

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the quarterly period ended **September 30, 2022**

or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the transition period from _____ to _____

Commission File Number: 0-17196



MGP INGREDIENTS, INC.

(Exact name of registrant as specified in its charter)

Kansas
(State or other jurisdiction of incorporation or organization)

45-4082531
(I.R.S. Employer Identification No.)

100 Commercial Street
Atchison Kansas
(Address of principal executive offices)

66002
(Zip Code)

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

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

Title of each class	Trading Symbol	Name of each exchange on which registered
Common Stock, no par value	MGPI	NASDAQ Global Select Market

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

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

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

Large accelerated filer Accelerated filer
 Non-accelerated filer Smaller Reporting Company
 Emerging growth company

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

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

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date:
21,994,036 shares of Common Stock, no par value, as of October 28, 2022

INDEX

PART I. FINANCIAL INFORMATION

	<u>Page</u>
<u>Item 1. Financial Statements</u>	
<u>Condensed Consolidated Statements of Income (Unaudited)</u>	<u>3</u>
<u>Condensed Consolidated Statements of Comprehensive Income (Unaudited)</u>	<u>4</u>
<u>Condensed Consolidated Balance Sheets (Unaudited)</u>	<u>5</u>
<u>Condensed Consolidated Statements of Cash Flows (Unaudited)</u>	<u>6</u>
<u>Condensed Consolidated Statements of Changes in Stockholders' Equity (Unaudited)</u>	<u>7</u>
<u>Notes to Unaudited Condensed Consolidated Financial Statements</u>	<u>9</u>
<u>Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations</u>	<u>22</u>
<u>Item 3. Quantitative and Qualitative Disclosures About Market Risk</u>	<u>35</u>
<u>Item 4. Controls and Procedures</u>	<u>35</u>

PART II. OTHER INFORMATION

<u>Item 1. Legal Proceedings</u>	<u>36</u>
<u>Item 1A. Risk Factors</u>	<u>36</u>
<u>Item 2. Unregistered Sales of Equity Securities and Use of Proceeds</u>	<u>36</u>
<u>Item 3. Defaults Upon Senior Securities</u>	<u>36</u>
<u>Item 4. Mine Safety Disclosures</u>	<u>36</u>
<u>Item 5. Other Information</u>	<u>36</u>
<u>Item 6. Exhibits</u>	<u>37</u>

METHOD OF PRESENTATION

Throughout this Report, when we refer to "the Company," "MGP," "we," "us," "our," and words of similar import, we are referring to the combined business of MGP Ingredients, Inc. and its consolidated subsidiaries, except to the extent that the context otherwise indicates. In this document, for any references to Note 1 through Note 11, refer to the Notes to Unaudited Condensed Consolidated Financial Statements in Item 1.

All amounts in this report, except for share, par values, bushels, gallons, pounds, mmbtu, proof gallons, 9-liter cases, per share, per bushel, per gallon, per proof gallon, per 9-liter case and percentage amounts, are shown in thousands unless otherwise noted.

PART I. FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

MGP INGREDIENTS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF INCOME
(Unaudited)
(Dollars in thousands, except share and per share amounts)

