, as the case may be, permissible under the terms of such Section, and the calculation of the amount, ratio or percentage then in existence. In the event that the Company or any Subsidiary has made an election to measure any financial liability using fair value (which election is being disregarded for purposes of determining compliance with this Agreement pursuant to Section 22.2) as to the period covered by any such financial statement, such Senior Financial Officer's certificate as to such period shall include a reconciliation from GAAP with respect to such election;

(b) Event of Default — certifying that such Senior Financial Officer has reviewed the relevant terms hereof and has made, or caused to be made, under his or her supervision, a review of the transactions and conditions of the Company and its Subsidiaries from the beginning of the quarterly or annual period covered by the statements then being furnished to the date of the certificate and that such review shall not have disclosed the existence during such period of any condition or event that constitutes a Default or an Event of Default or, if any such condition or event existed or exists (including, without limitation, any such event or condition resulting from the failure of the Company or any Subsidiary to comply with any Environmental Law), specifying the nature and period of existence thereof and what action the Company shall have taken or proposes to take with respect thereto; and

(c) Subsidiary Guarantors — certifying that each Subsidiary that is required to be a Subsidiary Guarantor pursuant to Section 9.7 is a Subsidiary Guarantor, in each case, as of the date of such certificate of Senior Financial Officer, and describing any changes to the composition of the Subsidiary Guarantor group, if any, during the quarterly or annual period covered by the statements then being furnished.

**Section 7.3. Visitation.** The Company shall, and shall cause each of its Subsidiaries to, permit the representatives of each holder of a Note that is an Institutional Investor:

(a) *No Default* — if no Default or Event of Default then exists, at the expense of such holder and upon reasonable prior notice to the Company, to visit the principal executive office of any member of the Consolidated Group, to discuss the affairs, finances and accounts of the Company and its Subsidiaries with the officers of the Company or any of its Subsidiaries, and (with the consent of the Company, which consent will not be unreasonably withheld) its independent public accountants, and (with the consent of the Company, which consent will not be unreasonably withheld) to visit the other offices and properties of the Company and each Subsidiary, all at such reasonable times and as often as may be reasonably requested in writing; and

(b) *Default* — if a Default or Event of Default then exists, at the expense of the Company to visit and inspect any of the offices or properties of the Company or any Subsidiary, to examine all their respective books of account, records, reports and other papers, to make copies and extracts therefrom, and to discuss their respective affairs, finances and accounts with their respective officers and independent public accountants (and by this provision the Company authorizes said accountants to discuss the affairs, finances and accounts of the Company and its Subsidiaries), all at such times and as often as may be requested.

**Section 7.4. Electronic Delivery.** Financial statements, opinions of independent certified public accountants, other information and Officer's Certificates that are required to be delivered by the Company pursuant to Sections 7.1(a), (b), (c) or (d) and Section 7.2 shall be deemed to have been delivered if the Company satisfies any of the following requirements with respect thereto:

(i) such financial statements satisfying the requirements of Section 7.1(a) or (b) and related Officer's Certificate satisfying the requirements of Section 7.2 and any other information required under Sections 7.1(c) and (d) are delivered to each holder of a Note by e-mail at the e-mail address set forth in such holder's Purchaser Schedule or as communicated from time to time in a separate writing delivered to the Company;

(ii) the Company shall have timely filed such Form 10-Q or Form 10-K, satisfying the requirements of Section 7.1(a) or Section 7.1(b), as the case may be, with the SEC on EDGAR and shall have made such form and the related Officer's Certificate satisfying the requirements of Section 7.2 available on its home page on the internet, which is located at <http://www.mgpingredients.com> as of the date of this Agreement;

(iii) such financial statements satisfying the requirements of Section 7.1(a) or Section 7.1(b) and related Officer's Certificate(s) satisfying the requirements of Section 7.2 and any other information required under Section 7.1(c) are timely posted by or on behalf of the Company on IntraLinks or on any other similar website to which each holder of Notes has free access; or

(iv) the Company shall have timely filed any of the items referred to in Section 7.1(c) with the SEC on EDGAR and shall have made such items available on its

home page on the internet or on IntraLinks or on any other similar website to which each holder of Notes has free access;

*provided however*, that in no case shall access to such financial statements, other information and Officer's Certificates be conditioned upon any waiver or other agreement or consent (other than confidentiality provisions consistent with Section 20 of this Agreement); provided, further, that in the case of any of clauses (ii), (iii) or (iv), the Company shall have given each holder of a Note substantially contemporaneous written notice, which may be by e-mail or in accordance with Section 18, of such posting or filing in connection with each delivery, provided further, that upon request of any holder to receive paper copies of such forms, financial statements, other information and Officer's Certificates or to receive them by e-mail, the Company will promptly e-mail them or deliver such paper copies, as the case may be, to such holder.

## **Section 8. Payment and Prepayment of the Notes.**

### **Section 8.1. Required Prepayments; Maturity.**

(a) *Series A Notes.* On August 23, 2021 and on the 23rd day of each November, February, May and August thereafter to and including August 23, 2027, the Company will prepay \$800,000.00 principal amount (or such lesser principal amount as shall then be outstanding) of the Series A Notes at par and without payment of the Make-Whole Amount or any premium, provided that upon any partial prepayment of the Series A Notes pursuant to Section 8.2 or 8.3 or partial purchase of the Series A Notes pursuant to Section 8.6 (provided that Section 8.6 has been amended pursuant to Section 17.1(c) to permit purchases of the Series A Notes), the principal amount of each required prepayment of the Series A Notes becoming due under this Section 8.1(a) on and after the date of such prepayment shall be reduced in the same proportion as the aggregate unpaid principal amount of the Series A Notes is reduced as a result of such prepayment.

(b) *Shelf Notes.* Each Series of Shelf Notes shall be subject to required prepayments, if any, set forth in the Notes of such Series, provided that upon any partial prepayment of the Shelf Notes of any Series pursuant to Section 8.2 or 8.3 or partial purchase of the Shelf Notes of such Series pursuant to Section 8.6 (provided that Section 8.6 has been amended pursuant to Section 17.1(c) to permit purchases of the Shelf Notes of such Series), the principal amount of each required prepayment of the Shelf Notes of such Series becoming due under this Section 8.1(b) on and after the date of such prepayment shall be reduced in the same proportion as the aggregate unpaid principal amount of the Shelf Notes of such Series is reduced as a result of such prepayment.

As provided therein, the entire unpaid principal balance of each Note shall be due and payable on the Maturity Date thereof.

**Section 8.2. Optional Prepayments with Make-Whole Amount.** The Company may, at its option, upon notice as provided below, prepay at any time all, or from time to time any part of, any Series of Notes, in an amount that is an integral multiple of \$100,000 and not less than \$1,000,000, at 100% of the principal amount so prepaid, and the Make-Whole Amount determined

for the prepayment date with respect to such principal amount. The Company will give each holder of the Series of Notes to be prepaid written notice of each optional prepayment under this Section 8.2 not less than 10 days and not more than 60 days prior to the date fixed for such prepayment unless the Company and the Required Holders agree to another time period pursuant to Section 17. Each such notice shall specify such date (which shall be a Business Day), the aggregate principal amount of the Series of Notes to be prepaid on such date, the principal amount of each Note held by such holder to be prepaid (determined in accordance with Section 8.4), and the interest to be paid on the prepayment date with respect to such principal amount being prepaid, and shall be accompanied by a certificate of a Senior Financial Officer as to the estimated Make-Whole Amount due in connection with such prepayment (calculated as if the date of such notice were the date of the prepayment), setting forth the details of such computation. Two Business Days prior to such prepayment, the Company shall deliver to each holder of the Series of Notes to be prepaid a certificate of a Senior Financial Officer specifying the calculation of such Make-Whole Amount as of the specified prepayment date. If a Default or an Event of Default exists at the time the Company gives any written notice of an optional prepayment, such notice shall be given to the holders of all Notes of all Series then outstanding, and the optional prepayment shall be made with respect to all Series of Notes rather than solely with respect to the Notes of a particular Series.

### **Section 8.3. Mandatory Prepayments.**

#### **(a) Change of Control.**

(i) *Notice of Change of Control or Control Event.* The Company will, within five Business Days after any Responsible Officer has knowledge of the occurrence of any Change of Control or Control Event, give written notice of such Change of Control or Control Event to each holder of any of the Notes. If a Change of Control or Control Event has occurred, such notice shall contain and constitute an offer by the Company to prepay the Notes as described in Section 8.3(a)(ii) and shall be accompanied by the certificate described in Section 8.3(a)(vi).

(ii) *Offer to Prepay Notes.* The offer to prepay Notes contemplated by this Section 8.3(a) shall be an offer to prepay, in accordance with and subject to this Section 8.3, each of the Notes held by each holder (in this case only, “**holder**” in respect of any Note registered in the name of a nominee for a disclosed beneficial owner shall mean such beneficial owner) on a date specified in such offer (the “**Proposed Change of Control Prepayment Date**”). Such Proposed Change of Control Prepayment Date shall be not less than 10 days and not more than 90 days after the date of such offer (if the Proposed Change of Control Prepayment Date shall not be specified in such offer, the Proposed Change of Control Prepayment Date shall be the 20th day after the date of such offer).

(iii) *Acceptance; Rejection.* The Company shall, on or before the seventh day prior to the Proposed Change of Control Prepayment Date, give telephonic re-notification and confirmation thereof to each holder which shall have designated a recipient of such notices in either the Purchaser Schedule for such holder or by notice in writing to the Company. A holder of Notes may accept the offer to prepay made pursuant to this Section 8.3(a) by causing a notice of such acceptance to be delivered to the Company on or before



the fifth day prior to the Proposed Change of Control Prepayment Date. A failure by a holder of Notes to respond to an offer to prepay made pursuant to this Section 8.3(a) on or before such date shall be deemed to constitute an acceptance of such offer by such holder.

(iv) *Prepayment.* Prepayment of the Notes to be prepaid pursuant to this Section 8.3(a) shall be at 100% of the principal amount of the Notes, together with interest accrued to the actual date of such prepayment and Make-Whole Amount, if any.

(v) *Deferral Pending Change of Control.* The obligation of the Company to prepay Notes pursuant to the offers required by Section 8.3(a)(ii) and accepted in accordance with Section 8.3(a)(iii) is subject to the occurrence of the Change of Control in respect of which such offers and acceptances shall have been made. In the event that such Change of Control does not occur on the Proposed Change of Control Prepayment Date in respect thereof, the prepayment shall be deferred until, and shall be made on or before the date on which, such Change of Control occurs. The Company shall keep each holder of Notes reasonably and timely informed of (A) any such deferral of the date of prepayment, (B) the date on which such Change of Control and the prepayment are expected to occur and (C) any determination by the Company that efforts to effect such Change of Control have ceased or been abandoned (in which case the offers and acceptances made pursuant to this Section 8.3 in respect of such Change of Control automatically shall be deemed rescinded without penalty or other liability).

(vi) *Officer's Certificate.* Each offer to prepay the Notes pursuant to this Section 8.3(a) shall be accompanied by a certificate, executed by a Responsible Officer of the Company and dated the date of such offer, specifying: (A) the Proposed Change of Control Prepayment Date; (B) that such offer is made pursuant to this Section 8.3(a); (C) the principal amount of each Note offered to be prepaid; (D) the interest that would be due on each Note offered to be prepaid, accrued to the Proposed Change of Control Prepayment Date and Make-Whole Amount, if any; (E) that the conditions of this Section 8.3(a) have been fulfilled; and (F) in reasonable detail, the nature and date of the Change of Control or Control Event.

**Section 8.4. Allocation of Partial Prepayments.** In the case of any partial prepayment of the Notes of any Series, the principal amount of the Notes of such Series to be prepaid shall be allocated among all of the Notes of such Series at the time outstanding (or in the case of a prepayment pursuant to Section 8.3, all the Notes the holders of which shall have accepted, or be deemed to have accepted, the offer to prepay such Notes) in proportion, as nearly as practicable, to the respective unpaid principal amounts thereof not theretofore called for prepayment.

**Section 8.5. Maturity; Surrender, Etc.** In the case of each prepayment of Notes of any Series pursuant to this Section 8, the principal amount of each Note to be prepaid shall mature and become due and payable on the date fixed for such prepayment, together with interest on such principal amount accrued to such date and the applicable Make-Whole Amount, if any. From and after such date, unless the Company shall fail to pay such principal amount when so due and payable, together with the interest and Make-Whole Amount, if any, as aforesaid, interest on such principal amount shall cease to accrue. Any Note paid or prepaid in full shall be surrendered to the Company

and cancelled and shall not be reissued, and no Note shall be issued in lieu of any prepaid principal amount of any Note.

**Section 8.6.** Purchase of Notes. The Company will not and will not permit any Affiliate to purchase, redeem, prepay or otherwise acquire, directly or indirectly, any of the outstanding Notes of any Series except upon the payment or prepayment of the Notes of such Series in accordance with this Agreement and the Notes of such Series. The Company will promptly cancel all Notes acquired by it or any Affiliate pursuant to any payment or prepayment of Notes pursuant to this Agreement and no Notes may be issued in substitution or exchange for any such Notes.

**Section 8.7. Make-Whole Amount.**

**“Make-Whole Amount”** means, with respect to any Note, an amount equal to the excess, if any, of the Discounted Value of the Remaining Scheduled Payments with respect to the Called Principal of such Note over the amount of such Called Principal, *provided* that the Make-Whole Amount may in no event be less than zero. For the purposes of determining the Make-Whole Amount, the following terms have the following meanings:

**“Called Principal”** means, with respect to any Note, the principal of such Note that is to be prepaid pursuant to Section 8.2 or Section 8.3 or has become or is declared to be immediately due and payable pursuant to Section 12.1, as the context requires.

**“Discounted Value”** means, with respect to the Called Principal of any Note, the amount obtained by discounting all Remaining Scheduled Payments with respect to such Called Principal from their respective scheduled due dates to the Settlement Date with respect to such Called Principal, in accordance with accepted financial practice and at a discount factor (applied on the same periodic basis as that on which interest on the Notes is payable) equal to the Reinvestment Yield with respect to such Called Principal.

**“Reinvestment Yield”** means, with respect to the Called Principal of any Note, the sum of (a) 0.50% plus (b) the yield to maturity implied by the “Ask Yield(s)” reported as of 10:00 a.m. (New York City time) on the second Business Day preceding the Settlement Date with respect to such Called Principal, on the display designated as “Page PX1” (or such other display as may replace Page PX1) on Bloomberg Financial Markets for the most recently issued actively traded on-the-run U.S. Treasury securities (**“Reported”**) having a maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date. If there are no such U.S. Treasury securities Reported having a maturity equal to such Remaining Average Life, then such implied yield to maturity will be determined by (i) converting U.S. Treasury bill quotations to bond equivalent yields in accordance with accepted financial practice and (ii) interpolating linearly between the “Ask Yields” Reported for the applicable most recently issued actively traded on-the-run U.S. Treasury securities with the maturities (1) closest to and greater than such Remaining Average Life and (2) closest to and less than such Remaining Average Life. The Reinvestment Yield shall be rounded to the number of decimal places as appears in the interest rate of the applicable Note.

If such yields are not Reported or the yields Reported as of such time are not ascertainable (including by way of interpolation), then “Reinvestment Yield” means, with respect to the Called

Principal of any Note, the sum of (x) 0.50% plus (y) the yield to maturity implied by the U.S. Treasury constant maturity yields reported, for the latest day for which such yields have been so reported as of the second Business Day preceding the Settlement Date with respect to such Called Principal, in Federal Reserve Statistical Release H.15 (or any comparable successor publication) for the U.S. Treasury constant maturity having a term equal to the Remaining Average Life of such Called Principal as of such Settlement Date. If there is no such U.S. Treasury constant maturity having a term equal to such Remaining Average Life, such implied yield to maturity will be determined by interpolating linearly between (1) the U.S. Treasury constant maturity so reported with the term closest to and greater than such Remaining Average Life and (2) the U.S. Treasury constant maturity so reported with the term closest to and less than such Remaining Average Life. The Reinvestment Yield shall be rounded to the number of decimal places as appears in the interest rate of the applicable Note.

**“Remaining Average Life”** means, with respect to any Called Principal, the number of years obtained by dividing (i) such Called Principal into (ii) the sum of the products obtained by multiplying (a) the principal component of each Remaining Scheduled Payment with respect to such Called Principal by (b) the number of years, computed on the basis of a 360-day year composed of twelve 30-day months and calculated to two decimal places, that will elapse between the Settlement Date with respect to such Called Principal and the scheduled due date of such Remaining Scheduled Payment.

**“Remaining Scheduled Payments”** means, with respect to the Called Principal of any Note, all payments of such Called Principal and interest thereon that would be due after the Settlement Date with respect to such Called Principal if no payment of such Called Principal were made prior to its scheduled due date, *provided* that if such Settlement Date is not a date on which interest payments are due to be made under the Notes, then the amount of the next succeeding scheduled interest payment will be reduced by the amount of interest accrued to such Settlement Date and required to be paid on such Settlement Date pursuant to Section 8.5 or Section 12.1.

**“Settlement Date”** means, with respect to the Called Principal of any Note, the date on which such Called Principal is to be prepaid pursuant to Section 8.2 or Section 8.3 or has become or is declared to be immediately due and payable pursuant to Section 12.1, as the context requires.

**Section 8.8. Payments Due on Non-Business Days.** Anything in this Agreement or the Notes to the contrary notwithstanding, (x) except as set forth in clause (y), any payment of interest on any Note that is due on a date that is not a Business Day shall be made on the next succeeding Business Day without including the additional days elapsed in the computation of the interest payable on such next succeeding Business Day; and (y) any payment of principal of or Make-Whole Amount on any Note (including principal due on the Maturity Date of such Note) that is due on a date that is not a Business Day shall be made on the next succeeding Business Day and shall include the additional days elapsed in the computation of interest payable on such next succeeding Business Day.

## **Section 9. Affirmative Covenants.**

The Company covenants that so long as any of the Notes are outstanding:

**Section 9.1. Compliance .** Without limiting Section 10.4, the Company will, and will cause each of its Subsidiaries to, (a) comply in all material respects with the provisions of all documents pursuant to which such Person is organized and governed, (b) comply in all material respects with all Material Contracts then in effect and (c) comply with all laws, ordinances or governmental rules or regulations to which each of them is subject, including, without limitation, ERISA, Environmental Laws, the USA PATRIOT Act and the other laws and regulations that are referred to in Section 5.16, and will obtain and maintain in effect all licenses, certificates, permits, franchises and other governmental authorizations necessary to the ownership of their respective properties or to the conduct of their respective businesses, in each case to the extent necessary to ensure that non-compliance with such laws, ordinances or governmental rules or regulations or failures to obtain or maintain in effect such licenses, certificates, permits, franchises and other governmental authorizations could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**Section 9.2. Insurance.** The Company will, and will cause each of its Subsidiaries to, maintain, with financially sound and reputable insurers, insurance with respect to their respective properties and businesses against such casualties and contingencies, of such types, on such terms and in such amounts (including deductibles, co-insurance and self-insurance, if adequate reserves are maintained with respect thereto) as is customary in the case of entities of established reputations engaged in the same or a similar business and similarly situated. Unless all Liens on the Collateral in favor of the Collateral Agent securing the Note Obligations pursuant to the Security Documents have been released pursuant to Section 9.8, such insurance shall (a) provide for not less than 30 days' prior notice to the holders of Notes of termination, lapse or cancellation of such insurance (except in the case of the foregoing as a result of non-payment of premium in which case only 10 days' prior notice shall be required), (b) have lender's loss payable endorsements (in the case of property policies insuring Collateral) and additional insured endorsements (in the case of liability policies) satisfactory to the Required Holders and (c) otherwise comply with the provisions of the Security Documents.

**Section 9.3. Maintenance of Properties.** The Company will, and will cause each of its Subsidiaries to, maintain and keep, or cause to be maintained and kept, their respective properties in good repair, working order and condition (other than ordinary wear and tear), so that the business carried on in connection therewith may be properly conducted at all times, *provided* that this Section shall not prevent the Company or any Subsidiary from discontinuing the operation and the maintenance of any of its properties if such discontinuance is desirable in the conduct of its business and the Company has concluded that such discontinuance could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**Section 9.4. Payment of Taxes and Claims.** The Company will, and will cause each of its Subsidiaries to, file all tax returns required to be filed in any jurisdiction and to pay and discharge all taxes shown to be due and payable on such returns and all other taxes, assessments, governmental charges, or levies imposed on them or any of their properties, assets, income or franchises, to the extent the same have become due and payable and before they have become delinquent and all claims for which sums have become due and payable that have or might become a Lien on properties or assets of the Company or any Subsidiary, *provided* that neither the Company nor any Subsidiary

need pay any such tax, assessment, charge, levy or claim if (i) the amount, applicability or validity thereof is contested by the Company or such Subsidiary on a timely basis in good faith and in appropriate proceedings, and the Company or a Subsidiary has established adequate reserves therefor in accordance with GAAP on the books of the Company or such Subsidiary or (ii) the nonpayment of all such taxes, assessments, charges, levies and claims could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**Section 9.5. Corporate Existence, Etc.** Subject to Sections 10.4 and 10.5, the Company will at all times preserve and keep its corporate existence in full force and effect. Subject to Sections 10.4 and 10.5, the Company will at all times preserve and keep in full force and effect the organizational existence of each of its Subsidiaries (unless merged into the Company or a Wholly-Owned Subsidiary) and all rights and franchises of the Company and its Subsidiaries unless, in the good faith judgment of the Company, the termination of or failure to preserve and keep in full force and effect such corporate existence, right or franchise could not, individually or in the aggregate, have a Material Adverse Effect.

**Section 9.6. Books and Records.** The Company will, and will cause each of its Subsidiaries to, maintain proper books of record and account in conformity with GAAP and all applicable requirements of any Governmental Authority having legal or regulatory jurisdiction over the Company or such Subsidiary, as the case may be. The Company will, and will cause each of its Subsidiaries to, keep books, records and accounts which, in reasonable detail, accurately reflect all transactions and dispositions of assets. The Company and its Subsidiaries have devised a system of internal accounting controls sufficient to provide reasonable assurances that their respective books, records, and accounts accurately reflect all transactions and dispositions of assets and the Company will, and will cause each of its Subsidiaries to, continue to maintain such system.