	Quarter Ended September 30,		Year to Date Ended September 30,	
	2022	2021	2022	2021
Sales	\$ 201,146	\$ 176,611	\$ 591,363	\$ 459,873
Cost of sales	142,098	119,525	401,270	313,661
Gross profit	59,048	57,086	190,093	146,212
Advertising and promotion expenses	7,279	5,664	18,848	9,888
Selling, general and administrative expenses	17,904	18,527	52,029	55,266
Other operating (income) expense, net	1	11	(34)	11
Operating income	33,864	32,884	119,250	81,047
Interest expense, net	(1,350)	(1,116)	(4,491)	(2,708)
Other income (expense), net	(1,353)	(421)	(2,361)	(479)
Income before income taxes	31,161	31,347	112,398	77,860
Income tax expense	7,533	7,674	26,037	18,701
Net income	23,628	23,673	86,361	59,159
Net (income) loss attributable to noncontrolling interest	180	203	444	279
Net income attributable to MGP Ingredients, Inc.	23,808	23,876	86,805	59,438
Income attributable to participating securities	(188)	(175)	(688)	(471)
Net income used in Earnings Per Common Share calculation	\$ 23,620	\$ 23,701	\$ 86,117	\$ 58,967
Share information:				
Basic weighted average common shares	22,008,381	21,981,201	22,000,026	20,293,818
Diluted weighted average common shares	22,228,814	21,981,201	22,000,026	20,293,818
Basic Earnings Per Common Share	\$ 1.07	\$ 1.08	\$ 3.91	\$ 2.91
Diluted Earnings Per Common Share	\$ 1.06	\$ 1.08	\$ 3.91	\$ 2.91

See accompanying notes to unaudited condensed consolidated financial statements

MGP INGREDIENTS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(Unaudited)
(Dollars in thousands)

	Quarter Ended September 30,		Year to Date Ended September 30,	
	2022	2021	2022	2021
Net income attributable to MGP Ingredients, Inc.	\$ 23,808	\$ 23,876	\$ 86,805	\$ 59,438
Other comprehensive loss, net of tax:				
Unrealized loss on foreign currency translation adjustment	(467)	(141)	(1,116)	(134)
Change in Company-sponsored post-employment benefit plan	(76)	(89)	(102)	(40)
Other comprehensive loss	(543)	(230)	(1,218)	(174)
Comprehensive income attributable to MGP Ingredients, Inc.	23,265	23,646	85,587	59,264
Comprehensive loss attributable to noncontrolling interest	(180)	(203)	(444)	(279)
Comprehensive income	\$ 23,085	\$ 23,443	\$ 85,143	\$ 58,985

See accompanying notes to unaudited condensed consolidated financial statements

MGP INGREDIENTS, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(Unaudited)
(Dollars in thousands)

	September 30, 2022	December 31, 2021
Current Assets		
Cash and cash equivalents	\$ 50,674	\$ 21,568
Receivables (less allowance for credit loss, \$175 and \$150 at September 30, 2022, and December 31, 2021, respectively)	107,653	92,537
Inventory	275,478	245,944
Prepaid expenses	5,833	1,510
Refundable income taxes	1,006	5,539
Total current assets	440,644	367,098
Property, plant, and equipment	430,945	404,149
Less accumulated depreciation and amortization	(210,254)	(196,863)
Property, plant, and equipment, net	220,691	207,286
Operating lease right-of-use assets, net	14,516	9,671
Investment in joint ventures	6,140	4,944
Intangible assets, net	217,285	218,838
Goodwill	226,294	226,294
Other assets	6,505	7,336
Total assets	\$ 1,132,075	\$ 1,041,467
Current Liabilities		
Current maturities of long-term debt	\$ 4,800	\$ 3,227
Accounts payable	64,858	53,712
Federal and state excise taxes payable	4,713	6,992
Accrued expenses and other	26,420	24,869
Total current liabilities	100,791	88,800
Long-term debt, less current maturities	31,105	35,266
Convertible senior notes	195,146	194,906
Long-term operating lease liabilities	11,327	6,997
Other noncurrent liabilities	4,047	5,132
Deferred income taxes	65,799	66,101
Total liabilities	408,215	397,202
Commitments and Contingencies (Note 8)		
Stockholders' Equity		
Capital stock		
Preferred, 5% non-cumulative; \$10 par value; authorized 1,000 shares; issued and outstanding 437 shares	4	4
Common stock		
No par value; authorized 40,000,000 shares; issued 23,125,166 shares at September 30, 2022 and December 31, 2021; and 21,993,355 and 21,964,314 shares outstanding at September 30, 2022 and December 31, 2021, respectively	6,715	6,715
Additional paid-in capital	317,541	315,802
Retained earnings	423,063	344,237
Accumulated other comprehensive income	(864)	354
Treasury stock, at cost, 1,131,811 and 1,160,852 shares at September 30, 2022 and December 31, 2021, respectively	(21,665)	(22,357)
Total MGP Ingredients, Inc. stockholders' equity	724,794	644,755
Noncontrolling interest	(934)	(490)
Total equity	723,860	644,265
Total liabilities and equity	\$ 1,132,075	\$ 1,041,467