**Section 9.7. Subsidiary Guarantors.** The Company will cause each of its Subsidiaries that guarantees or otherwise becomes liable at any time, whether as a borrower or an additional or co-borrower or otherwise, for or in respect of any Indebtedness under any Material Credit Facility to concurrently therewith:

- (a) enter into the Subsidiary Guaranty Agreement, which will provide for the guaranty by such Subsidiary, on a joint and several basis with all other such Subsidiaries, of (i) the prompt payment in full when due of all amounts payable by the Company pursuant to the Notes (whether for principal, interest, Make-Whole Amount or otherwise) and this Agreement, including, without limitation, all indemnities, fees and expenses payable by the Company thereunder and (ii) the prompt, full and faithful performance, observance and discharge by the Company of each and every covenant, agreement, undertaking and provision required pursuant to the Notes or this Agreement to be performed, observed or discharged by it (a “**Subsidiary Guaranty**”); and
- (b) deliver the following to each holder of a Note:
  - (i) an executed counterpart of the Subsidiary Guaranty Agreement, or a supplement to the Subsidiary Guaranty Agreement, whereby such Subsidiary becomes a party to the Subsidiary Guaranty Agreement;

(ii) a certificate signed by an authorized responsible officer of such Subsidiary containing representations and warranties on behalf of such Subsidiary to the same effect, *mutatis mutandis*, as those contained in Sections 5, as applicable (but with respect to such Subsidiary and such Subsidiary Guaranty rather than the Company);

(iii) all documents as may be reasonably requested by the Required Holders to evidence the due organization, continuing existence and good standing of such Subsidiary and the due authorization by all requisite action on the part of such Subsidiary of the execution and delivery of the Subsidiary Guaranty Agreement (or a supplement thereto) and the performance by such Subsidiary of its obligations thereunder, including, without limitation, the types of documents set forth in Sections 4.3 and 4.12(ii), (iv) and (v); and

(iv) an opinion of counsel reasonably satisfactory to the Required Holders covering the matters set forth in \_\_\_\_\_ of Schedule 4.4(a) but relating to such Subsidiary and such Subsidiary Guaranty Agreement and which opinion may be subject to assumptions, qualifications and limitations similar to those set forth in such Schedule 4.4(a).

Notwithstanding anything contained in this Agreement or the other Note Documents to the contrary, at the election of the Company and by written notice to each holder of Notes, any Guarantor may be discharged from all of its obligations and liabilities under its Guaranty Agreement and shall be automatically released from its obligations thereunder without the need for the execution or delivery of any other document by the holders, *provided*, that (I) if such Guarantor is a guarantor or is otherwise liable for or in respect of any Material Credit Facility, then such Guarantor has been released and discharged or will be released and discharged concurrently with the release of such Guarantor under its Guaranty Agreement) under such Material Credit Facility, (II) at the time of, and after giving effect to, such release and discharge, no Default or Event of Default shall be existing, (III) no amount is then due and payable by such Guarantor under any Note Document, (IV) if in connection with such Guarantor being released and discharged under any Material Credit Facility, any fee or other form of consideration (excluding reimbursement of expenses) is given to any holder of Indebtedness under such Material Credit Facility for such release, the holders of the Notes shall receive equivalent consideration substantially concurrently therewith, (V) each holder shall have received a certificate of a Responsible Officer certifying as to the matters set forth in clauses (I) through (IV), and (VI) in the event of any such release, for purposes of Section 10.2, all Indebtedness of such Subsidiary shall be deemed to have been incurred concurrently with such release.

**Section 9.8. Covenant to Secure Notes Equally.** The Company will, and will cause its Subsidiaries to, if it or any other Note Party shall create or assume any Lien to secure any obligation under any Material Credit Facility upon any of its property or assets, whether now owned or hereafter acquired, make or cause to be made effective provision whereby the Notes and any Guaranty thereof will be secured by such Lien equally and ratably with any and all other Indebtedness thereby secured; *provided*, that the creation and maintenance of such equal and ratable Lien shall not in any way limit or modify the right of the holders of the Notes to enforce the provisions of Section 10.3.

Notwithstanding anything contained in this Agreement or the other Note Documents to the contrary, at the election of the Company and by written notice to each holder of Notes, any Collateral of any Note Party may be released from the any Lien securing the Note Obligations, and the holders of Notes shall direct the Collateral Agent to release such Collateral, *provided*, that (I) after giving effect to such release, the Company has a Material Credit Facility, (II) if such Collateral is subject to a Lien securing any obligation under or in respect of any Material Credit Facility, then such Lien has been released and terminated or will be released and terminated concurrently with the release of such Collateral from the Lien securing the Note Obligations under such Material Credit Facility, (III) at the time of, and after giving effect to, such release and termination, no Default or Event of Default shall be existing, (IV) if in connection with such Collateral being released and terminated under any Material Credit Facility, any fee or other form of consideration is given to any holder of Indebtedness under such Material Credit Facility for such release or termination, the holders of the Notes shall receive equivalent consideration substantially concurrently therewith, (V) such release and termination is not prohibited by the Intercreditor Agreement or any other applicable intercreditor agreement required pursuant to the terms of this Agreement and (VI) each holder shall have received a certificate of a Responsible Officer certifying as to the matters set forth in clauses (I) through (VI).

**Section 9.9. Notes and Guaranty Agreements to Rank Pari Passu.** All payment obligations arising under this Agreement and the Notes shall be maintained at a rank (a) not less than pari passu with all other Notes from time to time issued and outstanding hereunder, without any preference among themselves and (b) not less than pari passu with all other Indebtedness of the Company under any Material Credit Facility (actual or contingent). All payment obligations of each Guarantor under any Guaranty Agreement shall be maintained (i) at a rank pari passu with all payment obligations of such Guarantor under such Guaranty Agreement and the Notes guaranteed thereby, without any preference among themselves and (ii) not less than pari passu in respect of all other Indebtedness of such Guarantor under any Material Credit Facility (actual or contingent).

**Section 9.10. Procedures and Controls.** The Company will maintain procedures and controls that are adequate (and otherwise comply with applicable law) to ensure that the Company and each Controlled Entity will be in compliance with all applicable U.S. Economic Sanctions laws, Anti-Money Laundering Laws and Anti-Corruption Laws.

**Section 9.11. Further Assurances.** The Company will, and will cause each of its Subsidiaries to, execute any and all further documents, agreements and instruments, and take all such further actions that may be required under any applicable law, or which the Required Holders may reasonably request, to effectuate the transactions contemplated by the Note Documents or to grant, preserve, protect or perfect the Liens created or purported to be created by the Security Documents or the validity or priority of any such lien.

## **Section 10. Negative Covenants.**

The Company covenants that so long as any of the Notes are outstanding:

### **Section 10.1. Financial Covenants.**

(a) Consolidated Leverage Ratio. The Company will not permit the Consolidated Leverage Ratio as of the last day of any fiscal quarter of the Company to be greater than 3.00 to 1.00.

(b) Consolidated Fixed Charge Coverage Ratio. The Company will not permit the Consolidated Fixed Charge Coverage Ratio as of the last day of any fiscal quarter of the Company to be less than 1.25 to 1.00.

**Section 10.2. Indebtedness.** The Company will not, and will not permit any Subsidiary to, create, incur, assume, guarantee or permit to exist any Indebtedness, except the following:

(a) the Note Obligations;

(b) any Indebtedness existing on the date hereof and set forth on Schedule 10.2 together with any Permitted Refinancings thereof;

(c) the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business;

(d) Indebtedness incurred to make Capital Expenditures or acquire, construct or improve a fixed or capital asset, so long as the aggregate outstanding principal amount of such Indebtedness does not at any time exceed \$15,000,000;

(e) obligations (contingent or otherwise) under any Swap Contract entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with liabilities, commitments, investments or assets held or reasonably anticipated by such Person and not for purposes of speculation;

(f) Indebtedness of a Note Party owing to another Note Party or, to the extent permitted by Section 10.6, of a Subsidiary of a Note Party owing to a Note Party;

(g) Guarantees by any Note Party of Indebtedness of another Note Party that is otherwise permitted hereunder;

(h) contingent liabilities in respect of any indemnification obligation, adjustment of purchase price, non-compete or similar obligation of any Note Party incurred in connection with the consummation of any Permitted Acquisition or any Disposition permitted hereunder;

(i) Indebtedness under the Credit Agreement, together with any Permitted Refinancings thereof; *provided*, that the aggregate principal amount of Indebtedness permitted pursuant this clause (i) shall at no time exceed \$175,000,000;

(j) unsecured Indebtedness of the Company owing to former employees, officers, or directors (or any spouses, ex-spouses, or estates of any of the foregoing) incurred in connection with the repurchase or redemption by the Company of its Equity Interests that have 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 and (ii) the aggregate amount of all such Indebtedness outstanding at any one time does not exceed \$5,000,000;

(k) Indebtedness in respect of:

(i) one or more series of senior or subordinated notes issued by the Company that are either, at the option of the Company, (x) unsecured or (y) secured by Liens on the Collateral ranking junior to or *pari passu* with the Liens securing the Note Obligations and the Credit Agreement Obligations, and

(ii) senior or subordinated loans made to the Company that are either, at the option of the Company, (x) unsecured or (y) secured by Liens on Collateral ranking junior to or *pari passu* with the Liens securing the Note Obligations and the Credit Agreement Obligations (any such Indebtedness described in clause (i) above or this clause (ii), “**Incremental Equivalent Debt**”) and any Permitted Refinancing of any Incremental Equivalent Debt; *provided that*

(1) no Incremental Equivalent Debt may be incurred unless, after giving effect to the incurrence of such Incremental Equivalent Debt, and after giving effect to any Permitted Acquisition, other Investment, or any sale, transaction or other Disposition or any incurrence of Indebtedness or repayment of Indebtedness consummated concurrently therewith, the Company has, on a Pro Forma Basis, a Consolidated Leverage Ratio not greater than 2.75 to 1.00;

(2) no Default or Event of Default shall have occurred and be continuing or would exist immediately after giving effect to the incurrence of such Incremental Equivalent Debt;

(3) the Company shall be in compliance with Section 10.1 on a Pro Forma Basis after giving effect to the incurrence of such Incremental Equivalent Debt, and after giving effect to any Permitted Acquisition, other Investment, or any sale, transaction or other Disposition or any incurrence of Indebtedness or repayment of Indebtedness consummated concurrently therewith, as of the end of the most recently ended fiscal quarter;

(4) the Weighted Average Life to Maturity of such Incremental Equivalent Debt shall be no shorter than the Weighted Average Life to Maturity of any Note Obligations then outstanding;

(5) all other terms of such Indebtedness not covered in this clause (k) shall be determined by the Company and the investors or lenders of such Incremental Equivalent Debt and to the extent such Incremental Equivalent Debt takes the form of loans or senior notes and the terms and documentation for such loans or senior notes, taken as a whole, are not substantially the

same as the Note Obligations (other than, in each case, pricing, amortization and maturity) (as determined by the Company in good faith), such loans shall be reasonably acceptable to the Required Holders (except for covenants and events of default applicable to only periods after the Maturity Date of each Series of Notes in effect at the time such Incremental Equivalent Debt is entered into);

(6) no Incremental Equivalent Debt shall be incurred by or subject to any Guaranty by any Person other than the Company and the Guarantors, respectively, and shall not be secured by any property or assets of any Note Party other than Collateral;

*provided, further*, if such Incremental Equivalent Debt:

(x) is secured on a pari passu basis with the Note Obligations and the Credit Agreement Obligations,

(1) the holders of such Indebtedness or a representative thereof will join in and become a party to the Intercreditor Agreement, or otherwise enter into an intercreditor agreement with the Required Holders, in each case in a manner or pursuant to such documentation as is reasonably acceptable to the Required Holders and

(2) such Indebtedness shall not require mandatory prepayments (except scheduled amortization permitted by clause (4) to the first proviso above) that are more restrictive than any mandatory prepayments applicable to the Note Obligations and may participate on a pro rata basis or on a less than pro rata basis (but not on a greater than pro rata basis) in any mandatory prepayments applicable to the Note Obligations, or

(y) is secured on a junior basis with the Note Obligations and the Credit Agreement Obligations,

(1) the holders of such Indebtedness or a representative thereof will enter into an intercreditor agreement with the holders of Notes that is reasonably acceptable to the Required Holders and

(2) such Indebtedness shall not have any scheduled principal prepayments or be subject to any mandatory redemption or prepayment provisions (except for customary change of control provisions and customary asset sale provisions that permit application of the applicable proceeds to the payment of the Note Obligations, the Credit Agreement Obligations or other secured Incremental Equivalent Debt prior to application to such Indebtedness) due prior to the date that is 91 days after the latest Maturity Date of all Notes then outstanding, or

(z) is unsecured, such Indebtedness shall not have any scheduled principal prepayments (except scheduled amortization permitted by clause (4) to the first proviso above) or be subject to any mandatory redemption or prepayment provisions (except for customary change of control provisions and customary asset sale provisions that permit application of the applicable proceeds to the payment of the Note Obligations and any Credit Agreement Obligations or other secured Incremental Equivalent Debt prior to application to such Indebtedness) due prior to the date that is 91 days after the latest Maturity Date of all Notes then outstanding;

(l) Permitted IRB Financings and Permitted Refinancings thereof; and

(m) other unsecured Indebtedness so long as the aggregate outstanding principal amount of such Indebtedness does not at any time exceed \$10,000,000.

**Section 10.3. Liens.** The Company will not and will not permit any of its Subsidiaries to directly or indirectly create, incur, assume or permit to exist (upon the happening of a contingency or otherwise) any Lien on or with respect to any property or asset (including, without limitation, any document or instrument in respect of goods or accounts receivable) of the Company or any such Subsidiary, whether now owned or held or hereafter acquired, or any income or profits therefrom, or assign or otherwise convey any right to receive income or profits, except:

(a) any Lien on the Collateral in favor of the Collateral Agent securing the Note Obligations and the Credit Agreement Obligations permitted pursuant to Section 10.2 (i) that is subject to the Intercreditor Agreement;

(b) any Lien that is existing on the date of this Agreement and set forth on Schedule 10.3, including any renewals or replacements thereof; provided that (i) such Lien shall not apply to any other asset of the Company or any Subsidiary and (ii) such Lien shall secure only those obligations which it secures on the date hereof or any renewals or refinancings thereof which do not increase the principal amount of such obligations;

(c) Permitted Encumbrances;

(d) purchase money Liens upon or in any inventory or any fixed or capital asset (in each case including any proceeds thereof) to secure the purchase price thereof or, in the case of any fixed or capital asset, the cost of construction or improvement of such fixed or capital asset (including Liens securing any Capital Lease Obligations); *provided*, that (i) such Lien secures Indebtedness permitted by Section 10.2(d) or, in the case of any Lien on inventory, the purchase price of such inventory and other inventory purchased from such supplier, (ii) such Lien attaches to such asset concurrently or within 90 days after the acquisition, improvement or completion of the construction thereof, (iii) such Lien does not extend to any other asset and (iv) the Indebtedness secured thereby does not exceed the cost of acquiring, constructing or improving such asset;

(e) to the extent constituting a Lien, any lease of Permitted Real Estate;

(f) Liens on property securing Indebtedness permitted to be incurred under Sections 10.2(i) or (k), but only if the priority of such Liens is pari passu with or junior to the Liens securing the Note Obligations on such property pursuant to an intercreditor agreement entered into in accordance with Sections 10.2(k) or, if applicable the Intercreditor Agreement;

(g) Liens securing Permitted IRB Financings, including any Permitted Refinancings thereof; *provided*, that such Liens encumber only the related IRB Property; and

(h) other Liens that do not secure Indebtedness for borrowed money or letters of credit and as to which the aggregate amount of the obligations secured thereby does not exceed \$10,000,000.

Notwithstanding anything to the contrary in this Agreement, the Company shall not, nor shall it permit any Subsidiary to, mortgage, pledge, grant or permit to exist a security interest in, or other Lien upon, any of its real property now owned or hereafter acquired, except (w) Permitted Encumbrances, (x) any Lien that is existing on the date of this Agreement and set forth on Schedule 10.3, (y) to the extent constituting a Lien, any lease of any Permitted Real Estate and (z) any lease of or Lien upon any IRB Property, in each case in connection with any Permitted IRB Financings or Permitted Refinancings thereof.

**Section 10.4. Merger, Consolidation, Etc.** The Company will not, and will not permit any Subsidiary to, consolidate with or merge with any other Person or Dispose of all or substantially all of its assets in a single transaction or series of transactions to any Person, or liquidate or dissolve or enter into any other line of business other than those conducted as of the date of this Agreement or businesses reasonably related thereto, except that, in each of the foregoing cases, if at the time thereof and immediately after giving effect thereto, no Default or Event of Default exists:

(a) any Subsidiary may merge into the Company in a transaction in which the Company is the survivor;

(b) any Subsidiary that is not a Note Party may (i) merge into (A) any other Subsidiary that is not a Note Party or (B) any Note Party (other than the Company) so long as the survivor is a Note Party and (ii) transfer assets to any Note Party and to any other Subsidiary that is not a Note Party;

(c) any Note Party may (i) transfer assets to any other Note Party or (ii) merge with any other Note Party so long as, if the Company is a party to such transaction, the Company is the survivor; and

(d) any Subsidiary may liquidate or dissolve if the Company determines in good faith that such liquidation or dissolution is in the best interests of the Company and is not disadvantageous to the holders of Notes; and

(e) any Subsidiary may merge into any Person or acquire all or substantially all of the assets of any other Person in a transaction permitted by Section 10.6 in which the survivor in any such merger or the acquirer of such assets is a Wholly-Owned Subsidiary and is a Note Party.

**Section 10.5. Transfer of Assets.** The Company will not, and will not permit any Subsidiary to, Dispose of any of its assets, whether now owned or hereafter acquired, including any Equity Interest owned by it, nor will the Company permit any of its Subsidiaries to issue any additional Equity Interest in such Subsidiary other than to a Note Party, except for the following:

(a) the Disposition for fair market value of obsolete or worn out equipment or other fixed assets not necessary for operations Disposed of in the ordinary course of business;

(b) the sale of inventory and Eligible Investments in the ordinary course of business;

(c) Dispositions solely between or among Note Parties;

(d) transfers of assets by any Note Party to any Subsidiary that is not a Note Party, *provided*, that (i) no Default or Event of Default exists at the time of each such transfer or would occur as a result of such transfer, (ii) such transferred assets do not include any Equity Interests of any Note Party and (iii) the sum of (A) the aggregate amount transferred to all such Subsidiaries by all Note Parties in any fiscal year *plus* (B) any Investments made under 10.6(k) does not exceed \$5,000,000 in any fiscal year;

(e) so long as no Default or Event of Default exists or would occur as a result thereof, the sale, lease or other disposition of any Permitted Real Estate;

(f) to the extent constituting Dispositions, transactions permitted by Sections 10.3, 10.4, 10.6 and 10.7 and the expenditure or other transfer or use of cash or cash equivalents in transactions not otherwise prohibited by this Agreement;

(g) the lease of equipment and other transactions described in the ICM Lease, as initially in effect and as it may be subsequently amended with the written consent of the Required Holders;

(h) the licensing, on a non-exclusive basis, of patents, trademarks, copyrights and other intellectual property in the ordinary course of business or consistent with customary industry practices;

(i) the abandonment of trademarks and other intellectual property which the Company in good faith determines are no longer useful to its or a Subsidiary's business;

(j) any involuntary loss, damage or destruction of property, including the abandonment or other Disposition of stale, spoiled or otherwise nonconforming inventory;

(k) any involuntary condemnation, seizure or taking, by exercise of the power of eminent domain or otherwise, or confiscation or requisition or use of property; and

(l) any sale, lease or other Disposition of any IRB Property in connection with any Permitted IRB Financings; and

(m) any other Dispositions of assets (other than Equity Interests in a Subsidiary that is a Note Party) that are not permitted by any other clause of this Section; *provided*, that the aggregate fair market value of all assets Disposed of in reliance upon this clause (m) shall not exceed \$5,000,000 in any fiscal year;

*provided, further*, that all Dispositions permitted by clauses (a), (b) (e), (h) and (m) above shall be made for fair value.

**Section 10.6. Loans, Investments, Acquisitions.** The Company will not, and will not permit any Subsidiary to, purchase, hold or acquire (including pursuant to any merger with any Person that was not a Wholly-Owned Subsidiary prior to such merger), any Equity Interests, Indebtedness or other securities (including any option, warrant, or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, Guarantee any obligations of, or make or permit to exist any investment or any other interest in, any other Person (all of the foregoing being collectively called “**Investments**”), or make any Acquisition, except for the following:

(a) Investments existing on the date of this Agreement and set forth on Schedule 10.6;

(b) Eligible Investments;

(c) Investments by a Note Party in another Note Party;

(d) Guarantees permitted pursuant to Section 10.2, and any Guarantees by a Note Party of any obligations otherwise permitted to be incurred by another Note Party (and without regard to whether the obligations guaranteed constitute Indebtedness);

(e) accounts receivable arising and trade credit granted in the ordinary course of business and any securities received in satisfaction or partial satisfaction thereof in connection with accounts of financially troubled Persons to the extent reasonably necessary in order to prevent or limit loss;

(f) loans and advances to employees who are not holders of Equity Interests of the Company in the ordinary course of business for travel, relocation and similar expenses so long as the aggregate outstanding principal amount of such loans and advances does not at any time exceed \$1,000,000;

(g) Swap Contracts otherwise permitted hereunder;

(h) Permitted Acquisitions occurring after the date of this Agreement;

(i) Investments in joint ventures, corporate collaborations and strategic alliances in the ordinary course of the Company's or a Subsidiary's business (including the acquisition of non-controlling Equity Interests in a Person); *provided*, that (i) such Investments do not interfere in any material respect with the ordinary conduct of the business of the Company or its Subsidiaries or result in a material diminution in the value of the Collateral as security for the Note Obligations, other than by virtue of any assets invested pursuant to such Investment ceasing to be Collateral, and (ii) the aggregate amount of any Investments made by the Company or any Subsidiary in connection with all such joint ventures, collaborations and alliances shall not exceed \$50,000,000 in the aggregate at any time outstanding (it being understood that (x) for purposes of determining the amount of any Investment outstanding under this clause (i), such amount shall be deemed to be the amount of such Investment when made, purchased or acquired without adjustment for subsequent increases or decreases in the value of such Investment less any amount realized in respect of such Investment upon the sale, collection or return of capital (not to exceed the original amount invested), and (y) if any subsequent Investment in a Person results in the Acquisition by the Company or a Subsidiary of a Controlling Equity Interest in such Person in a transaction that constitutes a Permitted Acquisition under clause (h) above, the amount of any prior Investment in such acquired Person pursuant to this clause (i) shall be deemed to be no longer outstanding);

(j) equity Investments by any Note Party in any Subsidiary of such Note Party which is required by law to maintain a minimum net capital requirement or as may be otherwise required by applicable law;

(k) promissory notes and other non-cash consideration received in connection with any sale, transfer or other Disposition permitted hereunder;

(l) the purchase of Equity Interests of the Company for distribution to directors, officers or employees of the Consolidated Group in connection with restricted stock units or similar rights issued to such directors, officers or employees pursuant to employee compensation or similar plans consistent with the plans in effect on the Series A Closing Day; and

(m) Investments consisting of bonds or the like issued pursuant to or in connection with Permitted IRB Financings, including any Permitted Refinancings thereof; and

(n) any other Investments so long as (i) no Event of Default has occurred and is continuing or would result therefrom and (ii) the sum of (A) the aggregate amount of Investments made under this clause (n) *plus* (B) the aggregate amount of Dispositions made under Section 10.5(d) does not exceed \$5,000,000 in any fiscal year of the Company.

**Section 10.7. Restricted Payments.** The Company will not, and will not permit any Subsidiary to, make any Restricted Payment or apply or set apart any of their assets therefor or agree to do any of the foregoing other than:

(a) Restricted Payments made by any Subsidiary to the Company or any other Note Party;

(b) distributions to former employees, officers, or directors of the Company (or any spouses, ex-spouses, or estates of any of the foregoing) on account of redemptions of Equity Interests of the Company held by such Persons; *provided*, that the aggregate amount of such redemptions made by the Company does not exceed \$2,000,000 in any fiscal year of the Company;

(c) the Company may make distributions to former employees, officers, or directors of the Company (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 the Company on account of repurchases of the Equity Interests of the Company held by such Persons; *provided*, that such Indebtedness was incurred by such Persons solely to acquire Equity Interests of the Company; and

(d) other Restricted Payments made in cash by the Company in respect of its Equity Interests; *provided*, that no Default or Event of Default exists or will occur after giving effect thereto on the date thereof and on a Pro Forma Basis as if such Restricted Payment occurred on the last day of the most recently ended four-fiscal quarter period of the Company.

**Section 10.8. Transactions with Affiliates.** The Company will not and will not permit any Subsidiary to, Dispose of any asset to, or purchase, lease or otherwise acquire any asset from, or otherwise engage in any other transactions with, any of its Affiliates, except (a) in the ordinary course of business at prices and on terms and conditions not less favorable to the Company or such Subsidiary than could be obtained on an arm's-length basis from unrelated third parties, (b) transactions between or among the Note Parties not involving any other Affiliates, and transactions permitted under Section 10.5(d), and (c) any Restricted Payment permitted by Section 10.7.

**Section 10.9. Burdensome Agreements.** The Company will not and will not permit any Subsidiary to, enter into or cause, suffer or permit to exist any agreement with any Person that (a) limits the ability of any Subsidiary to make Restricted Payments, (b) limits the ability of any Subsidiary to guarantee the Note Obligations, provided that the foregoing shall not apply to restrictions or conditions imposed under any of the Note Documents or, to the extent no more restrictive than the Note Documents, any document or agreement pertaining to any Indebtedness permitted by Section 10.2(i) or 10.2(k), or (c) restricts the ability of the Company or any Subsidiary to create, incur or permit any Lien upon any of its assets, whether now owned or hereafter acquired; *provided*, that (i) the foregoing shall not apply to restrictions or conditions imposed by applicable Law, under any Note Document or, with respect to IRB Property, pursuant to Permitted IRB Financings, or, to the extent no more restrictive than this Agreement, any document or agreement pertaining to any Indebtedness permitted by Section 10.2(i) or 10.2(k), (ii) clause (c) shall not apply to (A) restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions and conditions apply only to assets the acquisition of which was financed by such Indebtedness, (B) customary restrictions that arise in connection with any Disposition permitted by Section 10.5 and relate solely to the assets or Person subject to such Disposition, (C) customary provisions in joint venture agreements and other similar agreements applicable to joint ventures permitted under Section 10.6 and applicable solely to such joint venture



and its equity entered into in the ordinary course of business, (D) customary provisions restricting subletting, transfer or assignment of any lease, (E) customary provisions in commercial contracts entered into in the ordinary course of business restricting the assignment or transfer thereof, (F) restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business, (G) restrictions regarding licensing or sublicensing by the Company or any Subsidiary of intellectual property in the ordinary course of business and (H) restrictions on cash earnest money deposits in favor of sellers in connection with Acquisitions not prohibited hereunder.

**Section 10.10. Amendment of Certain Agreements.** The Company will not and will not permit any Subsidiary to, amend or modify, or waive any of its rights under, any of its formation documents, governing documents or other organizational documents, any Material Contract, in any case in a manner material and adverse to the holders of Notes, *provided*, that nothing in this Agreement shall require any member of the Consolidated Group to maintain or to renew, or shall prohibit any member of the Consolidated Group from terminating, any Material Contract, so long as the failure to maintain or to renew or the termination of such Material Contract (and, if applicable, after giving effect to any new contract entered or to be entered into in full or partial replacement of such Material Contract) could not be reasonably be expected to have a Material Adverse Effect.

**Section 10.11. Use of Funds.** The Company will not and will not permit any Subsidiary to, use any of the proceeds of the Notes except for the purposes stated in Section 5.14.

**Section 10.12. Accounting Changes.** The Company will not and will not permit any Subsidiary to, make any significant change in accounting treatment or reporting practices, except as required by GAAP, or change its fiscal year, except to change the fiscal year of a Subsidiary to conform its fiscal year to that of the Company.

**Section 10.13. Sale-Leasebacks.** The Company will not and will not permit any Subsidiary to, enter into any arrangement, directly or indirectly, whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereinafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property sold or transferred in each case excluding any sale-leaseback of Permitted Real Estate or property subject to a Disposition pursuant to Sections 10.5(l) or (m).

**Section 10.14. Restrictions Pertaining to Certain Debt.** The Company will not and will not permit any Subsidiary to, (a) amend or modify any loan agreement, note purchase agreement or other material document governing any Indebtedness incurred pursuant to Section 10.2(k) that is subordinated in right of payment to the Note Obligations or is secured on a junior lien basis to the Liens securing the Note Obligations (collectively, “**Junior Financing**”) in any manner that is adverse to the holders, or (b) prepay, redeem, purchase, defease or otherwise satisfy any Junior Financing prior to the scheduled maturity thereof in any manner except (i) the refinancing thereof with any Indebtedness that constitutes a Permitted Refinancing or is permitted pursuant to Section 10.2(k), and (ii) regularly scheduled payments of interest and other amounts (other than principal) to the extent permitted by the applicable intercreditor or subordination agreement entered into in connection with such Junior Financing.

**Section 10.15. Most Favored Lender Status.** If the Company or any Subsidiary enters into, assumes or otherwise becomes bound or obligated (including, without limitation, by amendment thereto) under any Material Credit Facility, in any case containing one or more Additional Covenants (other than those in the Credit Agreement on the date of this Agreement) or Additional Defaults (other than those in the Credit Agreement on the date hereof), (a) the Company shall promptly (but in any event within 10 Business Days) provide notice to each holder thereof and (b) the terms of this Agreement shall, without any further action on the part of the Company or any of the holders of Notes, be deemed to be amended automatically to include each Additional Covenant and each Additional Default contained in such Material Credit Facility. The Company further covenants to promptly execute and deliver at its expense (including the fees and expenses of counsel for the holders of Notes) an amendment to this Agreement in form and substance satisfactory to the Required Holder(s) evidencing the amendment of this Agreement to include such Additional Covenants and Additional Defaults, provided that the execution and delivery of such amendment shall not be a precondition to the effectiveness of such amendment as provided for in this Section 10.15, but shall merely be for the convenience of the parties hereto. Any Additional Covenant or Additional Default incorporated pursuant to this Section 10.15 shall be deemed deleted from this Agreement at such time as such Additional Covenant or Additional Default is deleted or otherwise removed from, or is no longer in effect under, or pursuant to, the related Material Credit Facility, or if the related Material Credit Facility has been terminated; *provided*, that (i) in no event shall the terms and provisions of the covenants and defaults contained in this Agreement become less restrictive than the terms and provisions of the covenants and defaults contained in this Agreement on the Series A Closing Day as a result of this Section 10.15 and (ii) in each case that any consideration is paid or provided to any holder of Indebtedness under the related Material Credit Facility in connection with any such deletion, removal, non-effectiveness or termination (other than reimbursement of expenses and repayment in full of the related Material Credit Facility in connection with its termination), the same amount of consideration shall be paid or provided to the holders of Notes.

**Section 10.16. Economic Sanctions, Etc..** The Company will not and will not permit any Controlled Entity to (a) become (including by virtue of being owned or controlled by a Blocked Person), own or control a Blocked Person or (b) directly or indirectly have any investment in or engage in any dealing or transaction (including, without limitation, any investment, dealing or transaction involving the proceeds of the Notes) with any Person if such investment, dealing or transaction (i) would cause any holder or any affiliate of such holder to be in violation of, or subject to sanctions under, any law or regulation applicable to such holder or (ii) is prohibited by or subject to sanctions under any U.S. Economic Sanctions.

#### **Section 11. Events of Default.**

An “**Event of Default**” shall exist if any of the following conditions or events shall occur and be continuing:

(a) the Company defaults in the payment of any principal or Make-Whole Amount, if any, on any Note when the same becomes due and payable, whether at maturity or at a date fixed for repayment or by declaration or otherwise; or

(b) the Company defaults in the payment of any interest on any Note for more than five Business Days after the same becomes due and payable; or

(c) the Company defaults in the performance of or compliance with any term contained in Sections 7.1, 7.2, 8.3, 9.5 (with respect to the Company's existence), 9.7, 9.8, 9.9, 9.10 or 10 (other than 10.9(b) or (c)); or

(d) the Company or any Guarantor defaults in the performance of or compliance with any term contained herein (other than those referred to in Sections 11(a), (b) and (c)) or in any other Note Document and such default is not remedied within 30 days after the earlier of (i) a Responsible Officer obtaining actual knowledge of such default and (ii) the Company receiving written notice of such default from any holder of a Note (any such written notice to be identified as a "notice of default" and to refer specifically to this Section 11(d)); or

(e) (i) any representation or warranty made in writing by or on behalf of the Company or by any officer of the Company in any Note Document or any writing furnished in connection with the transactions contemplated hereby proves to have been false or incorrect in any material respect on the date as of which made, or (ii) any representation or warranty made in writing by or on behalf of any other Note Party or by any officer of such Note Party in any Note Document or any writing furnished in connection with such Note Document proves to have been false or incorrect in any material respect on the date as of which made; or

(f) (i) the Company or any Subsidiary is in default (as principal or as guarantor or other surety) in the payment of any principal of or premium or make-whole amount or interest on any Indebtedness that is outstanding in an aggregate principal amount of at least \$10,000,000 (or its equivalent in the relevant currency of payment) beyond any period of grace provided with respect thereto, or (ii) the Company or any Subsidiary is in default in the performance of or compliance with any term of any evidence of any Indebtedness in an aggregate outstanding principal amount of at least \$10,000,000 (or its equivalent in the relevant currency of payment) or of any mortgage, indenture or other agreement relating thereto or any other condition exists, and as a consequence of such default or condition such Indebtedness has become, or has been declared (or one or more Persons are entitled to declare such Indebtedness to be), due and payable before its stated maturity or before its regularly scheduled dates of payment, or (iii) as a consequence of the occurrence or continuation of any event or condition (other than the passage of time or the right of the holder of Indebtedness to convert such Indebtedness into equity interests), (x) the Company or any Subsidiary has become obligated to purchase or repay Indebtedness before its regular maturity or before its regularly scheduled dates of payment in an aggregate outstanding principal amount of at least \$10,000,000 (or its equivalent in the relevant currency of payment), or (y) one or more Persons have the right to require the Company or any Subsidiary so to purchase or repay such Indebtedness; or

(g) the Company or any Subsidiary (i) is generally not paying, or admits in writing its inability to pay, its debts as they become due, (ii) files, or consents by answer or

otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy, insolvency, reorganization, moratorium or other similar law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, (v) is adjudicated as insolvent or to be liquidated, or (vi) takes corporate action for the purpose of any of the foregoing; or

(h) a court or other Governmental Authority of competent jurisdiction enters an order appointing, without consent by the Company or any of its Subsidiaries, a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, or constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of the Company or any of its Subsidiaries, or any such petition shall be filed against the Company or any of its Subsidiaries and such petition shall not be dismissed within 60 days; or

(i) any event occurs with respect to the Company or any Subsidiary which under the laws of any jurisdiction is analogous to any of the events described in Section 11(g) or Section 11(h), *provided*, that the applicable grace period, if any, which shall apply shall be the one applicable to the relevant proceeding which most closely corresponds to the proceeding described in Section 11(g) or Section 11(h); or

(j) one or more final judgments or orders for the payment of money aggregating in excess of \$10,000,000 (or its equivalent in the relevant currency of payment), including, without limitation, any such final order enforcing a binding arbitration decision, are rendered against one or more of the Company and its Subsidiaries and which judgments are not, within 30 days after entry thereof, bonded, discharged or stayed pending appeal, or are not discharged within 30 days after the expiration of such stay; or

(k) if (i) any Plan shall fail to satisfy the minimum funding standards of ERISA or the Code for any plan year or part thereof or a waiver of such standards or extension of any amortization period is sought or granted under section 412 of the Code, (ii) a notice of intent to terminate any Plan shall have been or is reasonably expected to be filed with the PBGC or the PBGC shall have instituted proceedings under ERISA section 4042 to terminate or appoint a trustee to administer any Plan or the PBGC shall have notified the Company or any ERISA Affiliate that a Plan may become a subject of any such proceedings, (iii) there is any "amount of unfunded benefit liabilities" (within the meaning of section 4001(a)(18) of ERISA) under one or more Plans, determined in accordance with Title IV of ERISA, (iv) the Company or any ERISA Affiliate shall have incurred or is reasonably expected to incur any liability pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans, (v) the Company or any ERISA Affiliate withdraws from any Multiemployer Plan, or (vi) the Company or any Subsidiary establishes or amends any employee welfare benefit plan that provides post-employment welfare benefits in a

manner that would increase the liability of the Company or any Subsidiary thereunder; and any such event or events described in clauses (i) through (vi) above, either individually or together with any other such event or events, could reasonably be expected to have a Material Adverse Effect. As used in this Section 11(j), the terms “employee benefit plan” and “employee welfare benefit plan” shall have the respective meanings assigned to such terms in section 3 of ERISA; or

(l) other than as permitted by the last paragraph of Section 9.7, any Guaranty of the Note Obligations shall cease to be in full force and effect or the obligations of any Guarantor under any Guaranty Agreement are not or cease to be legal, valid, binding and enforceable in accordance with the terms of such Guaranty Agreement; or

(m) any provision of any Note Document shall for any reason cease to be legal, valid and binding obligations of any Note Party party thereto, enforceable in accordance with its terms, or the Company, any Subsidiary or any Person acting on behalf of the Company or any Subsidiary shall contest in any manner the validity, binding nature or enforceability of such Note Document, except pursuant to the last paragraph of Section 9.8; or

(n) any Lien created or purported to be created under any Security Document shall cease to be, or shall be asserted by the Company, any Subsidiary or any Person acting on behalf of the Company or any Subsidiary not to be, a valid and perfected Lien on any Collateral, with the priority required by such Security Document, except (i) as a result of the Disposition of the applicable Collateral in a transaction permitted under the Note Documents or (ii) pursuant to the last paragraph of Section 9.8.

## **Section 12. Remedies on Default, Etc.**

**Section 12.1. Acceleration.** (a) If an Event of Default with respect to the Company described in Section 11(g), (h) or (i) (other than an Event of Default described in clause (i) of Section 11(g) or described in clause (vi) of Section 11(g) by virtue of the fact that such clause encompasses clause (i) of Section 11(g)) has occurred, all the Notes then outstanding shall automatically become immediately due and payable.

(b) If any other Event of Default has occurred and is continuing, the Required Holders may at any time at its or their option, by notice or notices to the Company, declare all the Notes then outstanding to be immediately due and payable.

(c) If any Event of Default described in Section 11(a) or (b) has occurred and is continuing, any holder or holders of Notes at the time outstanding affected by such Event of Default may at any time, at its or their option, by notice or notices to the Company, declare all the Notes held by it or them to be immediately due and payable.

Upon any Notes becoming due and payable under this Section 12.1, whether automatically or by declaration, such Notes will forthwith mature and the entire unpaid principal amount of such Notes, plus (x) all accrued and unpaid interest thereon (including, but not limited to, interest accrued thereon at the Default Rate) and (y) the Make-Whole Amount determined in respect of such principal

amount (to the full extent permitted by applicable law), shall all be immediately due and payable, in each and every case without presentment, demand, protest or further notice, all of which are hereby waived. The Company acknowledges, and the parties hereto agree, that each holder of a Note has the right to maintain its investment in the Notes free from repayment by the Company (except as herein specifically provided for) and that the provision for payment of a Make-Whole Amount by the Company in the event that the Notes are prepaid or are accelerated as a result of an Event of Default, is intended to provide compensation for the deprivation of such right under such circumstances.

**Section 12.2. Other Remedies.** If any Event of Default has occurred and is continuing, and irrespective of whether any Notes have become or have been declared immediately due and payable under Section 12.1, the holder of any Note at the time outstanding may proceed to protect and enforce the rights of such holder by an action at law, suit in equity or other appropriate proceeding, whether for the specific performance of any agreement contained herein or in any Note or Subsidiary Guaranty, or for an injunction against a violation of any of the terms hereof or thereof, or in aid of the exercise of any power granted hereby or thereby or by law or otherwise.

**Section 12.3. Rescission.** At any time after any Notes have been declared due and payable pursuant to Section 12.1(b) or (c), the Required Holders, by written notice to the Company, may rescind and annul any such declaration and its consequences if (a) the Company has paid all overdue interest on the Notes, all principal of and Make-Whole Amount, if any, on any Notes that are due and payable and are unpaid other than by reason of such declaration, and all interest on such overdue principal and Make-Whole Amount, if any, and (to the extent permitted by applicable law) any overdue interest in respect of the Notes, at the Default Rate, (b) neither the Company nor any other Person shall have paid any amounts which have become due solely by reason of such declaration, (c) all Events of Default and Defaults, other than non-payment of amounts that have become due solely by reason of such declaration, have been cured or have been waived pursuant to Section 17, and (d) no judgment or decree has been entered for the payment of any monies due pursuant hereto or to the Notes. No rescission and annulment under this Section 12.3 will extend to or affect any subsequent Event of Default or Default or impair any right consequent thereon.

**Section 12.4. No Waivers or Election of Remedies, Expenses, Etc.** No course of dealing and no delay on the part of any holder of any Note in exercising any right, power or remedy shall operate as a waiver thereof or otherwise prejudice such holder's rights, powers or remedies. No right, power or remedy conferred by this Agreement, any Subsidiary Guaranty or any Note upon any holder thereof shall be exclusive of any other right, power or remedy referred to herein or therein or now or hereafter available at law, in equity, by statute or otherwise. Without limiting the obligations of the Company under Section 15, the Company will pay to the holder of each Note on demand such further amount as shall be sufficient to cover all costs and expenses of such holder incurred in any enforcement or collection under this Section 12, including, without limitation, reasonable attorneys' fees, expenses and disbursements.

### **Section 13. Registration; Exchange; Substitution of Notes.**

**Section 13.1. Registration of Notes.** The Company shall keep at its principal executive office a register for the registration and registration of transfers of Notes. The name and address

of each holder of one or more Notes, each transfer thereof and the name and address of each transferee of one or more Notes shall be registered in such register. If any holder of one or more Notes is a nominee, then (a) the name and address of the beneficial owner of such Note or Notes shall also be registered in such register as an owner and holder thereof and (b) at any such beneficial owner's option, either such beneficial owner or its nominee may execute any amendment, waiver or consent pursuant to this Agreement. Prior to due presentment for registration of transfer, the Person(s) in whose name any Note(s) shall be registered shall be deemed and treated as the owner and holder thereof for all purposes hereof, and the Company shall not be affected by any notice or knowledge to the contrary. The Company shall give to any holder of a Note that is an Institutional Investor promptly upon request therefor, a complete and correct copy of the names and addresses of all registered holders of Notes.

**Section 13.2. Transfer and Exchange of Notes.** Upon surrender of any Note to the Company at the address and to the attention of the designated officer (all as specified in Section 18(iii)), for registration of transfer or exchange (and in the case of a surrender for registration of transfer accompanied by a written instrument of transfer duly executed by the registered holder of such Note or such holder's attorney duly authorized in writing and accompanied by the relevant name, address and other information for notices of each transferee of such Note or part thereof), within 10 Business Days thereafter, the Company shall execute and deliver, at the Company's expense (except as provided below), one or more new Notes (as requested by the holder thereof) of the same Series as such surrendered Note in exchange therefor, in an aggregate principal amount equal to the unpaid principal amount of the surrendered Note. Each such new Note shall be payable to such Person as such holder may request and shall be substantially in the form of Schedule 1(a), in the case of a Series A Note, or in the form of Schedule 1(b), in the case of a Shelf Note. Each such new Note shall be dated and bear interest from the date to which interest shall have been paid on the surrendered Note or dated the date of the surrendered Note if no interest shall have been paid thereon. The Company may require payment of a sum sufficient to cover any stamp tax or governmental charge imposed in respect of any such transfer of Notes. Notes shall not be transferred in denominations of less than \$100,000, *provided* that if necessary to enable the registration of transfer by a holder of its entire holding of Notes, one Note may be in a denomination of less than \$100,000. Any transferee, by its acceptance of a Note registered in its name (or the name of its nominee), shall be deemed to have made the representations set forth in Section 6.