See accompanying notes to unaudited condensed consolidated financial statements

MGP INGREDIENTS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)
(Dollars in thousands)

	Year to Date Ended September 30,	
	2022	2021
Cash Flows from Operating Activities		
Net income	\$ 86,361	\$ 59,159
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	16,257	13,668
Share-based compensation	3,086	5,247
Deferred income taxes, including change in valuation allowance	(302)	465
Other, net	1,462	(231)
Changes in operating assets and liabilities, net of effects of acquisition:		
Receivables, net	(15,582)	(5,593)
Inventory	(30,599)	(7,588)
Prepaid expenses	1,165	1,206
Refundable income taxes	(1,006)	(2,086)
Accounts payable	12,613	(6,678)
Accrued expenses and other	1,220	15,859
Federal and state excise taxes payable	(2,279)	(1,961)
Other, net	(143)	(682)
Net cash provided by operating activities	72,253	70,785
Cash Flows from Investing Activities		
Additions to property, plant, and equipment	(29,217)	(37,257)
Purchase of business, net of cash acquired	—	(149,613)
Contributions to equity method investment	(2,232)	(988)
Other, net	(315)	(1,308)
Net cash used in investing activities	(31,764)	(189,166)
Cash Flows from Financing Activities		
Payment of dividends and dividend equivalents	(7,984)	(7,362)
Purchase of treasury stock	(714)	(767)
Loan fees paid related to borrowings	—	(666)
Principal payments on long-term debt	(2,603)	(813)
Proceeds from credit agreement - revolver	—	242,300
Payments on credit agreement - revolver	—	(32,300)
Payment on assumed debt as part of the Merger	—	(87,509)
Net cash provided by (used in) financing activities	(11,301)	112,883
Effect of exchange rate changes on cash	(82)	(2)
Increase (decrease) in cash and cash equivalents	29,106	(5,500)
Cash and cash equivalents, beginning of period	21,568	21,662
Cash and cash equivalents, end of period	<u>\$ 50,674</u>	<u>\$ 16,162</u>

See accompanying notes to unaudited condensed consolidated financial statements

MGP INGREDIENTS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY
For Year to Date Ended September 30, 2022
(Unaudited)
(Dollars in thousands)

	Capital Stock Preferred	Issued Common	Additional Paid-In Capital	Retained Earnings	Accumulated Other Comprehensive Income	Treasury Stock	Non-controlling Interest	Total
Balance, December 31, 2021	\$ 4	\$ 6,715	\$ 315,802	\$ 344,237	\$ 354	\$ (22,357)	\$ (490)	\$ 644,265
Comprehensive income:								
Net income (loss)	—	—	—	37,437	—	—	(66)	37,371
Other comprehensive loss	—	—	—	—	(232)	—	—	(232)
Dividends and dividend equivalents of \$0.12 per common share and per restricted stock unit, net of estimated forfeitures	—	—	—	(2,661)	—	—	—	(2,661)
Share-based compensation	—	—	1,373	—	—	—	—	1,373
Stock shares awarded, forfeited or vested	—	—	(604)	—	—	604	—	—
Stock shares repurchased	—	—	—	—	—	(711)	—	(711)
Balance, March 31, 2022	4	6,715	316,571	379,013	122	(22,464)	(556)	679,405
Comprehensive income:								
Net income (loss)	—	—	—	25,560	—	—	(198)	25,362
Other comprehensive loss	—	—	—	—	(443)	—	—	(443)
Dividends and dividend equivalents of \$0.12 per common share and per restricted stock unit, net of estimated forfeitures	—	—	—	(2,658)	—	—	—	(2,658)
Share-based compensation	—	—	1,409	—	—	—	—	1,409
Stock shares awarded, forfeited or vested	—	—	(740)	—	—	740	—	—
Stock shares repurchased	—	—	—	—	—	(2)	—	(2)
Balance, June 30, 2022	4	6,715	317,240	401,915	(321)	(21,726)	(754)	703,073
Comprehensive income:								
Net income (loss)	—	—	—	23,808	—	—	(180)	23,628
Other comprehensive loss	—	—	—	—	(543)	—	—	(543)
Dividends and dividend equivalents of \$0.12 per common share and per restricted stock unit, net of estimated forfeitures	—	—	—	(2,660)	—	—	—	(2,660)
Share-based compensation	—	—	363	—	—	—	—	363
Stock shares awarded, forfeited, or vested	—	—	(62)	—	—	62	—	—
Stock shares repurchased	—	—	—	—	—	(1)	—	(1)
Balance, September 30, 2022	\$ 4	\$ 6,715	\$ 317,541	\$ 423,063	\$ (864)	\$ (21,665)	\$ (934)	\$ 723,860