**Section 13.3. Replacement of Notes.** Upon receipt by the Company at the address and to the attention of the designated officer (all as specified in Section 18(iii)) of evidence reasonably satisfactory to it of the ownership of and the loss, theft, destruction or mutilation of any Note (which evidence shall be, in the case of an Institutional Investor, notice from such Institutional Investor of such ownership and such loss, theft, destruction or mutilation), and

(a) in the case of loss, theft or destruction, of indemnity reasonably satisfactory to it (*provided* that if the holder of such Note is, or is a nominee for, an original Purchaser or another holder of a Note with a minimum net worth of at least \$100,000,000 or a Qualified Institutional Buyer, such Person's own unsecured agreement of indemnity shall be deemed to be satisfactory), or

(b) in the case of mutilation, upon surrender and cancellation thereof,

within 10 Business Days thereafter, the Company at its own expense shall execute and deliver, in lieu thereof, a new Note of the same Series as such lost, stolen, destroyed or mutilated Note, dated and bearing interest from the date to which interest shall have been paid on such lost, stolen, destroyed or mutilated Note or dated the date of such lost, stolen, destroyed or mutilated Note if no interest shall have been paid thereon.

#### **Section 14. Payments on Notes.**

**Section 14.1. Place of Payment.** Subject to Section 14.2, payments of principal, Make-Whole Amount, if any, and interest becoming due and payable on the Notes shall be made in New York, New York at the principal office of JPMorgan Chase Bank, N.A. in such jurisdiction. The Company may at any time, by notice to each holder of a Note, change the place of payment of the Notes so long as such place of payment shall be either the principal office of the Company in such jurisdiction or the principal office of a bank or trust company in such jurisdiction.

**Section 14.2. Home Office Payment.** So long as any Purchaser or its nominee shall be the holder of any Note, and notwithstanding anything contained in Section 14.1 or in such Note to the contrary, the Company will pay all sums becoming due on such Note for principal, Make-Whole Amount, if any, interest and all other amounts becoming due hereunder by the method and at the address specified for such purpose below such Purchaser's name in Schedule B (in the case of the Series A Notes) or as specified in such Purchaser's Confirmation of Acceptance (in the case of a Shelf Note), or by such other method or at such other address as such Purchaser shall have from time to time specified to the Company in writing for such purpose, without the presentation or surrender of such Note or the making of any notation thereon, except that upon written request of the Company made concurrently with or reasonably promptly after payment or prepayment in full of any Note, such Purchaser shall surrender such Note for cancellation, reasonably promptly after any such request, to the Company at its principal executive office or at the place of payment most recently designated by the Company pursuant to Section 14.1. Prior to any sale or other disposition of any Note held by a Purchaser or its nominee, such Purchaser will, at its election, either endorse thereon the amount of principal paid thereon and the last date to which interest has been paid thereon or surrender such Note to the Company in exchange for a new Note or Notes pursuant to Section 13.2. The Company will afford the benefits of this Section 14.2 to any Institutional Investor that is the direct or indirect transferee of any Note purchased by a Purchaser under this Agreement and that has made the same agreement relating to such Note as the Purchasers have made in this Section 14.2.

**Section 14.3. FATCA Information.** By acceptance of any Note, the holder of such Note agrees that such holder will with reasonable promptness duly complete and deliver to the Company, or to such other Person as may be reasonably requested by the Company, from time to time (a) in the case of any such holder that is a United States Person, such holder's United States tax identification number or other Forms reasonably requested by the Company necessary to establish such holder's status as a United States Person under FATCA and as may otherwise be necessary for the Company to comply with its obligations under FATCA and (b) in the case of any such holder that is not a United States Person, such documentation prescribed by applicable law (including as



prescribed by section 1471(b)(3)(C)(i) of the Code) and such additional documentation as may be necessary for the Company to comply with its obligations under FATCA and to determine that such holder has complied with such holder's obligations under FATCA or to determine the amount (if any) to deduct and withhold from any such payment made to such holder. Nothing in this Section 14.3 shall require any holder to provide information that is confidential or proprietary to such holder unless the Company is required to obtain such information under FATCA and, in such event, the Company shall treat any such information it receives as confidential.

## **Section 15. Expenses, Etc.**

**Section 15.1. Transaction Expenses.** Whether or not the transactions contemplated hereby are consummated, the Company will pay all costs and expenses (including reasonable attorneys' fees of a special counsel and, if reasonably required by the Required Holders, local or other counsel) incurred by the Purchasers and each other holder of a Note in connection with such transactions and in connection with any amendments, waivers or consents under or in respect of this Agreement, any Subsidiary Guaranty or the Notes (whether or not such amendment, waiver or consent becomes effective), including, without limitation: (a) the costs and expenses incurred in enforcing or defending (or determining whether or how to enforce or defend) any rights under this Agreement, any Subsidiary Guaranty or the Notes or in responding to any subpoena or other legal process or informal investigative demand issued in connection with this Agreement, any Subsidiary Guaranty or the Notes, or by reason of being a holder of any Note, (b) the costs and expenses, including financial advisors' fees, incurred in connection with the insolvency or bankruptcy of the Company or any Subsidiary or in connection with any work-out or restructuring of the transactions contemplated hereby and by the Notes and any Subsidiary Guaranty and (c) the costs and expenses incurred in connection with the initial filing of this Agreement and all related documents and financial information with the SVO *provided*, that such costs and expenses under this clause (c) shall not exceed \$4,000. If required by the NAIC, the Company shall obtain and maintain at its own cost and expense a Legal Entity Identifier (LEI).

**Section 15.2. Indemnification.** The Note Parties will pay, and will indemnify and save each Purchaser and each other holder of a Note, the Collateral Agent and each of their respective Affiliates, officers, directors, representatives, employees, advisors and agents (collectively, the "**Indemnified Parties**") harmless from, (i) all claims in respect of any fees, costs or expenses, if any, of brokers and finders (other than those, if any, retained by a Purchaser or other holder in connection with its purchase of the Notes) and any judgment, liability, claim, order, decree, cost, fee, expense, loss, action or obligation resulting from the consummation of the transactions contemplated hereby, including the use of the proceeds of the Notes by the Company, (ii) any and all wire transfer fees that any bank or other financial institution deducts from any payment under such Note to such holder or otherwise charges to a holder of a Note with respect to a payment under such Note, (iii) any judgment, liability, claim, order, decree, fine, penalty, cost, fee, expense (including reasonable attorneys' fees and expenses) or obligation resulting from the consummation of the transactions contemplated hereby, including the use of the proceeds of the Notes by the Company, and (iv) any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, claims, expenses or disbursements of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any Indemnified Party in any way relating to,

arising out of or incurred in respect this Agreement, any other Note Document or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or the enforcement of any of the terms hereof or thereof or of any such other documents, including any claims arising in connection with the release, discharge or presence of any Hazardous Material on any property of any Note Party, whether foreseeable or unforeseeable, including all costs of removal and disposal of such Hazardous Material, and reasonable attorneys' and consultants' fees and court costs (collectively, the "Indemnified Losses"), except to the extent that any Indemnified Loss is finally determined by a court of competent jurisdiction to be the direct result from the gross negligence or willful misconduct of the party seeking indemnification

**Section 15.3. Certain Taxes.** The Company agrees to pay all stamp, documentary or similar taxes or fees which may be payable in respect of the execution and delivery or the enforcement of any Note Document in the United States or any other jurisdiction where any Note Party has assets or of any amendment of, or waiver or consent under or with respect to, any Note Document, and to pay any value added tax due and payable in respect of reimbursement of costs and expenses by the Company pursuant to this Section 15, and will save each holder of a Note to the extent permitted by applicable law harmless against any loss or liability resulting from nonpayment or delay in payment of any such tax or fee required to be paid by the Company hereunder.

**Section 15.4. Survival.** The obligations of the Company under this Section 15 will survive the payment or transfer of any Note, the enforcement, amendment or waiver of any provision of this Agreement or any other Note Documents, and the termination of this Agreement.

#### **Section 16. Survival of Representations and Warranties; Entire Agreement.**

All representations and warranties contained herein shall survive the execution and delivery of this Agreement and the Notes, the purchase or transfer by any Purchaser of any Note or portion thereof or interest therein and the payment of any Note, and may be relied upon by any subsequent holder of a Note, regardless of any investigation made at any time by or on behalf of such Purchaser or any other holder of a Note. All statements contained in any certificate or other instrument delivered by or on behalf of the Company pursuant to this Agreement shall be deemed representations and warranties of the Company under this Agreement. Subject to the preceding sentence, this Agreement, the Notes and any Subsidiary Guaranties embody the entire agreement and understanding between each Purchaser and the Company and supersede all prior agreements and understandings relating to the subject matter hereof.

#### **Section 17. Amendment and Waiver.**

**Section 17.1. Requirements.** This Agreement and the Notes may be amended, and the observance of any term hereof or of the Notes may be waived (either retroactively or prospectively), only with the written consent of the Company and the Required Holders, except that:

- (a) no amendment or waiver (i) of any of Sections 1, 2, 3, 4, 5, 6 or 21 hereof, or any defined term (as it is used therein), (ii) other than pursuant to the last paragraph of Section 9.7, to effect any release of all or substantially all of the Guarantors from their respective liabilities under their respective Guaranties of the Note Obligations, or to limit

all or substantially all of the Guarantors' liabilities in respect of such Guaranties (other than as expressly permitted by the applicable Guaranty Agreement), or (iii) other than pursuant to the last paragraph of Section 9.8, to effect the release of all or substantially all of the Collateral, will be effective as to any holder of a Note unless consented to by such holder in writing;

(b) (i) with the written consent of Prudential (and without the consent of any other holder of Notes), the provisions of Section 2.2 may be amended or waived (except insofar as any such amendment or waiver would affect any rights or obligations with respect to the purchase and sale of Notes which shall have become Accepted Notes prior to such amendment or waiver), and (ii) with the written consent of all of the holders of the Notes which shall have become obligated to purchase Accepted Notes of any Series (and not without the written consent of all such holders), any of the provisions of Sections 2.2 and 4 may be amended or waived insofar as such amendment or waiver would affect only rights or obligations with respect to the purchase and sale of the Accepted Notes of such Series or the terms and provisions of such Accepted Notes;

(c) no such amendment or waiver may, without the written consent of each holder of each Note at the time outstanding, (i) subject to Section 12 relating to acceleration or rescission, change the amount or time of any prepayment or payment of principal of, or reduce the rate or change the time of payment or method of computation of (x) interest on the Notes or (y) the Make-Whole Amount, (ii) change the percentage of the principal amount of the Notes the holders of which are required to consent to any amendment or waiver, or (iii) amend any of Sections 8 (except as set forth in the second sentence of Section 8.2 and Section 17.1(c)), 11(a), 11(b), 12, 17 or 20; and

(d) Section 8.6 may be amended or waived to permit offers to purchase made by the Company or an Affiliate pro rata to the holders of all Notes at the time outstanding upon the same terms and conditions only with the written consent of the Company and the Super-Majority Holders.

#### **Section 17.2. Solicitation of Holders of Notes.**

(a) *Solicitation.* The Company will provide each holder of a Note with sufficient information, sufficiently far in advance of the date a decision is required, to enable such holder to make an informed and considered decision with respect to any proposed amendment, waiver or consent in respect of any of the provisions hereof or of any other Note Document, unless such proposed amendment, waiver or consent relates only to a specific Series of Accepted Notes which have not yet been purchased, in which case such information will only be required to be delivered to the Purchasers which shall have become obligated to purchase Accepted Notes of such Series. The Company will deliver executed or true and correct copies of each amendment, waiver or consent effected pursuant to this Section 17 or any other Note Document to each holder of a Note and any such Purchaser promptly following the date on which it is executed and delivered by, or receives the consent or approval of, the requisite holders of Notes.

(b) Payment. The Company will not directly or indirectly pay or cause to be paid any remuneration, whether by way of supplemental or additional interest, fee or otherwise, or grant any security or provide other credit support, to any holder of a Note or any such Purchaser described in Section 17.2(a) as consideration for or as an inducement to the entering into by such holder or such Purchaser of any waiver or amendment of any of the terms and provisions hereof or of any other Note Document unless such remuneration is concurrently paid, or security is concurrently granted or other credit support concurrently provided, on the same terms, ratably to each holder of a Note and any such Purchaser even if such holder did not consent to such waiver or amendment.

(c) Consent in Contemplation of Transfer. Any consent given pursuant to this Section 17 or any other Note Document by a holder of a Note that has transferred or has agreed to transfer its Note to the Company, any Subsidiary or any Affiliate of the Company (either pursuant to a waiver under Section 17.1(c) or subsequent to Section 8.6 having been amended pursuant to Section 17.1(c)) in connection with such consent shall be void and of no force or effect except solely as to such holder, and any amendments effected or waivers granted or to be effected or granted that would not have been or would not be so effected or granted but for such consent (and the consents of all other holders of Notes that were acquired under the same or similar conditions) shall be void and of no force or effect except solely as to such holder.

**Section 17.3. Binding Effect, Etc.** Any amendment or waiver consented to as provided in this Section 17 or any other Note Document applies equally to all holders of Notes and is binding upon them and upon each future holder of any Note and upon the Company without regard to whether such Note has been marked to indicate such amendment or waiver. No such amendment or waiver will extend to or affect any obligation, covenant, agreement, Default or Event of Default not expressly amended or waived or impair any right consequent thereon. No course of dealing between the Company and any holder of a Note and no delay in exercising any rights hereunder or under any other Note Document shall operate as a waiver of any rights of any holder of such Note.

**Section 17.4. Notes Held by Company, Etc.** Solely for the purpose of determining whether the holders of the requisite percentage of the aggregate principal amount of Notes then outstanding approved or consented to any amendment, waiver or consent to be given under this Agreement or any other Note Document, or have directed the taking of any action provided herein or in any other Note Document to be taken upon the direction of the holders of a specified percentage of the aggregate principal amount of Notes then outstanding, Notes directly or indirectly owned by the Company or any of its Affiliates shall be deemed not to be outstanding.

#### **Section 18. Notices.**

Except to the extent otherwise provided in Section 7.4, all notices and communications provided for hereunder shall be in writing and sent (a) by telecopy if the sender on the same day sends a confirming copy of such notice by an internationally recognized overnight delivery service (charges prepaid), or (b) by registered or certified mail with return receipt requested (postage prepaid), or (c) by an internationally recognized overnight delivery service (with charges prepaid). Any such notice must be sent:

(i) if to any Purchaser or its nominee, to such Purchaser or nominee at the address specified for such communications in Schedule B (in the case of the Series A Notes) or as specified by such Purchaser in its Confirmation of Acceptance (in the case of Shelf Notes), or at such other address as such Purchaser or nominee shall have specified to the Company in writing,

(ii) if to any other holder of any Note, to such holder at such address as such other holder shall have specified to the Company in writing, or

(iii) if to the Company, to the Company at its address set forth at the beginning hereof to the attention of Thomas K. Pigott, Chief Financial Officer, or at such other address as the Company shall have specified to the holder of each Note in writing.

Notices under this Section 18 will be deemed given only when actually received.

Notwithstanding anything to the contrary in this Section 18, any communication pursuant to Section 2.2 shall be made by the method specified for such communication in Section 2.2, and shall be effective to create any rights or obligations under this Agreement only if, in the case of a telephone communication, an Authorized Officer of the party conveying the information and of the party receiving the information are parties to the telephone call, and in the case of a telecopier communication, the communication is signed by an Authorized Officer of the party conveying the information, addressed to the attention of an Authorized Officer of the party receiving the information, and in fact received at the telecopier terminal the number of which is listed for the party receiving the communication in Schedule C or at such other telecopier terminal as the party receiving the information shall have specified in writing to the party sending such information.

#### **Section 19. Reproduction of Documents.**

This Agreement and all documents relating thereto, including, without limitation, (a) consents, waivers and modifications that may hereafter be executed, (b) documents received by any Purchaser at any Closing (except the Notes themselves), and (c) financial statements, certificates and other information previously or hereafter furnished to any Purchaser, may be reproduced by such Purchaser by any photographic, photostatic, electronic, digital, or other similar process and such Purchaser may destroy any original document so reproduced. The Company agrees and stipulates that, to the extent permitted by applicable law, any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made by such Purchaser in the regular course of business) and any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence. This Section 19 shall not prohibit the Company or any other holder of Notes from contesting any such reproduction to the same extent that it could contest the original, or from introducing evidence to demonstrate the inaccuracy of any such reproduction.

#### **Section 20. Confidential Information.**

For the purposes of this Section 20, “**Confidential Information**” means information delivered to any Purchaser by or on behalf of the Company or any Subsidiary in connection with the transactions contemplated by or otherwise pursuant to this Agreement that is proprietary in nature and that (except for information described in Section 7.1) was clearly marked or labeled or otherwise adequately identified when received by such Purchaser as being confidential information of the Company or such Subsidiary, *provided* that such term does not include information that (a) was publicly known or otherwise known to such Purchaser prior to the time of such disclosure, (b) subsequently becomes publicly known through no act or omission by such Purchaser or any Person acting on such Purchaser’s behalf, (c) otherwise becomes known to such Purchaser other than through disclosure by the Company or any Subsidiary or (d) constitutes financial statements delivered to such Purchaser under Section 7.1 that are otherwise publicly available. Each Purchaser will maintain the confidentiality of such Confidential Information and use such Confidential Information in accordance with procedures adopted by such Purchaser in good faith to protect confidential information of third parties delivered to such Purchaser and its use thereof, *provided* that such Purchaser may deliver or disclose Confidential Information to (i) its directors, officers, employees, agents, attorneys, trustees and affiliates (to the extent such disclosure reasonably relates to the administration of the investment represented by its Notes), (ii) its auditors, financial advisors and other professional advisors who agree to hold confidential the Confidential Information substantially in accordance with this Section 20, (iii) any other holder of any Note, (iv) any Institutional Investor to which it sells or offers to sell such Note or any part thereof or any participation therein (if such Person has agreed in writing prior to its receipt of such Confidential Information to be bound by this Section 20), (v) any Person from which it offers to purchase any Security of the Company (if such Person has agreed in writing prior to its receipt of such Confidential Information to be bound by this Section 20), (vi) any federal or state regulatory authority having jurisdiction over such Purchaser, (vii) the NAIC or the SVO or, in each case, any similar organization, or any nationally recognized rating agency that requires access to information about such Purchaser’s investment portfolio, or (viii) any other Person to which such delivery or disclosure may be necessary or appropriate (w) to effect compliance with any law, rule, regulation or order applicable to such Purchaser, (x) in response to any subpoena or other legal process, (y) in connection with any litigation to which such Purchaser is a party or (z) if an Event of Default has occurred and is continuing, to the extent such Purchaser may reasonably determine such delivery and disclosure to be necessary or appropriate in the enforcement or for the protection of the rights and remedies under such Purchaser’s Notes, this Agreement or any other Note Document. Each holder of a Note, by its acceptance of a Note, will be deemed to have agreed to be bound by and to be entitled to the benefits of this Section 20 as though it were a party to this Agreement. On reasonable request by the Company in connection with the delivery to any holder of a Note of information required to be delivered to such holder under this Agreement or requested by such holder (other than a holder that is a party to this Agreement or its nominee), such holder will enter into an agreement with the Company embodying this Section 20.

In the event that as a condition to receiving access to information relating to the Company or its Subsidiaries in connection with the transactions contemplated by or otherwise pursuant to this Agreement, any Purchaser or holder of a Note is required to agree to a confidentiality undertaking (whether through IntraLinks, another secure website, a secure virtual workspace or otherwise) which is different from this Section 20, this Section 20 shall not be amended thereby and, as between such

Purchaser or such holder and the Company, this Section 20 shall supersede any such other confidentiality undertaking.

#### **Section 21. Substitution of Purchaser.**

Each Purchaser shall have the right to substitute any one of its Affiliates or another Purchaser or any one of such other Purchaser's Affiliates (a "**Substitute Purchaser**") as the purchaser of the Notes that it has agreed to purchase hereunder, by written notice to the Company, which notice shall be signed by both such Purchaser and such Substitute Purchaser, shall contain such Substitute Purchaser's agreement to be bound by this Agreement and shall contain a confirmation by such Substitute Purchaser of the accuracy with respect to it of the representations set forth in Section 6. Upon receipt of such notice, any reference to such Purchaser in this Agreement (other than in this Section 21), shall be deemed to refer to such Substitute Purchaser in lieu of such original Purchaser. In the event that such Substitute Purchaser is so substituted as a Purchaser hereunder and such Substitute Purchaser thereafter transfers to such original Purchaser all of the Notes then held by such Substitute Purchaser, upon receipt by the Company of notice of such transfer, any reference to such Substitute Purchaser as a "Purchaser" in this Agreement (other than in this Section 21), shall no longer be deemed to refer to such Substitute Purchaser, but shall refer to such original Purchaser, and such original Purchaser shall again have all the rights of an original holder of the Notes under this Agreement.

#### **Section 22. Miscellaneous.**

**Section 22.1. Successors and Assigns.** All covenants and other agreements contained in this Agreement by or on behalf of any of the parties hereto bind and inure to the benefit of their respective successors and assigns (including, without limitation, any subsequent holder of a Note) whether so expressed or not, except that the Company may not assign or otherwise transfer any of its rights or obligations hereunder or under the Notes without the prior written consent of each holder. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto and their respective successors and assigns permitted hereby) any legal or equitable right, remedy or claim under or by reason of this Agreement.

**Section 22.2. Accounting Terms.** All accounting terms used herein which are not expressly defined in this Agreement have the meanings respectively given to them in accordance with GAAP. Notwithstanding the foregoing, if the Company notifies the holders of Notes that, in the Company's reasonable opinion, or if the Required Holders notify the Company that, in the Required Holders' reasonable opinion, as a result of changes in GAAP from time to time ("Subsequent Changes"), any of the covenants contained in Sections 10.1 or any of the defined terms used therein, no longer apply as intended such that such covenants are materially more or less restrictive to the Company than are such covenants immediately prior to giving effect to such Subsequent Changes, the Company and the holders of Notes shall negotiate in good faith to reset or amend such covenants or defined terms so as to negate such Subsequent Changes, or to establish alternative covenants or defined terms. Until the Company and the Required Holders so agree to reset, amend or establish alternative covenants or defined terms, the covenants contained in Sections 10.1, together with the relevant defined terms, shall continue to apply and compliance therewith shall be determined assuming that the Subsequent Changes shall not have occurred ("Static GAAP").

During any period that compliance with any covenants shall be determined pursuant to Static GAAP, the Company shall include relevant reconciliations in reasonable detail between GAAP and Static GAAP with respect to the applicable covenant compliance calculations contained in each certificate of a Senior Financial Officer delivered pursuant to Section 7.2 during such period. Except as otherwise specifically provided herein, (i) all computations made pursuant to this Agreement shall be made in accordance with GAAP, and (ii) all financial statements shall be prepared in accordance with GAAP. For purposes of determining compliance with this Agreement (including, without limitation, Section 9, Section 10 and the definition of “Indebtedness”) (including Additional Covenants contained in, or deemed to be included in, this Agreement), any election by the Company to measure any financial liability using fair value (as permitted by Financial Accounting Standards Board Accounting Standards Codification Topic No. 825-10-25 – *Fair Value Option*, International Accounting Standard 39 – *Financial Instruments: Recognition and Measurement* or any similar accounting standard) shall be disregarded and such determination shall be made as if such election had not been made.

**Section 22.3. Severability.** Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall (to the full extent permitted by law) not invalidate or render unenforceable such provision in any other jurisdiction.

**Section 22.4. Construction, Etc.** Each covenant contained herein shall be construed (absent express provision to the contrary) as being independent of each other covenant contained herein, so that compliance with any one covenant shall not (absent such an express contrary provision) be deemed to excuse compliance with any other covenant. Where any provision herein refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person.

Defined terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein) and, for purposes of the Notes, shall also include any such notes issued in substitution therefor pursuant to Section 13, (b) subject to Section 22.1, any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein,” “hereof” and “hereunder,” and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Sections and Schedules shall be construed to refer to Sections of, and Schedules to, this Agreement, and (e) any reference to any law or regulation herein shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time.



**Section 22.5. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one instrument. Each counterpart may consist of a number of copies hereof, each signed by less than all, but together signed by all, of the parties hereto.

**Section 22.6. Governing Law.** This Agreement and the Notes shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the law of the State of New York excluding choice-of-law principles of the law of such State that would permit the application of the laws of a jurisdiction other than such State.

**Section 22.7. Jurisdiction and Process; Waiver of Jury Trial.** (a) The Company and each holder of a Note irrevocably submits to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan, The City of New York, over any suit, action or proceeding arising out of or relating to any Note Document. To the fullest extent permitted by applicable law, the Company and each holder of a Note irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any claim that it is not subject to the jurisdiction of any such court, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

(b) The Company and each holder of a Note agree, to the fullest extent permitted by applicable law, that a final judgment in any suit, action or proceeding of the nature referred to in Section 22.7(a) brought in any such court shall be conclusive and binding upon it subject to rights of appeal, as the case may be, and may be enforced in the courts of the United States of America or the State of New York (or any other courts to the jurisdiction of which it or any of its assets is or may be subject) by a suit upon such judgment.

(c) The Company consents to process being served by or on behalf of any holder of Notes in any suit, action or proceeding of the nature referred to in Section 22.7(a) by mailing a copy thereof by registered, certified mail, priority or express (or any substantially similar form of mail), postage prepaid, return receipt or delivery confirmation requested, to it at its address specified in Section 18 or at such other address of which such holder shall then have been notified pursuant to said Section. The Company agrees that such service upon receipt (i) shall be deemed in every respect effective service of process upon it in any such suit, action or proceeding and (ii) shall, to the fullest extent permitted by applicable law, be taken and held to be valid personal service upon and personal delivery to it. Notices hereunder shall be conclusively presumed received as evidenced by a delivery receipt furnished by the United States Postal Service or any reputable commercial delivery service.

(d) Nothing in this Section 22.7 shall affect the right of any holder of a Note to serve process in any manner permitted by law, or limit any right that the holders of any of the Notes may have to bring proceedings against the Company in the courts of any appropriate jurisdiction or to enforce in any lawful manner a judgment obtained in one jurisdiction in any other jurisdiction.

(e) The parties hereto hereby waive trial by jury in any action brought on or with respect to this Agreement, each other Note Document or any other document executed in connection herewith or therewith.

**Section 22.8. Transaction References.** The Company agrees that Prudential may (i) refer to its role in originating the purchase of the Notes from the Company and establishing the Facility, as well as the identity of the Company and the aggregate principal amount and issue date of the Notes and the maximum aggregate principal amount of the Shelf Notes and the date on which the Facility was established, on its internet site or in marketing materials, press releases, published “tombstone” announcements or any other print or electronic medium and (ii) display the Company’s corporate logo in conjunction with any such reference.

\* \* \* \* \*

If you are in agreement with the foregoing, please sign the form of agreement on a counterpart of this Agreement and return it to the Company, whereupon this Agreement shall become a binding agreement between you and the Company.

Very truly yours,

**MGP Ingredients, Inc.**

By: /s/ Thomas K. Pigott  
Name: Thomas K. Pigott  
Title: CFO

This Agreement is hereby  
accepted and agreed to as  
of the date hereof.

**PGIM, INC.**

By: /s/ Brien Davis  
Vice President

**THE PRUDENTIAL INSURANCE COMPANY OF AMERICA**

By: /s/ Brien Davis

Vice President

**THE PRUDENTIAL LIFE INSURANCE COMPANY, LTD.**

By: Prudential Investment Management Japan Co., Ltd., as Investment Manager

By: PGIM, Inc., as Sub-Adviser

By: /s/ Brien Davis

Vice President

**PRUDENTIAL RETIREMENT INSURANCE AND ANNUITY COMPANY**

By: PGIM, Inc., as investment manager

By: /s/ Brien Davis

Vice President

## DEFINED TERMS

As used herein, the following terms have the respective meanings set forth below or set forth in the Section hereof following such term:

“**Acceptance**” is defined in Section 2.2(f).

“**Acceptance Day**” is defined in Section 2.2(f).

“**Acceptance Window**” means, with respect to any interest rate quotes provided by Prudential pursuant to Section 2.2(e), the time period designated by Prudential during which the Company may elect to accept such interest rate quotes as to not less than \$10,000,000 in aggregate principal amount of Shelf Notes specified in the related Request for Purchase.

“**Accepted Note**” is defined in Section 2.2(f).

“**Acquisition**” means (a) the acquisition of a Controlling Equity Interest in another Person, whether by purchase of such Equity Interest, the exercise of an option or warrant for, or conversion of securities into, such Equity Interest, or otherwise, in each case causing any Person to become a Subsidiary, (b) the acquisition of assets of another Person (other than the Company or a Subsidiary) which constitute all or substantially all of the assets of such Person or of a line or lines of business conducted by such Person, or (c) a merger or consolidation or any other combination with another Person (other than the Company or a Subsidiary); *provided* that the Company or a Subsidiary (after giving effect to such merger, consolidation or other combination) is the survivor.

“**Additional Covenants**” means any affirmative or negative covenant or any mandatory prepayment provision or any similar restriction or provision applicable to the Company or any Subsidiary (regardless of whether such provision is labeled or otherwise characterized as a covenant) the subject matter of which either (a) is similar to that of any covenant in Section 7, 9 or 10 of this Agreement, or related definitions in Schedule A of this Agreement, but contains one or more percentages, amounts or formulas that is more restrictive than those set forth herein or more beneficial to the holder or holders of the Indebtedness created or evidenced by the document in which such covenant or similar restriction is contained (and such covenant or similar restriction shall be deemed an Additional Covenant only to the extent that it is more restrictive or more beneficial) or (b) is different from the subject matter of any covenant in Section 7, 9 or 10 of this Agreement, or related definitions in Schedule A of this Agreement or is different from the subject matter of any prepayment provision in Section 8.3.

“**Additional Defaults**” means any provision contained in any document or instrument creating or evidencing Indebtedness of the Company or any Subsidiary which permits the holder or holders of Indebtedness to accelerate (with the passage of time or giving of notice or both) the maturity thereof or otherwise requires the Company or any Subsidiary to purchase such Indebtedness prior to the stated maturity thereof and which either (i) is similar to any Default or Event of Default contained in Section 11 of this Agreement, or related definitions in Schedule A of this Agreement, but contains one or more percentages, amounts or formulas that is more restrictive or has a shorter grace period than those set forth herein or is more beneficial to the holders of such other Indebtedness

(and such provision shall be deemed an Additional Default only to the extent that it is more restrictive, has a shorter grace period or is more beneficial) or (ii) is different from the subject matter of any Default or Event of Default contained in Section 11 of this Agreement, or related definitions in Schedule A of this Agreement.

**“Affiliate”** means, at any time, (a) with respect to any Person, any other Person that at such time directly or indirectly through one or more intermediaries Controls, or is Controlled by, or is under common Control with, such first Person, (b) with respect to the Company, shall include any Person beneficially owning or holding, directly or indirectly, 10% or more of any class of voting or equity interests of the Company or any Subsidiary or any Person of which the Company and its Subsidiaries beneficially own or hold, in the aggregate, directly or indirectly, 10% or more of any class of voting or equity interests and (c) with respect to Prudential, shall include any managed account, investment fund or other vehicle for which Prudential or any Prudential Affiliate acts as investment advisor or portfolio manager. As used in this definition, **“Control”** 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, by contract or otherwise. Unless the context otherwise clearly requires, any reference to an **“Affiliate”** is a reference to an Affiliate of the Company.

**“Agreement”** means this Note Purchase and Private Shelf Agreement, including all Schedules attached hereto.

**“Anti-Corruption Laws”** means any law or regulation in a U.S. or any non-U.S. jurisdiction regarding bribery or any other corrupt activity, including the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act 2010.

**“Anti-Money Laundering Laws”** means any law or regulation in a U.S. or any non-U.S. jurisdiction regarding money laundering, drug trafficking, terrorist-related activities or other money laundering predicate crimes, including the Currency and Foreign Transactions Reporting Act of 1970 (otherwise known as the Bank Secrecy Act) and the USA PATRIOT Act.

**“Authorized Officer”** means (i) in the case of the Company, its chief executive officer, its chief financial officer, any other Person authorized by the Company to act on behalf of the Company and designated as an “Authorized Officer” of the Company in Schedule C attached hereto or any other Person authorized by the Company to act on behalf of the Company and designated as an “Authorized Officer” of the Company for the purpose of this Agreement in an Officer’s Certificate executed by the Company’s chief executive officer or chief financial officer and delivered to Prudential, and (ii) in the case of Prudential, any officer of Prudential designated as its “Authorized Officer” in Schedule C or any officer of Prudential designated as its “Authorized Officer” for the purpose of this Agreement in a certificate executed by one of its Authorized Officers or a lawyer in its law department. Any action taken under this Agreement on behalf of the Company by any individual who on or after the date of this Agreement shall have been an Authorized Officer of the Company and whom Prudential in good faith believes to be an Authorized Officer of the Company at the time of such action shall be binding on the Company even though such individual shall have ceased to be an Authorized Officer of the Company, and any action taken under this Agreement on behalf of Prudential by any individual who on or after the date of this Agreement shall have been

an Authorized Officer of Prudential and whom the Company in good faith believes to be an Authorized Officer of Prudential at the time of such action shall be binding on Prudential even though such individual shall have ceased to be an Authorized Officer of Prudential.

**“Available Facility Amount”** is defined in Section 2.2(a).

**“Blocked Person”** means (a) a Person whose name appears on the list of Specially Designated Nationals and Blocked Persons published by OFAC, (b) a Person, entity, organization, country or regime that is blocked or a target of sanctions that have been imposed under U.S. Economic Sanctions Laws or (c) a Person that is an agent, department or instrumentality of, or is otherwise beneficially owned by, controlled by or acting on behalf of, directly or indirectly, any Person, entity, organization, country or regime described in clause (a) or (b).

**“Bunge Agreements”** means, collectively, (a) that certain Grain Supply Agreement dated as of January 1, 2015, by and between MGPI of Indiana, LLC and Consolidated Grain and Barge and (b) that certain Grain Supply Agreement dated as of December 22, 2014, by and between MGPI Processing and Bunge Milling, Inc., in each case as amended from time to time and together with any replacements thereof.

**“Business Day”** means (a) for the purposes of Section 8.7 only, any day other than a Saturday, a Sunday or a day on which commercial banks in New York City are required or authorized to be closed, (b) for the purpose of Section 2.2 only, a day on which Prudential is open for business, and (c) for the purposes of any other provision of this Agreement, any day other than a Saturday, a Sunday or a day on which commercial banks in New York, New York or Dallas, Texas are required or authorized to be closed.

**“Cancellation Date”** is defined in Section 2.2(h)(iv).

**“Cancellation Fee”** is defined in Section 2.2(h)(iv).

**“Capital Expenditures”** means for any period, without duplication, (a) the additions to property, plant and equipment and other capital expenditures of the Consolidated Group that are (or would be) set forth on a consolidated statement of cash flows of the Consolidated Group for such period prepared in accordance with GAAP and (b) Capital Lease Obligations incurred by the Consolidated Group during such period; *provided*, that Capital Expenditures shall not include (i) expenditures that constitute Acquisitions permitted hereunder, (ii) the purchase price of equipment that is purchased simultaneously with the trade-in of existing equipment but only to the extent that the gross amount of such purchase price is reduced by the credit granted by the seller of such equipment for the equipment being traded in at such time, or (iii) expenditures made in connection with the replacement, substitution, restoration or repair of assets to the extent financed with (x) insurance proceeds paid on account of the loss or damage to the assets being replaced, restored or repaired or (y) awards of compensation arising from the taking by eminent domain or condemnation of the assets being replaced.

**“Capital Lease”** means, at any time, a lease with respect to which the lessee is required concurrently to recognize the acquisition of an asset and the incurrence of a liability in accordance with GAAP.

**“Capital Lease Obligations”** of any Person means all obligations of such Person to pay rent or other amounts under any Capital Lease, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

**“Change of Control”** means any event or series of events by which:

(a) (i) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act, but excluding any employee benefit plan of such person or its Subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) other than the Permitted Investors becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a “person” or “group” shall be deemed to have “beneficial ownership” of all Equity Interests that such “person” or “group” has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an “option right”)), directly or indirectly, of more than 40% of the Equity Interests of the Company entitled to vote in the election of members of the board of directors (or equivalent governing body) of the Company or (ii) during any period of 12 consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Company cease to be composed of individuals (x) who were members of that board or equivalent governing body on the first day of such period, (y) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (x) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (z) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (x) and (y) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body; or

(b) there shall have occurred under any indenture or other instrument evidencing any Indebtedness of any Note Party in excess of \$10,000,000 any “change in control” or similar provision (as set forth in the indenture, agreement or other evidence of such Indebtedness) obligating the Company or any of its Subsidiaries to repurchase, redeem or repay all or any part of the Indebtedness provided for therein.

**“CISADA”** is defined in Section 5.16(a).

**“Closing”** is defined in Section 3.1.

**“Closing Day”** means, with respect to the Series A Notes, the Series A Closing Day and, with respect to any Accepted Note, the Business Day specified for the closing of the purchase and sale of such Accepted Note in the Confirmation of Acceptance for such Accepted Note, *provided* that (a) if the Company and the Purchaser which is obligated to purchase such Accepted Note agree on an earlier Business Day for such closing, the **“Closing Day”** for such Accepted Note shall be such earlier Business Day, and (b) if the closing of the purchase and sale of such Accepted Note is rescheduled pursuant to Section 3.3, the Closing Day for such Accepted Note, for all purposes of

this Agreement except references to “original Closing Day” in Section 2.2(h)(iii), shall mean the Rescheduled Closing Day with respect to such Accepted Note.

“**Code**” means the Internal Revenue Code of 1986, as amended from time to time, and the rules and regulations promulgated thereunder from time to time.

“**Collateral**” means, collectively, all property of any Note Party or any other Person on which a Lien has been granted as security for all or any portion of the Note Obligations.

“**Collateral Agent**” means Wells Fargo Bank, National Association, in its capacity as collateral agent for the benefit of the holders of Notes, and its successors and assigns in such capacity as provided under the Intercreditor Agreement.

“**Commitment Letter**” means the letter agreement dated as of July 6, 2017, between the Company and Prudential.

“**Company**” is defined in the preamble to this Agreement.

“**Confidential Information**” is defined in Section 20.

“**Confirmation of Acceptance**” is defined in Section 2.2(f).

“**Consolidated EBITDA**” means, for the Consolidated Group for any period, the sum of (a) Consolidated Net Income for such period, *plus* (b) to the extent deducted in arriving at Consolidated Net Income for such period, (i) income taxes (whether federal, state, local or otherwise), (ii) Consolidated Interest Expense, (iii) depreciation and amortization determined on a consolidated basis in accordance with GAAP for such period and (iv) other non-cash charges (except to the extent that such non-cash charges are reserved for cash charges to be taken in the future), *minus* (c) to the extent included in determining Consolidated Net Income for such period, non-cash gains or non-cash items increasing Consolidated Net Income.

“**Consolidated Fixed Charge Coverage Ratio**” means, for any period of four consecutive fiscal quarters of the Company, the ratio of (a) the remainder of (i) Consolidated EBITDA for such period *minus* (ii) dividends and distributions by the Company to its shareholders during such period (excluding any dividends paid from any pre-merger dividends or any merger, equity cancellation or other consideration received by MGPI Processing in connection with the disposition or cancellation of its Equity Interests in ICP during the period in which such dividends are paid by the Company to its shareholders), *minus* (iii) income taxes (whether federal, state, local or otherwise) paid in cash during such period, *minus* (iv) Capital Expenditures during such period (excluding Capital Expenditures constituting payments in respect of capital leases and Capital Expenditures financed by Indebtedness permitted under Section 10.2(d)), *minus* (v) share repurchases or other acquisition or retirement of any of the Company’s Equity Interests or any security convertible into or exchangeable for any of the Company’s Equity Interests (in each case excluding share repurchases and other acquisitions of stock of the Company or securities convertible therefor required to be purchased pursuant to employee stock compensation plans consistent with the plans in effect on the Series A Closing Day in an aggregate amount not to exceed (x) \$7,500,000 in any period other



than the 2019 fiscal year, or (y) \$14,200,000 in the 2019 fiscal year) to (b) Consolidated Fixed Charges for such period.

**“Consolidated Fixed Charges”** means for the Consolidated Group for any period, the sum (without duplication) of (a) Consolidated Interest Expense for such period, and (b) scheduled principal payments of Consolidated Funded Indebtedness (other than the loans outstanding under the Credit Agreement) during such period.

**“Consolidated Funded Indebtedness”** means, as of any date of determination, all outstanding liabilities for borrowed money and other interest-bearing liabilities of the Consolidated Group outstanding on such date, including, without limitation, (a) all obligations evidenced by bonds, debentures, loan agreements, notes or other similar agreements or instruments, (b) all Capital Lease Obligations and purchase money indebtedness, (c) all obligations, contingent or otherwise, in respect of drawn letters of credit, acceptances or similar extensions of credit, (d) all obligations, contingent or otherwise, to purchase, redeem, retire or otherwise acquire for value any Equity Interests of such Person (other than stock of the Company required to be purchased pursuant to employee stock compensation plans consistent with the plans in effect on the Series A Closing Day) and (e) Guarantees of Indebtedness of any of the foregoing types described in clauses (a) through (d) of this definition, after eliminating all off-setting debits and credits between members of the Consolidated Group and all other items required to be eliminated in the course of the preparation of consolidated financial statements of the Consolidated Group in accordance with GAAP.

**“Consolidated Group”** means, collectively, the Company and its Subsidiaries.

**“Consolidated Interest Expense”** means, for the Consolidated Group for any period determined on a consolidated basis in accordance with GAAP, total interest expense (including the interest component of any payments in respect of Capital Lease Obligations and the net payment obligations pursuant to Swap Contracts pertaining to interest rate transactions) during such period.

**“Consolidated Leverage Ratio”** means, as of the date of computation thereof, the ratio of (a) Consolidated Funded Indebtedness (determined as at such date) to (b) Consolidated EBITDA for the period of four consecutive fiscal quarters of the Company most recently ended on or prior to such date; *provided*, that, during any period that includes any Material Acquisition or a Material Disposition, the calculation of Consolidated EBITDA shall be made on a historical Pro Forma Basis with respect to that portion of the applicable measurement period that occurred prior to the consummation of such transaction in accordance with the following sentence. For each period of four fiscal quarters ending next following the date of any Material Acquisition or Material Disposition consummated after the date of this Agreement, for purposes of determining the Consolidated Leverage Ratio, the consolidated results of operations of the Consolidated Group shall include the results of operations of the Person or assets subject to such Material Acquisition or exclude the results of operations of the Person or assets subject to such Material Disposition, as the case may be, on a historical Pro Forma Basis to the extent information in sufficient detail concerning such historical results of such Person or assets is reasonably available, and which amounts shall include only adjustments reasonably satisfactory to the Required Holders.

**“Consolidated Net Income”** means, for any period, the net income (or loss) of the Consolidated Group for such period determined on a consolidated basis in accordance with GAAP, but excluding therefrom (to the extent otherwise included therein) (a) any extraordinary gains or losses, (b) any gains attributable to a sale of assets (other than inventory sold in the ordinary course of business) or the write-up of assets and non-cash losses attributable to the impairment of any intangible asset, (c) any Equity Interest of any member of the Consolidated Group in the unremitted earnings of any Person that is not a Subsidiary and (d) except to the extent included pursuant to the last sentence in the definition of “Consolidated Leverage Ratio”, any income (or loss) of any Person accrued prior to the date it becomes a Subsidiary of or is merged into or consolidated with a member of the Consolidated Group or the date that such Person’s assets are acquired by a member of the Consolidated Group.