See accompanying notes to unaudited condensed consolidated financial statements

MGP INGREDIENTS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY
For Year to Date Ended September 30, 2021
(Unaudited)
(Dollars in thousands)

	Capital Stock Preferred	Issued Common	Additional Paid-In Capital	Retained Earnings	Accumulated Other Comprehensive Income	Treasury Stock	Non-controlling Interest	Total
Balance, December 31, 2020	\$ 4	\$ 6,715	\$ 15,503	\$ 262,943	\$ 486	\$ (23,125)	\$ —	\$ 262,526
Comprehensive income:								
Net income	—	—	—	15,427	—	—	—	15,427
Other comprehensive income	—	—	—	—	55	—	—	55
Dividends and dividend equivalents of \$0.12 per common share and per restricted stock unit, net of estimated forfeitures								
Share-based compensation	—	—	3,229	—	—	—	—	3,229
Stock shares awarded, forfeited or vested	—	—	(716)	—	—	716	—	—
Stock shares repurchased	—	—	—	—	—	(674)	—	(674)
Balance, March 31, 2021	4	6,715	18,016	276,318	541	(23,083)	—	278,511
Comprehensive income:								
Net income (loss)	—	—	—	20,135	—	—	(76)	20,059
Other comprehensive income	—	—	—	—	1	—	—	1
Dividends and dividend equivalents of \$0.12 per common share and per restricted stock unit, net of estimated forfeitures								
Share-based compensation	—	—	1,538	—	—	—	—	1,538
Stock shares awarded, forfeited, or vested	—	—	(705)	—	—	705	—	—
Stock shares repurchased	—	—	—	—	—	(91)	—	(91)
Equity consideration for Merger	—	—	296,213	—	—	—	—	296,213
Balance, June 30, 2021	4	6,715	315,062	293,800	542	(22,469)	(76)	593,578
Comprehensive income:								
Net income (loss)	—	—	—	23,876	—	—	(203)	23,673
Other comprehensive loss	—	—	—	—	(230)	—	—	(230)
Dividends and dividend equivalents of \$0.12 per common share and per restricted stock unit, net of estimated forfeitures								
Share-based compensation	—	—	480	—	—	—	—	480
Stock shares awarded, forfeited, or vested	—	—	(64)	—	—	64	—	—
Stock shares repurchased	—	—	—	—	—	(1)	—	(1)
Equity consideration for Merger	—	—	65	—	—	—	—	65
Balance, September 30, 2021	\$ 4	\$ 6,715	\$ 315,543	\$ 315,022	\$ 312	\$ (22,406)	\$ (279)	\$ 614,911

See accompanying notes to unaudited condensed consolidated financial statements

MGP INGREDIENTS, INC.
NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Dollars in thousands, unless otherwise noted)