**“Control Event”** means:

(a) the execution by any Note Party or their respective Affiliates of any agreement or letter of intent with respect to any proposed transaction or event or series of transactions or events which, individually or in the aggregate, may reasonably be expected to result in a Change of Control,

(b) the execution of any written agreement which, when fully performed by the parties thereto, would result in a Change of Control, or

(c) the making of any written offer by any person (as such term is used in section 13(d) and section 14(d)(2) of the Exchange Act as in effect on the date of this Agreement) or related persons constituting a group (as such term is used in Rule 13d-5 under the Exchange Act as in effect on the date of this Agreement) to the holders of the Equity Interests of the Company, which offer, if accepted by the requisite number of holders, would result in a Change of Control.

**“Controlled Entity”** means (i) any of the Subsidiaries of the Company and any of their or the Company’s respective Controlled Affiliates and (ii) if the Company has a parent company, such parent company and its Controlled Affiliates. As used in this definition, **“Control”** 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, by contract or otherwise.

**“Credit Agreement”** means the Credit Agreement dated as of the date of this Agreement, by and between the Company and the Credit Agreement Lenders, as the same may be amended, restated, supplemented, replaced, refinanced or otherwise modified from time to time.

**“Credit Agreement Lenders”** means the lenders from time to time party to the Credit Agreement.

**“Credit Agreement Obligations”** means the “Obligations” as defined in the Credit Agreement.

**“Credit Documents”** means the Credit Agreement, the Security Documents, the Intercreditor Agreement and all documents, instruments and agreements delivered in connection with the foregoing.

**“Customer Owned Inventory”** means inventory owned by a customer of the Company or any of its Subsidiaries and with respect to which the Company or any of its Subsidiaries is acting as a bailee or the like or is otherwise storing or disposing of such inventory at the request of or for the benefit of such customer or its assignee, including any lender to such customer, in each case so long as such inventory is owned by such customer.

**“Default”** means an event or condition the occurrence or existence of which would, with the lapse of time or the giving of notice or both, become an Event of Default.

**“Default Rate”** means that rate of interest per annum that is the greater of (a) 2.00% above the rate of interest stated in clause (a) of the first paragraph of the Notes or (b) 2.00% over the rate of interest publicly announced by JPMorgan Chase Bank in New York, New York as its “base” or “prime” rate.

**“Delayed Delivery Fee”** is defined in Section 2.2(h)(iii).

**“Disclosure Documents”** is defined in Section 5.3.

**“Disposition”** or **“Dispose”** means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any note or accounts receivable or any rights and claims associated therewith.

**“EDGAR”** means the SEC’s Electronic Data Gathering, Analysis and Retrieval System or any successor SEC electronic filing system for such purposes.

**“Eligible Investments”** means:

(a) direct obligations of, or obligations the timely payment of principal or interest of which are fully and unconditionally guaranteed by the United States of America or any agency thereof;

(b) obligations of any corporation organized under the laws of any state of the United States of America or under the laws of any other nation, payable in the United States of America, expressed to mature not later than 270 days following the date of issuance thereof and having one of the two highest ratings obtainable from either S&P Global Ratings, a division of S&P Global, Inc. (**“S&P”**), or Moody’s Investor’s Services, Inc. (**“Moody’s”**);

(c) interest bearing demand or time deposits or certificates of deposit maturing within one year from the date of issuance thereof and issued by a bank or trust company organized under the laws of the United States or of any state thereof having capital surplus and undivided profits aggregating at least \$1,000,000,000 and being rated “A” or better by S&P or “A” or better by Moody’s;

(d) deposit accounts maintained with any bank that satisfies the criteria in clause (c) above or 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 bank is insured by the Federal Deposit Insurance Corporation; and

(e) any other investments expressly approved in writing by the Required Holders.

**“Environmental Laws”** means any and all federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including but not limited to those related to Hazardous Materials.

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

**“Equity Interests”** means as to any Person, all capital stock, partnership interests, membership interests, beneficial interests in a trust or other indicia of equity rights issued by such Person from time to time, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest.

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

**“ERISA Affiliate”** means any trade or business (whether or not incorporated) that is treated as a single employer together with the Company under section 414 of the Code.

**“Event of Default”** is defined in Section 11.

**“Exchange Act”** means the Securities Exchange Act of 1934, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

**“Existing Credit Agreement”** means that certain Third Amended and Restated Credit Agreement dated as of March 21, 2016, by and among the Company, certain Subsidiaries party thereto, as borrowers, Wells Fargo Bank, National Association, as administrative agent, and the lenders from time to time party thereto.

**“Existing Supply Agreements”** means, collectively, (a) each Bunge Agreement and (b) that certain Supply Agreement dated July 10, 2015, by and between Ardent Mills, LLC and MGPI Processing, as amended from time to time and together with any replacements thereof.

**“Facility”** is defined in Section 2.2(a).

**“Family Trust”** means, in respect of any individual, any trust for the exclusive benefit of such individual, his/her spouse and lineal descendants, so long as such individual has the exclusive right to control such trust.

**“FATCA”** means (a) sections 1471 through 1474 of the Code, 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), together with any current or future regulations or official interpretations thereof, (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the United States of America and any other jurisdiction, which (in either case) facilitates the implementation of the foregoing clause (a), and (c) any agreements entered into pursuant to section 1471(b)(1) of the Code.

**“Form 10-K”** is defined in Section 7.1(b).

**“Form 10-Q”** is defined in Section 7.1(a).

**“GAAP”** means generally accepted accounting principles as in effect from time to time in the United States of America. Notwithstanding anything in this Agreement to the contrary, any lease that would have been accounted for as an operating lease on a balance sheet of such Person prepared in conformity with GAAP as in effect on the date of this Agreement shall be deemed not to be a Capital Lease.

**“Governmental Authority”** means

- (a) the government of
  - (i) the United States of America or any state or other political subdivision thereof, or
  - (ii) any other jurisdiction in which the Company or any Subsidiary conducts all or any part of its business, or which asserts jurisdiction over any properties of the Company or any Subsidiary, or
- (b) any entity exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, any such government.

**“Governmental Official”** means any governmental official or employee, employee of any government-owned or government-controlled entity, political party, any official of a political party, candidate for political office, official of any public international organization or anyone else acting in an official capacity.

**“Guarantor”** means each Subsidiary that is a party to the Subsidiary Guaranty Agreement and any other Person that Guarantees the Note Obligations.

**“Guaranty”** means, with respect to any Person, any obligation (except the endorsement in the ordinary course of business of negotiable instruments for deposit or collection) of such Person guaranteeing or in effect guaranteeing any indebtedness, dividend or other obligation of any other Person in any manner, whether directly or indirectly, including (without limitation) obligations incurred through an agreement, contingent or otherwise, by such Person:

- (a) to purchase such indebtedness or obligation or any property constituting security therefor;
- (b) to advance or supply funds (i) for the purchase or payment of such indebtedness or obligation, or (ii) to maintain any working capital or other balance sheet condition or any income statement condition of any other Person or otherwise to advance or make available funds for the purchase or payment of such indebtedness or obligation;
- (c) to lease properties or to purchase properties or services primarily for the purpose of assuring the owner of such indebtedness or obligation of the ability of any other Person to make payment of the indebtedness or obligation; or
- (d) otherwise to assure the owner of such indebtedness or obligation against loss in respect thereof.

In any computation of the indebtedness or other liabilities of the obligor under any Guaranty, the indebtedness or other obligations that are the subject of such Guaranty shall be assumed to be direct obligations of such obligor.

**“Guaranty Agreements”** means, collectively, the Subsidiary Guaranty Agreement and all other agreements pursuant to which any other Person guarantees all or any portion of the Note Obligations.

**“Hazardous Materials”** means any and all pollutants, toxic or hazardous wastes or other substances that might pose a hazard to health and safety, the removal of which may be required or the generation, manufacture, refining, production, processing, treatment, storage, handling, transportation, transfer, use, disposal, release, discharge, spillage, seepage or filtration of which is or shall be restricted, prohibited or penalized by any applicable law including, but not limited to, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum, petroleum products, lead based paint, radon gas or similar restricted, prohibited or penalized substances.

**“Hedge Treasury Note(s)”** means, with respect to any Accepted Note, the United States Treasury Note or Notes whose duration (as determined by Prudential) most closely matches the duration of such Accepted Note.

“**holder**” means, with respect to any Note, the Person in whose name such Note is registered in the register maintained by the Company pursuant to Section 13.1, *provided, however*, that if such Person is a nominee, then for the purposes of Sections 7, 12, 17.2 and 18 and any related definitions in this Schedule A, “holder” shall mean the beneficial owner of such Note whose name and address appears in such register.

“**Hostile Tender Offer**” means, with respect to the use of proceeds of any Note, any offer to purchase, or any purchase of, shares of capital stock of any corporation or equity interests in any other entity, or securities convertible into or representing the beneficial ownership of, or rights to acquire, any such shares or equity interests, if such shares, equity interests, securities or rights are of a class which is publicly traded on any securities exchange or in any over-the-counter market, other than purchases of such shares, equity interests, securities or rights representing less than 5% of the equity interests or beneficial ownership of such corporation or other entity for portfolio investment purposes, and such offer or purchase has not been duly approved by the board of directors of such corporation or the equivalent governing body of such other entity prior to the date on which the Company makes the Request for Purchase of such Note.

“**ICM Lease**” means that certain Equipment Lease Agreement dated as of August 16, 2017, between MGPI Processing, as lessor, and ICM, Inc., as lessee.

“**ICP**” means Illinois Corn Processing, LLC, a Delaware limited liability company.

“**INHAM Exemption**” is defined in Section 6.2(e).

“**Incremental Equivalent Debt**” is defined in Section 10.2(k).

“**Indebtedness**” with respect to any Person means, at any time, without duplication,

(a) all obligations of such Person for borrowed money;

(b) all obligations of such Person evidenced by bonds, debentures, loan agreements, notes or other similar agreements or instruments;

(c) all obligations of such Person in respect of the deferred purchase price of property or services (other than current trade payables incurred in the ordinary course of business);

(d) all obligations of such Person under any conditional sale or other title retention agreement(s) relating to property acquired by such Person;

(e) all Capital Lease Obligations of such Person;

(f) all obligations, contingent or otherwise, of such Person in respect of letters of credit, acceptances or similar extensions of credit;

(g) all Guarantees of such Person of the type of Indebtedness described in clauses (a) through (f) above;

(h) all Indebtedness of a third party secured by any Lien on property owned by such Person, whether or not such Indebtedness has been assumed by such Person;

(i) all obligations of such Person, contingent or otherwise, to purchase, redeem, retire or otherwise acquire for value any Equity Interests of such Person;

(j) all Off-Balance Sheet Liabilities; and

(k) the Swap Termination Value under any Swap Contract of such Person.

The Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture in which such Person is a general partner or a joint venturer, except to the extent that the terms of such Indebtedness or applicable law provide that such Person is not liable therefor.

**“Institutional Investor”** means (a) any Purchaser of a Note, (b) any holder of a Note holding (together with one or more of its affiliates) more than 5.00% of the aggregate principal amount of the Notes of any Series then outstanding, (c) any bank, trust company, savings and loan association or other financial institution, any pension plan, any investment company, any insurance company, any broker or dealer, or any other similar financial institution or entity, regardless of legal form, and (d) any Related Fund of any holder of any Note.

**“Intercreditor Agreement”** means the Collateral Agency and Intercreditor Agreement dated as of the date of this Agreement, in form and substance reasonably satisfactory to the Purchasers, by and among the Senior Lenders, the holders of Notes and the Collateral Agent, and acknowledged by the Note Parties.

**“Investment”** is defined in Section 10.6.

**“IRB Property”** has the meaning given to such term in the definition of Permitted IRB Financings.

**“Issuance Period”** is defined in Section 2.2(b).

**“Lien”** means any mortgage, pledge, security interest, lien (statutory or otherwise), charge, encumbrance, hypothecation, assignment, deposit arrangement, or other arrangement having the practical effect of the foregoing or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement and any capital lease having the same economic effect as any of the foregoing). For the avoidance of doubt, a Lien shall not include any owner’s, bailor’s or similar interest with respect to any Customer Owned Inventory.

**“Make-Whole Amount”** is defined in Section 8.7.

**“Material”** means material in relation to the business, operations, affairs, financial condition, assets, properties, or prospects of the Company and its Subsidiaries taken as a whole.



**“Material Acquisition”** means any Acquisition or series of related Acquisitions consummated after the date of this Agreement involving aggregate consideration with a fair market value in excess of \$10,000,000.

**“Material Adverse Effect”** means a material adverse effect on (a) the business, operations, affairs, financial condition, assets or properties of the Company and its Subsidiaries taken as a whole, (b) the ability of any Note Party to perform any of its obligations under any of the Note Documents, (c) any rights and remedies of any holder of a Note or the Collateral Agent under any Note Document, or (d) the legality, validity or enforceability of any of the Note Documents.

**“Material Contracts”** means (any contract or other agreement (other than the Note Documents and any documents or agreements pertaining to any Indebtedness permitted by Sections 10.2(i) or (k), whether written or oral, to which any Note Party is a party that involves payments in an aggregate amount of more than \$25,000,000 or as to which the breach, nonperformance, cancellation or failure to renew by any party thereto would have a Material Adverse Effect, (b) as of the Series A Closing Day, (i) each Existing Supply Agreement and (ii) that certain Distillate Supply Agreement dated as of July 1, 2013 between Diageo Americas Supply, Inc. and MGPI of Indiana, LLC and (c) after the Series A Closing Day, each agreement described in clause (b) above, if then in effect, together with any amendments, restatements or other modifications thereof entered into after the Series A Closing Day.

**“Material Credit Facility”** means, as to the Company and its Subsidiaries,

(a) the Credit Agreement, including any renewals, extensions, amendments, supplements, restatements, replacements or refinancing thereof; and

(b) any other agreement(s) creating or evidencing indebtedness for borrowed money entered into on or after the date of this Agreement by the Company or any Subsidiary, or in respect of which the Company or any Subsidiary is an obligor or otherwise provides a Guaranty or other credit support (**“Credit Facility”**), in a principal amount outstanding or available for borrowing equal to or greater than \$10,000,000 (or the equivalent of such amount in the relevant currency of payment, determined as of the date of the closing of such facility based on the exchange rate of such other currency); and if no Credit Facility or Credit Facilities equal or exceed such amounts, then the largest Credit Facility shall be deemed to be a Material Credit Facility.

**“Maturity Date”** is defined in the first paragraph of each Note.

**“Material Disposition”** means any Disposition or series of related Dispositions consummated after the date of this Agreement involving aggregate consideration with a fair market value in excess of \$1,000,000.

**“MGPI Processing”** means MGPI Processing, Inc., a Kansas corporation.

**“Multiemployer Plan”** means any Plan that is a “multiemployer plan” (as such term is defined in section 4001(a)(3) of ERISA).

“**NAIC**” means the National Association of Insurance Commissioners or any successor thereto.

“**Non-U.S. Plan**” means any plan, fund or other similar program that (a) is established or maintained outside the United States of America by the Company or any Subsidiary primarily for the benefit of employees of the Company or one or more Subsidiaries residing outside the United States of America, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement or payments to be made upon termination of employment, and (b) is not subject to ERISA or the Code.

“**Note Documents**” means this Agreement, the Notes, the Guaranty Agreements, the Intercreditor Agreement, the Security Documents and all other documents now or hereafter executed and delivered by or on behalf of a Note Party pursuant to or in connection with any of the foregoing or any of the transactions contemplated hereby, and any and all amendments, supplements and other modifications to any of the foregoing.

“**Note Obligations**” means, collectively, all Indebtedness evidenced by the Notes and all present and future Indebtedness, liabilities and obligations (including indemnities), and renewals, increases and extensions thereof, or any part thereof, now or in the future owed to any Purchaser or any holder of any Note by any Note Party under any Note Document, together with all interest accruing thereon (including any interest accruing after the filing of any petition in bankruptcy or the commencement of any insolvency, reorganization or like proceeding relating to any Note Party, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), the Make-Whole Amount with respect to any Note, fees, costs and expenses (including all attorney’s fees and expenses incurred in the enforcement or collection thereof) payable under the Note Documents or in connection with the protection of rights or exercise of remedies under the Note Documents.

“**Note Parties**” means, collectively, the Company and the Guarantors.

“**Notes**” is defined in Section 1.2.

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

“**OFAC Sanctions Program**” means any economic or trade sanction that OFAC is responsible for administering and enforcing. A list of OFAC Sanctions Programs may be found at <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>.

“**Off-Balance Sheet Liabilities**” of any Person means (a) any repurchase obligation or liability of such Person with respect to accounts or notes receivable sold by such Person, (b) any liability of such Person under any sale and leaseback transactions which do not create a liability on the balance sheet of such Person, (c) any liability of such Person under any so-called “synthetic” lease transaction or (d) any obligation arising with respect to any other transaction which is the functional equivalent of or takes the place of borrowing but which does not constitute a liability on the balance sheet of such Person.

“**Officer’s Certificate**” means a certificate of a Senior Financial Officer or of any other officer of the Company whose responsibilities extend to the subject matter of such certificate.

“**PBGC**” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA or any successor thereto.

“**Permitted Acquisition**” means any Acquisition by any Note Party; *provided*, that:

(a) no Default or Event of Default shall have occurred and be continuing either before or after giving effect to such Acquisition and any Indebtedness incurred in connection therewith;

(b) the total cash and noncash consideration (including the fair market value of all Equity Interests issued or transferred to the sellers thereof, all indemnities, earn-outs and other contingent payment obligations to, and the aggregate amounts paid or to be paid under non-compete, consulting and other affiliated agreements with, the sellers thereof, all write-downs of property and reserves for liabilities with respect thereto and all assumptions of debt, liabilities and other obligations in connection therewith) paid by or on behalf of the Company and its Subsidiaries for any such Acquisition, when aggregated with the total cash and non-cash consideration paid by or on behalf of the Company and its Subsidiaries for all other Acquisitions made by the Company and its Subsidiaries, shall not exceed \$100,000,000 in any fiscal year;

(c) such Acquisition is not a “hostile” acquisition and, if required by applicable law, has been approved by the board of directors and/or shareholders (or comparable persons or groups) of the applicable Note Party and the Person to be (or whose assets are to be) acquired;

(d) the lines of business of the Person to be so acquired are permitted pursuant to Section 10.4 or, in the case of an Acquisition of assets, the assets acquired are useful in the business of the Company and its Subsidiaries as conducted immediately prior to such Acquisition;

(e) all of the requirements set forth in Section 9.7 are satisfied;

(f) the Consolidated Leverage Ratio calculated on a Pro Forma Basis (as of the closing date of the Acquisition after giving effect thereto) shall be no greater than 2.75 to 1.00; and

(g) in the case of a Material Acquisition, at least five Business Days before the date on which any such Acquisition is to be consummated, the Company has delivered to each holder of a Note (i) a certificate from a Responsible Officer of the Company, in form and substance reasonably satisfactory to the Required Holders, (A) certifying that all of the requirements set forth in clauses (a) through (f) have been satisfied or will be satisfied on or prior to the consummation of such Acquisition and (B) certifying and attaching copies of Permitted Acquisition Documents, which shall be in form and substance reasonably satisfactory to the Required Holders, and (ii) if requested by the Required Holders, a 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 the Required Holders.

**“Permitted Acquisition Documents”** means with respect to any Acquisition proposed by any Note Party, final copies or substantially final drafts if not executed at the required time of delivery of the purchase agreement, sale agreement, merger agreement or other agreement evidencing such Acquisition and each other document executed, delivered, contemplated by or prepared in connection therewith and any amendment, modification or supplement to any of the foregoing.

**“Permitted Encumbrances”** means, collectively, (a) Liens imposed by law for taxes, assessments or governmental charges or levies on property not yet due or which are being contested in good faith by appropriate proceedings and with respect to which adequate reserves are being maintained in accordance with GAAP, (b) statutory Liens of landlords and Liens of carriers, warehousemen, mechanics, materialmen and other Liens imposed by law created in the ordinary course of business for amounts not yet due or which are being contested in good faith by appropriate proceedings and with respect to which adequate reserves are being maintained in accordance with GAAP, (c) pledges and deposits made in the ordinary course of business in compliance with workers’ compensation, unemployment insurance and other social security laws or regulations, (d) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business, (e) judgment and attachment liens not giving rise to an Event of Default, (f) customary Liens and rights of setoff upon deposits in favor of depository institutions and Liens of a collecting bank on payment items in the course of collection, in each case except to the extent required to be waived or subordinated pursuant to a control agreement or subordination agreement in favor of the Collateral Agent required to be executed and delivered pursuant to this Agreement, (g) any interest of title of a lessor under, and Liens arising from precautionary Uniform Commercial Code financing statements (or equivalent filings, registrations or agreements) relating to, leases permitted by this Agreement, and (h) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or materially interfere with the ordinary conduct of business of the Company or any Subsidiary; *provided*, that the term “Permitted Encumbrances” shall not include any Lien securing Indebtedness or any leasing or subleasing of real property that is not approved in advance in writing by the Required Holders.

**“Permitted Investors”** means any of (a) Karen Seaberg, (b) Richard B. Cray and (c) Laidacker M. Seaberg, or any Family Trust of such Persons.

**“Permitted IRB Financings”** means financings, in an aggregate principal amount outstanding at any time not to exceed \$10,000,000, in the nature of industrial revenue bonds or the like issued by a state, county, municipality or similar political subdivision or an industrial revenue authority or similar issuer in connection with the acquisition, construction, installation and/or equipping of land or real property improvements and/or personal property located thereon to be used in the manufacture or storage of whiskey, including but not limited to whiskey maturation warehouses or similar facilities and barrels to fill such warehouses or similar facilities, but excluding

whiskey distillate stored in such barrels (collectively, the “**IRB Property**”), and whereby the Company or one of its Subsidiaries may transfer all or a portion of such IRB Property to the issuer of such bonds (whether pursuant to a sale or a lease) and whereby, in such event, the Company or such Subsidiary, as applicable shall lease back or otherwise acquire from such issuer a leasehold or similar interest in such IRB Property. Notwithstanding the foregoing, no such financing shall constitute a Permitted IRB Financing if the real property subject to such financing was acquired by the Company or a Subsidiary more than one year before the issuance of the industrial revenue bonds related to such real property.

“**Permitted Real Estate**” means real estate owned by the Company or one or more of its Subsidiaries and located at or near: 16 Kansas Avenue, Kansas City, Kansas; 10 Berger Avenue, Kansas City, Kansas; 101 Commercial Street, Atchison, Kansas; and 68, 72, 84, 102 and 108 Ridge Avenue, Greendale, Indiana.

“**Permitted Refinancing**” means, with respect to any Person, any modification, refinancing, refunding, renewal, restructuring, replacement or extension of any Indebtedness of such Person (whether with the same or different lenders); *provided*, that (a) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, restructured, refunded, renewed, replaced or extended except by an amount equal to unpaid accrued interest and premium thereon, (b) such modification, refinancing, refunding, renewal, replacement or extension has a final maturity date equal to or later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended, (c) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to Section 10.2(i), at the time thereof, no Default or Event of Default shall have occurred and be continuing, (d) if such Indebtedness being modified, refinanced, refunded, renewed or extended is secured, the terms and conditions relating to collateral of any such modified, refinanced, refunded, renewed or extended Indebtedness, taken as a whole, are not materially less favorable to the Note Parties or the holders of the Notes than the terms and conditions with respect to the collateral for the Indebtedness being modified, refinanced, refunded, renewed or extended, taken as a whole (and the Liens on any Collateral securing any such modified, refinanced, refunded, renewed or extended Indebtedness shall have the same (or lesser) priority relative to the Liens on the Collateral securing the Note Obligations), (e) the terms and conditions (excluding any amortization, collateral, subordination, pricing, fees, rate floors, discounts, premiums and optional prepayment or redemption terms) of any such modified, refinanced, refunded, renewed or extended Indebtedness, taken as a whole, shall not be materially less favorable to the Note Parties than the Indebtedness being modified, refinanced, refunded, renewed or extended, except for covenants or other provisions applicable only to periods after the Maturity Date of all Notes then outstanding (f) such modification, refinancing, refunding, renewal or extension is incurred by the Person who is the obligor on the Indebtedness being modified, refinanced, refunded, renewed or extended, and (g) if such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is subordinated in right of payment to the Note Obligations, such modification, refinancing, refunding, renewal, replacement or extension is subordinated in right of payment to the Note Obligations on terms (i) at least as favorable (taken as a whole) (as reasonably determined by the Company) to the holders of Notes as those contained in the documentation governing the

Indebtedness being modified, refinanced, refunded, renewed, replaced or extended, and such modification, refinancing, refunding, renewal, replacement or extension is incurred by one or more Persons who is an obligor of the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended or (ii) otherwise reasonably acceptable to the Required Holders.

**“Person”** means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization, business entity or Governmental Authority.

**“Plan”** means an “employee benefit plan” (as defined in section 3(3) of ERISA) subject to Title I of ERISA that is or, within the preceding five years, has been established or maintained, or to which contributions are or, within the preceding five years, have been made or required to be made, by the Company or any ERISA Affiliate or with respect to which the Company or any ERISA Affiliate may have any liability.

**“Pledge Agreement”** means the Pledge Agreement dated as of the date of this Agreement, made by each Note Party in favor of the Collateral Agent.

**“Pro Forma Basis”** means, with respect to compliance with any test hereunder for an applicable period of measurement, for any Investment, Disposition, incurrence or repayment of Indebtedness, Restricted Payment, discontinuance of operations or any other event or action requiring or permitting such test to be calculated on a “Pro Forma Basis”, the following shall be deemed to have occurred as of the first day of the applicable period of measurement (as of the last date in the case of a balance sheet item) in such test, in each case on a basis consistent with Article 11 of Regulation S-X of the Exchange Act, as interpreted by the Securities and Exchange Commission or otherwise as approved by the Required Holders: (i) income statement items (whether positive or negative) attributable to the property or person subject to such transaction, event or action (A) in the case of a Disposition of all or substantially all Equity Interests in any Subsidiary of the Company or any division, product line, or facility used for operations of the Company or any of its Subsidiaries, shall be excluded, and (B) in the case of a Permitted Acquisition or Investment, shall be included, (ii) any Indebtedness which is retired shall be excluded and shall be deemed to have been retired as of the first day of the applicable period of measurement, and (iii) any Indebtedness incurred or assumed by the Company and its Subsidiaries and if such indebtedness has a floating or formula rate, shall have an implied rate of interest for the applicable period for purposes of this definition determined by utilizing the rate which is or would be in effect with respect to such Indebtedness as at the relevant date of determination.

**“property”** or **“properties”** means, unless otherwise specifically limited, real or personal property of any kind, tangible or intangible, choate or inchoate.

**“Prudential”** is defined in the addressee line to this Agreement.

**“Prudential Affiliate”** means any Affiliate of Prudential.

**“PTE”** is defined in Section 6.2(a).

**“Purchaser”** is defined in the addressee line to this Agreement.

**“Qualified Institutional Buyer”** means any Person who is a “qualified institutional buyer” within the meaning of such term as set forth in Rule 144A(a)(1) under the Securities Act.

**“QPAM Exemption”** is defined in Section 6.2(d).

**“Rate Lock Cancellation Fee”** is defined in the Commitment Letter.

**“Rate Lock Delayed Delivery Fee”** is defined in the Commitment Letter.

**“Related Fund”** means, with respect to any holder of any Note, any fund or entity that (i) invests in Securities or bank loans, and (ii) is advised or managed by such holder, the same investment advisor as such holder or by an affiliate of such holder or such investment advisor.

**“Request for Purchase”** is defined in Section 2.2(d).

**“Required Holders”** means, at any time on or after the Closing, the holders of at least 50.1% in principal amount of the Notes at the time outstanding (exclusive of Notes then owned by the Company or any of its Affiliates).

**“Rescheduled Closing Day”** is defined in Section 3.3.

**“Responsible Officer”** means any Senior Financial Officer and any other officer of the Company with responsibility for the administration of the relevant portion of this Agreement.

**“Restricted Payment”** means (a) any dividend or other distribution, direct or indirect, on account of any Equity Interest of any member of the Consolidated Group now or hereafter outstanding, (b) any redemption, conversion, exchange, retirement or similar payment, purchase or other acquisition for value, direct or indirect, of any Equity Interest of any member of the Consolidated Group now or hereafter outstanding, and (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire Equity Interest of any member of the Consolidated Group now or hereafter outstanding.

**“SEC”** means the Securities and Exchange Commission of the United States, or any successor thereto.

**“Security Agreement”** means the Security Agreement dated as of the date of this Agreement, made by each Note Party (including, without limitation, by any joinder to the Security Agreement (in the form contemplated thereby)) in favor of the Collateral Agent.

**“Security Documents”** means, collectively, the Security Agreement, the Pledge Agreement, each control agreement and any other agreement or instrument pursuant to which any Note Party or any other Person grants or purports to grant a Lien to secure all or any portion of the Note Obligations.

**“Securities”** or **“Security”** shall have the meaning specified in section 2(1) of the Securities Act.

“**Securities Act**” means the Securities Act of 1933, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

“**Senior Financial Officer**” means the president, chief financial officer, principal accounting officer, treasurer or comptroller of the Company.

“**Series**” is defined in Section 1.2.

“**Series A Closing**” is defined in Section 3.1.

“**Series A Closing Day**” is defined in Section 3.1.

“**Series A Notes**” is defined in Section 1.1.

“**Series A Purchaser**” is defined in the addressee line to this Agreement.

“**Shelf Closing**” means, with respect to any Series of Shelf Notes, the closing of the sale and purchase of such Series of Shelf Notes.

“**Shelf Notes**” is defined in Section 1.2.

“**Source**” is defined in Section 6.2.

“**Structuring Fee**” is defined in Section 2.2(h)(i).

“**State Sanctions List**” means a list that is adopted by any state Governmental Authority within the United States of America pertaining to Persons that engage in investment or other commercial activities in Iran or any other country that is a target of economic sanctions imposed under U.S. Economic Sanctions Laws.

“**Subsidiary**” means, as to any Person, any other Person in which such first Person or one or more of its Subsidiaries or such first Person and one or more of its Subsidiaries owns sufficient equity or voting interests to enable it or them (as a group) ordinarily, in the absence of contingencies, to elect a majority of the directors (or Persons performing similar functions) of such second Person, and any partnership or joint venture if more than a 50% interest in the profits or capital thereof is owned by such first Person or one or more of its Subsidiaries or such first Person and one or more of its Subsidiaries (unless such partnership or joint venture can and does ordinarily take major business actions without the prior approval of such Person or one or more of its Subsidiaries). Unless the context otherwise clearly requires, any reference to a “Subsidiary” is a reference to a Subsidiary of the Company.

“**Subsidiary Guarantor**” means such Subsidiary that has executed and delivered a Subsidiary Guaranty.

“**Subsidiary Guaranty**” is defined in Section 9.7(a).



**“Subsidiary Guaranty Agreement”** means the Guaranty Agreement dated as of the date of this Agreement, made by each Subsidiary Guarantor in favor of the holders of Notes.

**“Substitute Purchaser”** is defined in Section 21.

**“Super-Majority Holders”** means at any time on or after the Closing, the holders of at least 66-2/3% in principal amount of the Notes at the time outstanding (exclusive of Notes then owned by the Company or any of its Affiliates).

**“SVO”** means the Securities Valuation Office of the NAIC or any successor to such Office.

**“Swap Contract”** means (a) any and all interest rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a **“Master Agreement”**), including any such obligations or liabilities under any Master Agreement.

**“Swap Termination Value”** means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts).

**“United States Person”** has the meaning set forth in Section 7701(a)(30) of the Code.

**“USA PATRIOT Act”** means United States Public Law 107-56, Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

**“U.S. Economic Sanctions”** means those laws, executive orders, enabling legislation or regulations administered and enforced by the United States pursuant to which economic sanctions have been imposed on any Person, entity, organization, country or regime, including the Trading with the Enemy Act, the International Emergency Economic Powers Act, the Iran Sanctions Act, the Sudan Accountability and Divestment Act and any other OFAC Sanctions Program.

**“Weighted Average Life to Maturity”** means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (b) the then outstanding principal amount of such Indebtedness.

**“Wholly-Owned Subsidiary”** means, at any time, any Subsidiary all of the equity interests (except directors’ qualifying shares) and voting interests of which are owned by any one or more of the Company and the Company’s other Wholly-Owned Subsidiaries at such time.

**PURCHASER SCHEDULE**

**MGP Ingredients, Inc.**  
**3.53% Senior Secured Notes due August 23, 2027**

	<b><u>Aggregate Principal Amount of Notes to be Purchased</u></b>	<b><u>Note Denomination</u></b>
<b>THE PRUDENTIAL INSURANCE COMPANY OF AMERICA</b>	<b>\$10,000,000.00</b>	<b>\$10,000,000.00</b>

- (1) All payments on account of Notes held by such purchaser shall be made by wire transfer of immediately available funds for credit to:

JPMorgan Chase Bank, NA  
New York, NY  
ABA No.: #####  
Account Name: #####  
Account No.: ##### (please do not include spaces)

Each such wire transfer shall set forth the name of the Company, a reference to "3.53% Senior Secured Notes due August 23, 2027, Security No.##### and the due date and application (as among principal, interest and Make-Whole Amount) of the payment being made.

- (2) Address for all communications and notices:

The Prudential Insurance Company of America  
c/o Prudential Capital Group  
2200 Ross Ave.  
Suite 4100E  
Dallas, TX 75201

Attention: Managing Director  
cc: Vice President and Corporate Counsel

and for all notices relating solely to scheduled principal and interest payments to

The Prudential Insurance Company of America  
c/o PGIM, Inc.  
Prudential Tower  
655 Broad Street  
14th Floor - South Tower  
Newark, NJ 07102

Attention: PIM Private Accounting Processing Team  
Email: Pim.Private.Accounting.Processing.Team@prudential.com

- (3) Address for Delivery of Notes:

(a) Send physical security by nationwide overnight delivery service to:

PGIM, Inc.  
655 Broad Street  
14th Floor - South Tower  
Newark, NJ 07102

Attention: Michael Iacono - Trade Management Manager

(b) Send copy by email to:

Kimberly Perdue  
kimberly.perdue@prudential.com  
(214) #####

and

#####@Prudential.com

(4) Tax Identification No.: 22-1211670

**PURCHASER SCHEDULE**

**MGP Ingredients, Inc.**  
**3.53% Senior Secured Notes due August 23, 2027**

<b><u>Aggregate Principal Amount of Notes to be Purchased</u></b>	<b><u>Note Denomination</u></b>
<b>\$8,850,000.00</b>	<b>\$8,850,000.00</b>

**THE PRUDENTIAL LIFE INSURANCE COMPANY, LTD.**

- (1) All payments on account of Notes held by such purchaser shall be made by wire transfer of immediately available funds for credit to:

JPMorgan Chase Bank, NA  
New York, NY  
ABA No.: 021000021  
Account Name: #####  
Account No.: ##### (please do not include spaces)

Each such wire transfer shall set forth the name of the Company, a reference to "3.53% Senior Secured Notes due August 23, 2027, Security No. #####, PPN: ##### and the due date and application (as among principal, interest and Make-Whole Amount) of the payment being made.

- (2) All payments, other than principal, interest or Make-Whole Amount, on account of Notes held by such purchaser shall be made by wire transfer of immediately available funds for credit to:

JPMorgan Chase Bank  
New York, NY  
ABA No. 021-000-021  
Account No. 304199036  
Account Name: Prudential International Insurance Service Co.

Each such wire transfer shall set forth the name of the Company, a reference to "3.53% Senior Secured Notes due August 23, 2027, Security No. #####, PPN: ##### and the due date and application (e.g., type of fee) of the payment being made.

- (3) Address for all communications and notices:

Prudential Private Placement Investors, L.P.  
c/o Prudential Capital Group  
2200 Ross Ave.  
Suite 4100E  
Dallas, TX 75201

Attention: Managing Director  
cc: Vice President and Corporate Counsel

and for all notices relating solely to scheduled principal and interest payments to

The Prudential Life Insurance Company, Ltd.  
2-13-10, Nagatacho  
Chiyoda-ku, Tokyo 100-0014, Japan

Attention: Kazuhito Ashizawa, Team Leader of Investment  
Administration Team

E-mail: #####@prudential.co.jp

and e-mail copy to:

Attention: Kohei Imamura, Manager of Investment  
Administration Team

E-mail: #####@prudential.co.jp

(4) Address for Delivery of Notes:

(a) Send physical security by nationwide overnight delivery service to:

PGIM, Inc.  
655 Broad Street  
14th Floor - South Tower  
Newark, NJ 07102

Attention: Michael Iacono - Trade Management Manager

(b) Send copy by email to:

Kimberly Perdue  
#####@prudential.com  
(214) #####

and

#####@Prudential.com

(5) Tax Identification No.: 98-0433392

**PURCHASER SCHEDULE**

**MGP Ingredients, Inc.**  
**3.53% Senior Secured Notes due August 23, 2027**

	<b><u>Aggregate Principal Amount of Notes to be Purchased</u></b>	<b><u>Note Denomination</u></b>
<b>PRUDENTIAL RETIREMENT INSURANCE AND ANNUITY COMPANY</b>	<b>\$1,150,000.00</b>	<b>\$1,150,000.00</b>

- (1) All payments on account of Notes held by such purchaser shall be made by wire transfer of immediately available funds for credit to:

JPMorgan Chase Bank, NA  
New York, NY  
ABA No.: 021000021  
Account Name: PRIAC - DC (Non-Trust) - Privates  
Account No.: P86329 (please do not include spaces)

Each such wire transfer shall set forth the name of the Company, a reference to "3.53% Senior Secured Notes due August 23, 2027, Security No. #####, PPN: ##### and the due date and application (as among principal, interest and Make-Whole Amount) of the payment being made.

- (2) Address for all communications and notices:

Prudential Retirement Insurance and Annuity Company  
c/o Prudential Capital Group  
2200 Ross Ave.  
Suite 4100E  
Dallas, TX 75201

Attention: Managing Director  
cc: Vice President and Corporate Counsel

and for all notices relating solely to scheduled principal and interest payments to

Prudential Retirement Insurance and Annuity Company  
c/o PGIM, Inc.  
Prudential Tower  
655 Broad Street  
14th Floor - South Tower  
Newark, NJ 07102

Attention: PIM Private Accounting Processing Team  
Email: Pim.Private.Accounting.Processing.Team@prudential.com

- (3) Address for Delivery of Notes:

(a) Send physical security by nationwide overnight delivery service to:

PGIM, Inc.  
655 Broad Street  
14th Floor - South Tower  
Newark, NJ 07102

Attention: Michael Iacono - Trade Management Manager

(b) Send copy by email to:

Kimberly Perdue  
#####@prudential.com  
#####

and

Private.Disbursements@Prudential.com

(4) Tax Identification No.: 06-1050034



## INFORMATION SCHEDULE

### Authorized Officers for Prudential

#### **PGIM, INC.**

- (1) All payments to Prudential shall be made by wire transfer of immediately available funds for credit to:

JPMorgan Chase Bank,  
New York, NY  
ABA No.: 021-000-021  
Account No.: 304232491  
Account Name: PIM Inc. - PCG

- (2) Address for all communications and notices:

PGIM, Inc.  
c/o Prudential Capital Group  
[Regional Office]

Attention: Managing Director

and for all notices relating solely to scheduled principal and interest payments to

PGIM, Inc.  
Prudential Tower  
655 Broad Street  
14th Floor - South Tower  
Newark, NJ 07102  
Attention: PIM Private Accounting Processing Team  
Email: #####@prudential.com

- (3) Tax Identification No.: 22-2540245

- (4) Authorized Officers:

Ric E. Abel  
Managing Director  
Prudential Capital Group  
2200 Ross Avenue, Suite 4300  
Dallas, TX 75201

Telephone: #####  
Facsimile: (214) 720-6297

Matthew A. Baker  
Vice President  
Prudential Capital Group  
2200 Ross Avenue, Suite 4300  
Dallas, TX 75201

Telephone: #####  
Facsimile: (214) 720-6222

Ty Bowman  
Vice President  
Prudential Capital Group  
2200 Ross Avenue, Suite 4300  
Dallas, TX 75201

Telephone: #####  
Facsimile: (214) 720-6297

Richard P. Carrell  
Vice President  
Prudential Capital Group  
2200 Ross Avenue, Suite 4300  
Dallas, TX 75201

Telephone: #####  
Facsimile: (214) 720-6297

Brien F. Davis  
Vice President  
Prudential Capital Group  
2200 Ross Avenue, Suite 4300  
Dallas, TX 75201

Telephone: #####  
Facsimile: (214) 720-6299

Randall M. Kob  
Managing Director  
Prudential Capital Group  
2200 Ross Avenue, Suite 4300  
Dallas, TX 75201

Telephone: #####  
Facsimile: (214) 720-6201

Brian E. Lemons  
Vice President  
Prudential Capital Group  
2200 Ross Avenue, Suite 4300  
Dallas, TX 75201

Telephone: #####  
Facsimile: (214) 720-6222

Lauren L. Soulis  
Vice President  
Prudential Capital Group  
2200 Ross Avenue, Suite 4300  
Dallas, TX 75201

Telephone: #####  
Facsimile: (214) 720-6297

Julia B. Buthman  
Managing Director  
Prudential Capital Group  
2200 Ross Avenue, Suite 4300  
Dallas, TX 75201

Telephone: #####  
Facsimile: (214) 720-6299

Wendy A. Carlson  
Managing Director  
Prudential Capital Group  
2200 Ross Avenue, Suite 4300  
Dallas, TX 75201

Telephone: #####  
Facsimile: (214) 720-6297

Christopher L. Halloran  
Vice President  
Prudential Capital Group  
2200 Ross Avenue, Suite 4300  
Dallas, TX 75201

Telephone: #####  
Facsimile: (214) 720-6222

Ingrida Soldatova  
Vice President  
Prudential Capital Group  
2200 Ross Avenue, Suite 4300  
Dallas, TX 75201

Telephone: #####  
Facsimile: (214) 720-6297

Brian N. Thomas  
Managing Director  
Prudential Capital Group  
2200 Ross Avenue, Suite 4300  
Dallas, TX 75201

Telephone: #####  
Facsimile: (214) 720-6222

Ingrida Soldatova  
Vice President  
Prudential Capital Group  
2200 Ross Avenue, Suite 4300  
Dallas, TX 75201

Telephone: #####  
Facsimile: (214) 720-6297

Brittany Braden  
Vice President  
Prudential Capital Group  
2200 Ross Avenue, Suite 4300  
Dallas, TX 75201

Telephone: #####  
Facsimile: (214) 720-6297

Authorized Officers for Company

Augustus Griffin  
President  
MGP Ingredients, Inc.  
100 Commercial Street  
PO Box 130  
Atchison, KS 66002

Telephone: #####  
Facsimile: (913) 360-5661

Thomas Pigott  
Chief Financial Officer  
MGP Ingredients, Inc.  
100 Commercial Street  
PO Box 130  
Atchison, KS 66002

Telephone: #####  
Facsimile: (913) 360-5661

[FORM OF SERIES A NOTE]

MGP INGREDIENTS, INC.

3.53% Senior Secured Note, Series A, Due August 23, 2027

No. [ ] [Date]  
\$[ ] PPN #####

FOR VALUE RECEIVED, the undersigned, MGP INGREDIENTS, INC. (the “**Company**”), a corporation organized and existing under the laws of the State of Kansas, hereby promises to pay to [ ], or registered assigns, the principal sum of [ ] DOLLARS (or so much thereof as shall not have been prepaid) on August 23, 2027 (the “**Maturity Date**”), with interest (computed on the basis of a 360-day year of twelve 30-day months) (a) on the unpaid balance hereof at the rate of 3.53% per annum from the date hereof, payable quarterly, on the 23rd day of August, November, February and May in each year, commencing with the November next succeeding the date hereof and on the Maturity Date, until the principal hereof shall have become due and payable, and (b) to the extent permitted by law, (x) on any overdue payment of interest and, (y) during the continuance of an Event of Default, on such unpaid balance and on any overdue payment of any Make-Whole Amount, at a rate per annum (the “**Default Rate**”) from time to time equal to the greater of (i) 5.53% or (ii) 2.00% over the rate of interest publicly announced by JPMorgan Chase Bank, N.A. from time to time in New York, New York as its “base” or “prime” rate, payable quarterly as aforesaid (or, at the option of the registered holder hereof, on demand).