Note 1. Accounting Policies and Basis of Presentation

The Company. MGP Ingredients, Inc. (“the Company,” or “MGP”) is a Kansas corporation headquartered in Atchison, Kansas and is a leading producer and supplier of premium distilled spirits, branded spirits and food ingredients. Distilled spirits include premium bourbon and rye whiskeys and grain neutral spirits, including vodka and gin. The Company’s distilled spirits are either packaged and sold under its own brands to distributors, sold, directly or indirectly to manufacturers of other branded spirits, or direct to consumer. MGP is also a top producer of high-quality, industrial alcohol for use in both food and non-food applications. The Company’s protein and starch food ingredients provide a host of functional, nutritional, and sensory benefits for a wide range of food products to serve the consumer packaged goods industry. The Company’s industrial alcohol and ingredients products are sold directly, or through distributors, to manufacturers and processors of finished packaged goods or to bakeries. The Company’s distillery products are derived from corn and other grains (including rye, barley, wheat, barley malt, and milo), and its ingredient products are derived primarily from wheat flour. On April 1, 2021, the Company acquired Luxco, Inc. and its affiliated companies (“Luxco”), which is a leading branded beverage alcohol company across various categories, with a more than 60-year business heritage. Luxco’s operations predominately involve the producing, importing, bottling and rectifying of distilled spirits. See Note 3, Business Combination, for further details.

The Company reports three operating segments: Distilling Solutions, Branded Spirits and Ingredient Solutions. During 2022, the Company changed the name of its Distillery Products segment to Distilling Solutions. Certain amounts in the 2021 consolidated financial statements have been reclassified to conform to the 2022 presentation.

Basis of Presentation and Principles of Consolidation. The unaudited condensed consolidated financial statements include the accounts of the Company and its wholly owned and majority owned subsidiaries. All significant intercompany balances and transactions have been eliminated in consolidation. These unaudited condensed consolidated financial statements as of and for the quarter and year to date ended September 30, 2022, should be read in conjunction with the consolidated financial statements and notes thereto in the Company’s Annual Report on Form 10-K for the year ended December 31, 2021, filed with the Securities and Exchange Commission (“SEC”). The results of operations for interim periods are not necessarily indicative of the results to be expected for the full year.

In the opinion of management, the accompanying unaudited condensed consolidated financial statements contain all adjustments (consisting of normal and recurring adjustments) necessary to fairly present the results for interim periods in accordance with U.S. generally accepted accounting principles (“GAAP”). Pursuant to the rules and regulations of the SEC, certain information and note disclosures normally included in the financial statements prepared in accordance with GAAP have been condensed or omitted.

The Company holds a 60 percent interest in Dos Primos Tequila, LLC (“Dos Primos”). The Company consolidated Dos Primos’ activity on the financial statements and presented the 40 percent non-controlling interest portion on a separate line.

Use of Estimates. The financial reporting policies of the Company conform to GAAP. The preparation of unaudited condensed consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting period. The application of certain of these policies places demands on management’s judgment, with financial reporting results relying on estimation about the effects of matters that are inherently uncertain, inclusive of the effects related to the COVID-19 pandemic. For all of these policies, management cautions that future events rarely develop as forecast, and estimates routinely require adjustment and may require material adjustment.

Immaterial Correction to Prior Period Financial Statements. During the year to date ended September 30, 2022, the Company identified an immaterial correction related to gross amounts of Property, plant and equipment and Accumulated depreciation and amortization in the Condensed Consolidated Balance Sheet as of December 31, 2021. The Company performed a materiality assessment, considering both quantitative and qualitative factors, which resulted in the determination that the correction to the financial statements was immaterial. As such, the Company corrected the December 31, 2021 gross balances for Property, plant, and equipment and Accumulated depreciation and amortization on the Condensed Consolidated Balance Sheet reported in this Form 10-Q by equal and offsetting amounts, which resulted in no change to the balance of Property, plant, and equipment, net.