Payments of principal of, interest on and any Make-Whole Amount with respect to this Note are to be made in lawful money of the United States of America at JPMorgan Chase Bank, N.A. in New York, New York or at such other place as the Company shall have designated by written notice to the holder of this Note as provided in the Note Purchase Agreement referred to below.

This Note is one of a series of Senior Secured Notes (the “**Notes**”) issued pursuant to the Note Purchase and Private Shelf Agreement dated as of August 23, 2017 (as from time to time amended, restated, supplemented, or otherwise modified from time to time, the “**Note Purchase Agreement**”), by and among the Company, PGIM, Inc. and the respective Purchasers named therein and is entitled to the benefits thereof. Each holder of this Note will be deemed, by its acceptance hereof, to have (i) agreed to the confidentiality provisions set forth in Section 20 of the Note Purchase Agreement and (ii) made the representations set forth in Section 6 of the Note Purchase Agreement. Unless otherwise indicated, capitalized terms used in this Note shall have the respective meanings ascribed to such terms in the Note Purchase Agreement.

This Note is a registered Note and, as provided in the Note Purchase Agreement, upon surrender of this Note for registration of transfer accompanied by a written instrument of transfer duly executed, by the registered holder hereof or such holder’s attorney duly authorized in writing, a new Note for a like principal amount will be issued to, and registered in the name of, the transferee. Prior to due presentment for registration of transfer, the Company may treat the person

Schedule 1(a)  
(to Note Purchase and Private Shelf Agreement)

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in whose name this Note is registered as the owner hereof for the purpose of receiving payment and for all other purposes, and the Company will not be affected by any notice to the contrary.

The Company will make required prepayments of principal on the dates and in the amounts specified in the Note Purchase Agreement. This Note is also subject to optional and mandatory prepayment, in whole or from time to time in part, at the times and on the terms specified in the Note Purchase Agreement, but not otherwise.

This Note is guaranteed by the Guarantors and from time to time may be secured pursuant to the Security Documents in accordance with the terms of the Note Purchase Agreement.

If an Event of Default occurs and is continuing, the principal of this Note may be declared or otherwise become due and payable in the manner, at the price (including any applicable Make-Whole Amount) and with the effect provided in the Note Purchase Agreement.

This Note shall be construed and enforced in accordance with, and the rights of the Company and the holder of this Note shall be governed by, the law of the State of New York excluding choice-of-law principles of the law of such State that would permit the application of the laws of a jurisdiction other than such State.

**MGP INGREDIENTS, INC.**

By \_\_\_\_\_  
Name:  
Title:

[FORM OF SHELF NOTE]

MGP INGREDIENTS, INC.

[ ]% Senior Secured Note, Series \_\_, Due [\_\_\_\_\_, \_\_\_\_]

No. [ ]

PPN[\_\_\_\_\_]

ORIGINAL PRINCIPAL AMOUNT:

ORIGINAL ISSUE DATE:

INTEREST RATE:

INTEREST PAYMENT DATES:

FINAL MATURITY DATE:

PRINCIPAL PREPAYMENT DATES AND AMOUNTS:

FOR VALUE RECEIVED, the undersigned, MGP INGREDIENTS, INC. (the “**Company**”), a corporation organized and existing under the laws of the State of Kansas, hereby promises to pay to [\_\_\_\_\_] , or registered assigns, the principal sum of [\_\_\_\_\_] DOLLARS [on the Final Maturity Date specified above (or so much thereof as shall not have been prepaid),] [, payable on the Principal Prepayment Dates and in the amounts specified above, and on the Final Maturity Date specified above in an amount equal to the unpaid balance of the principal hereof,] (the “**Maturity Date**”) with interest (computed on the basis of a 360-day year of twelve 30-day months) (a) on the unpaid balance hereof at the Interest Rate per annum specified above, payable on each Interest Payment Date specified above and on the Final Maturity Date specified above, commencing with the Interest Payment Date next succeeding the date hereof and on the Maturity Date, until the principal hereof shall have become due and payable, and (b) to the extent permitted by law, (x) on any overdue payment of interest and (y) during the continuance of an Event of Default, on such unpaid balance and on any overdue payment of any Make-Whole Amount, at a rate per annum (the “**Default Rate**”) from time to time equal to the greater of (i) 2% over the Interest Rate specified above or (ii) 2% over the rate of interest publicly announced by JPMorgan Chase Bank, N.A. from time to time in New York, New York as its “base” or “prime” rate, payable on each Interest Payment Date as aforesaid (or, at the option of the registered holder hereof, on demand).

Payments of principal of, interest on and any Make-Whole Amount with respect to this Note are to be made in lawful money of the United States of America at JPMorgan Chase Bank, N.A. in New York, New York or at such other place as the Company shall have designated by written notice to the holder of this Note as provided in the Note Purchase Agreement referred to below.

This Note is one of a series of Senior Secured Notes (the “**Notes**”) issued pursuant to the Note Purchase and Private Shelf Agreement dated as of August 23, 2017 (as from time to time amended, restated, supplemented, or otherwise modified from time to time, the “**Note Purchase Agreement**”), by and among the Company, PGIM, Inc. and the respective Purchasers named therein and is entitled to the benefits thereof. Each holder of this Note will be deemed, by its acceptance hereof, to have (i) agreed to the confidentiality provisions set forth in Section 20 of the Note Purchase Agreement and (ii) made the representations set forth in Section 6 of the Note Purchase Agreement.

Schedule 1(b)  
(to Note Purchase and Private Shelf Agreement)

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Unless otherwise indicated, capitalized terms used in this Note shall have the respective meanings ascribed to such terms in the Note Purchase Agreement.

This Note is a registered Note and, as provided in the Note Purchase Agreement, upon surrender of this Note for registration of transfer accompanied by a written instrument of transfer duly executed, by the registered holder hereof or such holder's attorney duly authorized in writing, a new Note for a like principal amount will be issued to, and registered in the name of, the transferee. Prior to due presentment for registration of transfer, the Company may treat the person in whose name this Note is registered as the owner hereof for the purpose of receiving payment and for all other purposes, and the Company will not be affected by any notice to the contrary.

[The Company will make required prepayments of principal on the dates and in the amounts specified in the Note Purchase Agreement.] [This Note is [also] subject to [optional] prepayment, in whole or from time to time in part, at the times and on the terms specified in the Note Purchase Agreement, but not otherwise.] [This Note is not subject to prepayment.]

This Note is guaranteed by the Guarantors and from time to time may be secured pursuant to the Security Documents in accordance with the terms of the Note Purchase Agreement.

If an Event of Default occurs and is continuing, the principal of this Note may be declared or otherwise become due and payable in the manner, at the price (including any applicable Make-Whole Amount) and with the effect provided in the Note Purchase Agreement.

This Note shall be construed and enforced in accordance with, and the rights of the Company and the holder of this Note shall be governed by, the law of the State of New York excluding choice-of-law principles of the law of such State that would permit the application of the laws of a jurisdiction other than such State.

**MGP INGREDIENTS, INC.**

By \_\_\_\_\_  
Name:  
Title:

[FORM OF REQUEST FOR PURCHASE]

MGP INGREDIENTS, INC.

Reference is made to the Note Purchase and Private Shelf Agreement (as amended, restated, supplemented or otherwise modified from time to time, the "Agreement"), dated as of August 23, 2017, by and between MGP Ingredients, Inc., a Kansas corporation (the "Company"), on the one hand, and PGIM, Inc. ("Prudential") and each Prudential Affiliate which becomes party thereto, on the other hand. Capitalized terms used and not otherwise defined herein shall have the respective meanings specified in the Agreement.

Pursuant to Section 2.2(d) of the Agreement, the Company hereby makes the following Request for Purchase:

1. Aggregate principal amount  
of  
the Shelf Notes covered hereby  
(the "Notes") ..... \$ \_\_\_\_\_

2. Individual specifications of the  
Notes:

<u>Principal Amount</u>	<u>Final Maturity Date</u>	<u>Principal Prepayment Dates and Amounts</u>	<u>Interest Payment Period</u>
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[ ] in arrears

3. Use of proceeds of the  
Notes:

4. Proposed day for the closing of the purchase and sale of the  
Notes:

5. The purchase price of the Notes is to be transferred  
to:

<u>Name and Address and ABA Routing</u>	<u>Number of</u>
<u>Number of Bank</u>	<u>Account</u>



6. The Company certifies that (a) the representations and warranties contained in Section 5 of the Agreement are true on and as of the date of this Request for Purchase, (b) that there exists on the date of this Request for Purchase no Event of Default or Default and (c) the Company will not use any proceeds from such Notes for the purposes of financing a Hostile Tender Offer.

Dated:

**MGP INGREDIENTS, INC.**

By \_\_\_\_\_

Authorized Officer

[FORM OF CONFIRMATION OF ACCEPTANCE]

Reference is made to the Note Purchase and Private Shelf Agreement (as amended, restated, supplemented or otherwise modified from time to time, the “**Agreement**”), dated as of August 23, 2017, by and between MGP Ingredients, Inc., a Kansas corporation (the “**Company**”), on the one hand, and PGIM, Inc. (“**Prudential**”) and each Prudential Affiliate which becomes party thereto, on the other hand. Capitalized terms used and not otherwise defined herein shall have the respective meanings specified in the Agreement.

Prudential or the Prudential Affiliate which is named below as a Purchaser of Shelf Notes hereby confirms the representations as to such Shelf Notes set forth in Section 6 of the Agreement, and agrees to be bound by the provisions of the Agreement applicable to the Purchasers or holders of the Notes.

Pursuant to Section 2.2(f) of the Agreement, an Acceptance with respect to the following Accepted Notes is hereby confirmed:

I. Accepted Notes: Aggregate  
principal  
amount \$ \_\_\_\_\_

(A) (a) Name of  
Purchaser:

- (b) Principal amount:
- (c) Final maturity date:
- (d) Principal prepayment dates and amounts:
- (e) Interest rate:
- (f) Interest payment period: [ ] in arrears
- (g) Payment and notice instructions: As set forth on attached  
Purchaser Schedule

(B) (a) Name of  
Purchaser:

- (b) Principal amount:
- (c) Final maturity date:
- (d) Principal prepayment dates and amounts:
- (e) Interest rate:
- (f) Interest payment period: [ ] in arrears
- (g) Payment and notice instructions: As set forth on attached

Purchaser Schedule

[(C), (D)... same information as above.]

II. Closing  
Day:

Schedule 2.2(f)  
(to Note Purchase and Private Shelf Agreement)

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**MGP INGREDIENTS, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_

[PGIM, INC.]

By \_\_\_\_\_

Vice President

[PRUDENTIAL AFFILIATE]

By \_\_\_\_\_

Vice President

[ATTACH PURCHASER SCHEDULES]

**FORM OF OPINION OF SPECIAL COUNSEL  
TO THE COMPANY**

[See attached.]

Schedule 4.4(a)  
(to Note Purchase and Private Shelf Agreement)

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**DISCLOSURE MATERIALS**

None.

Schedule 5.3  
(to Note Purchase and Private Shelf Agreement)

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**SUBSIDIARIES OF THE COMPANY AND  
OWNERSHIP OF SUBSIDIARY STOCK**

Name of Subsidiary	Authorized Shares	Number of Shares/ Units Issued	% of Outstanding Shares/Units directly owned by MGP Ingredients, Inc.	Guarantor
MGPI Processing, Inc., a Kansas corporation	common stock: 1,000 shares of with no par value	1,000	100%	yes
	preferred stock: 10 shares with par value of \$10.00	10	100%	
MGPI Pipeline, Inc., a Kansas corporation	common stock: 100,000 shares with par value of \$1.00	5,000 shares	100%	yes
MGPI of Indiana, LLC, a Delaware limited liability company	membership units	single member LLC	100%	yes
Thunderbird Real Estate Holdings, LLC, a Delaware limited liability company	membership units	single member LLC	100%	no

**AFFILIATES  
OF THE COMPANY**

1. To the Company's knowledge, Karen Seaberg owns over 10% of the common stock of the Company (may include Persons controlled by Karen Seaberg).
2. To the Company's knowledge, the following Persons own over 10% of the preferred stock of the Company:
  - (a) Karen Seaberg (including Persons controlled by Karen Seaberg)
  - (b) Kansas University Endowment Association.

**OFFICERS AND DIRECTORS  
OF THE COMPANY**

Name	Position
Augustus C. Griffin	President, CEO and Director
Thomas K. Pigott	Vice President of Finance and CFO
David E. Rindom	Vice President and CAO
Lori Norlen	Corporate Secretary
David E. Dykstra	Vice President
Andrew P. Mansinne	Vice President
Michael R Buttshaw	Vice President
Stephen J. Glaser	Vice President
Karen L. Seaberg	Director
James L. Bareuther	Director
David J. Colo	Director
Terrence P. Dunn	Director
George W. Page, Jr.	Director
M. Jeannine Strandjord	Director
Daryl R. Schaller, Ph.D.	Director
Anthony P. Foglio	Director

## FINANCIAL STATEMENTS

MGP Ingredients, Inc. Form 10-Q for the fiscal quarter ended June 30, 2017

MGP Ingredients, Inc. Form 10-Q for the fiscal quarter ended March 31, 2017

MGP Ingredients, Inc. Form 10-K for the fiscal year ended December 31, 2016

MGP Ingredients, Inc. Form 10-K for the fiscal year ended December 31, 2015

MGP Ingredients, Inc. Form 10-K for the fiscal year ended December 31, 2014

All such financial statements are available online at:

<http://www.mgpingredients.com> (link For Investor)

and

<https://www.sec.gov> (ticker symbol MGPI)

Schedule 5.5  
(to Note Purchase and Private Shelf Agreement)

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## MATERIAL CONTRACTS

1. Credit Agreement, dated as of August 23, 2017, between the Company and Wells Fargo Bank, National Association.
2. Grain Supply Agreement, dated December 22, 2014, between MGPI Processing, Inc. and Bunge Milling, Inc.
3. Grain Supply Agreement, dated January 1, 2015, between MGPI of Indiana, LLC and Consolidated Grain and Barge.
4. Supply Agreement, dated July 10, 2015 between Ardent Mills, LLC and MGPI Processing, Inc.
5. Distillate Supply Agreement, dated July 1, 2013, between Diageo Americas Supply, Inc. and MGPI of Indiana, LLC.

Schedule 5.6  
(to Note Purchase and Private Shelf Agreement)

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## EXISTING INDEBTEDNESS

1. Indebtedness outstanding under the Credit Agreement, dated as of August 23, 2017, between the Company and Wells Fargo Bank, National Association, in an outstanding principal amount not to exceed \$13.0 million.(1)
2. Indebtedness of MGPI Pipeline, Inc. due U.S. Bank National Association, acting through its division, U.S. Bank Equipment Finance. Outstanding principal balance: approximately \$2,086,752.81 as of August 11, 2017. Collateral: aircraft and engines; see related financing statements described in Schedule 10.3. The aircraft is owned by MGPI Pipeline, Inc. and is leased by it to MGPI Processing, Inc. Indebtedness guaranteed by the Company.
3. To the extent constituting Indebtedness, the obligations secured by or related to the equipment lease or purchase-money financing statements described in Schedule 10.3.

See Schedule 10.3 for a description of certain Liens existing on the closing date of this Agreement.

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(1) This maximum principal amount is after giving effect to the disbursement of the \$20.0 million proceeds of Series A Notes on the Series A Closing Date and the application of such funds by the Company to reduce indebtedness under the Credit Agreement.

## LABOR MATTERS

### **MGPI Processing, Inc.**

Union: United Food and Commercial Workers Local 74D  
Contract Expiration: 08/31/19

### **MGPI of Indiana, LLC**

Union: United Food and Commercial Workers Local 13  
Contract Expiration: 12/31/17

Schedule 5.20  
(to Note Purchase and Private Shelf Agreement)

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## **EXISTING PERMITTED INDEBTEDNESS**

The Indebtedness described in paragraph numbers 2 and 3 of Schedule 5.15.

Schedule 10.2  
(to Note Purchase and Private Shelf Agreement)

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## EXISTING LIENS

Liens evidenced by the UCC financing statements listed below:

1. Debtor - **MGP Ingredients, Inc.** \* (f/k/a MGPI Holdings, Inc.)

Jurisdiction	UCC Number	Filing Date	Secured Party	Collateral**
Kansas	<b>6954606</b>	2012-12-13	General Electric Capital Corporation	Equipment Lease Agreement No. 7665240-0002

\* See item no. 2 below (MGPI Processing, Inc.) for UCC financing statements filed against MGP Ingredients, Inc. before it changed its name to MGPI Processing, Inc.

\*\* See related UCC financing statement for complete collateral description

2. Debtor - **MGPI Processing, Inc.** (f/k/a MGP Ingredients, Inc., Midwest Grain Products, Inc. and Midwest Solvents Company, Inc.)

Jurisdiction	UCC Number	Filing Date	Secured Party	Collateral*
Kansas	<b>5729033</b> (originally filed against MGP Ingredients, Inc. as debtor)	2004-01-22	Winthrop Resources Corporation	Lease Agreement No. MG011204, Schedule #001
	70621029 - Continuation	2009-01-05		
	7037542 - Continuation	2013-10-28		
Kansas	<b>6172803</b> (originally filed against MGP Ingredients, Inc. as debtor)	2006-06-05	Winthrop Resources Corporation	Lease Agreement No. MG011204, Schedule #B02
	70933721 - Continuation	2011-04-27		
	72203743 - Continuation	2016-04-28		
Kansas	<b>6395701</b> (originally filed against MGP Ingredients, Inc. as debtor)	2007-08-07	Winthrop Resources Corporation	Lease Agreement No. MG011204, Schedule #003R
	71210871 - Continuation	2012-07-27		
	72522266 - Continuation	2017-07-12		
Kansas	<b>6502512</b> (originally filed against MGP Ingredients, Inc. as debtor)	2008-06-25	Winthrop Resources Corporation	Lease Agreement No. MG011204, Schedule #005R
	71348788 - Continuation	2013-02-13		
Kansas	<b>6538847</b> (originally filed against MGP Ingredients, Inc. as debtor)	2008-10-23	Winthrop Resources Corporation	Lease Agreement No. MG011204, Schedule #006R
	7005762 - Continuation	2013-06-21		

Schedule 10.3  
(to Note Purchase and Private Shelf Agreement)

Kansas	<b>6812317</b> (originally filed against MGP Ingredients, Inc. as debtor)	2011-07-01	U.S. Bancorp Equipment Finance, Inc.	Master Lease Agreement dated 06/28/11, specific assets
	72171262 - Continuation	2016-03-18		
Kansas	<b>6954606</b>	2012-12-13	General Electric Capital Corporation	Specific equipment
Kansas	<b>72498376</b>	2017-06-07	Canon Financial Services, Inc.	Specific equipment
Kansas	<b>6977383</b>	2013-03-11	GE Capital Commercial Inc.	Specific equipment
Kansas	<b>6993224</b>	2013-05-03	Passchendaele Capital Fund	Lease Agreement #CG-5593 Lease Schedule No. 1
	7006091 - Assignment	2013-06-21	Sterling National Bank	
	7010739 - Amendment	2013-07-10		Amend to more fully describe equipment/collateral
Kansas	<b>7003551</b>	2013-06-12	CSI Leasing, Inc.	Master Lease 242997, Equipment Schedule 5
Kansas	<b>71618552</b>	2014-02-18	CSI Leasing, Inc.	Master Lease 242997, Equipment Schedule 6
Kansas	<b>7091911</b>	2014-06-19	GE Capital Commercial Inc.	Specific equipment
Kansas	<b>7100571</b>	2014-07-31	GE Capital Commercial Inc.	Specific equipment
Kansas	<b>103482289</b>	2015-05-27	Deere Credit, Inc.	Specific equipment
Kansas	<b>72021434</b>	2015-08-11	General Electric Credit Corporation of Tennessee	Specific equipment
Kansas	<b>7191224</b>	2015-11-12	U.S. Bank National Association acting through its division U.S. Bank Equipment Finance [Assignor secured party is MGPI Pipeline, Inc.]	One Cessna aircraft, two aircraft engines, and related items, agreements, contracts, chattel paper, etc.
Kansas	<b>7191489</b>	2015-11-12	Harcros Chemicals Inc.	Bulk Storage Equipment
Kansas	<b>072237675</b>	2016-06-09	CSI Leasing, Inc.	Specific equipment

\* See related UCC financing statement for complete collateral description

3. Debtor - **MGPI Pipeline, Inc.** (f/k/a Midwest Grain Pipeline, Inc.)

Jurisdiction	UCC Number	Filing Date	Secured Party	Collateral*
Kansas	72086031	2015-11-11	U.S. Bank National Association acting through its division U.S. Bank Equipment Finance	One Cessna aircraft, two aircraft engines, and related items, agreements, contracts, chattel paper, etc.

\* See related UCC financing statement for complete collateral description

4. Debtor - **MGPI of Indiana, LLC** (f/k/a Firebird Acquisitions, LLC)

Jurisdiction	UCC Number	Filing Date	Secured Party	Collateral*
Delaware	2014 4944062	2014-12-08	Ultra Pure, LLC	All barrels of whiskey as set forth in Warehouse Service Agreement dated 10/29/2012, as amended

\* See related UCC financing statement for complete collateral description

5. Debtor - **Thunderbird Real Estate Holdings, LLC**

None.

## EXISTING INVESTMENTS

1. Investments by the Company in its Subsidiaries.
2. Minority equity investments made by the Company in the following local (Atchison, Kansas) entities:

Bellevue Country Club    \$22,000

Right on Track        \$53,680

Schedule 10.6  
(to Note Purchase and Private Shelf Agreement)