Inventory. Inventory includes finished goods, raw materials in the form of agricultural commodities used in the production process as well as bottles, caps, and labels used in the bottling process, and certain maintenance and repair items. Bourbons and whiskeys, included in inventory, are normally aged in barrels for several years, following industry practice; all barreled bourbon and whiskey is classified as a current asset. The Company includes warehousing, insurance, and other carrying charges applicable to barreled whiskey in inventory costs.

Inventories are stated at lower of cost or net realizable value on the first-in, first-out, or FIFO, method. Inventory valuations are impacted by constantly changing prices paid for key materials. Inventory consists of the following:

	September 30, 2022	December 31, 2021
Finished goods	\$ 49,008	\$ 35,362
Barreled distillate (bourbons and whiskeys)	185,681	174,080
Raw materials	27,496	24,981
Work in process	1,581	1,261
Maintenance materials	10,020	9,179
Other	1,692	1,081
Total	<u>\$ 275,478</u>	<u>\$ 245,944</u>

Revenue Recognition. Revenue is recognized when control of the promised goods or services is transferred to the customer in an amount that reflects the consideration it expects to be entitled to receive in exchange for the performance obligations. The term between invoicing and when payment is due is not significant and the period between when the entity transfers the promised good or service to the customer and when the customer pays for that good or service is one year or less.

Revenue is recognized for the sale of products at the point in time finished products are delivered to the customer in accordance with shipping terms. This is a faithful depiction of the satisfaction of the performance obligation because, at the point control passes to the customer, the customer has legal title and the risk and rewards of ownership have transferred, and the customer has present obligation to pay.

The Company's Distilling Solutions segment routinely enters into bill and hold arrangements, whereby the Company produces and sells aged and unaged distillate to customers, and the product is barreled at the customer's request and warehoused at a Company location for an extended period of time in accordance with directions received from the Company's customers. Even though the aged and unaged distillate remains in the Company's possession, a sale is recognized at the point in time when the customer obtains control of the product. Control is transferred to the customer in bill and hold transactions when: the customer acceptance specifications have been met, legal title has transferred, the customer has a present obligation to pay for the product, and the risk and rewards of ownership have transferred to the customer. Additionally, all of the following bill and hold criteria have to be met in order for control to be transferred to the customer: the reason for the bill and hold arrangement is substantive - the customer has requested the product be warehoused, the product has been identified as separately belonging to the customer, the product is currently ready for physical transfer to the customer, and the Company does not have the ability to use the product or direct it to another customer.

Warehouse services revenue is recognized over the time that warehouse services are rendered and as they are rendered. This is a faithful depiction of the satisfaction of the performance obligation because control of the aging products has already passed to the customer and there are no additional performance activities required by the Company, except as requested by the customer. The performance of the service activities, as requested, is invoiced as satisfied and revenue is concurrently recognized. Contract bottling is recognized over the time contract bottling services are rendered and as they are rendered.

Sales in the Branded Spirits segment reflect reductions attributable to consideration given to customers in incentive programs, including discounts and allowances for certain volume targets. These allowances and discounts are not for distinct goods and are paid only when the depletion volume targets are achieved by the customer. The amounts reimbursed to customers are determined based on agreed-upon amounts and are recorded as a reduction of revenue.

Excise Taxes. The Company is responsible for compliance with the Alcohol and Tobacco Tax and Trade Bureau of the U.S. Treasury Department (the “TTB”) regulations which includes making timely and accurate excise tax payments. The Company is subject to periodic compliance audits by the TTB. Individual states also impose excise taxes on alcohol beverages in varying amounts. The Company calculates its Federal and state excise tax expense based upon units shipped and on its understanding of the applicable excise tax laws. Excise taxes that are both imposed on and concurrent with a specific revenue-producing transaction, that are collected by the Company from a customer are excluded from revenue.

Income Taxes. The Company accounts for income taxes using an asset and liability method which requires the recognition of deferred tax assets and liabilities for the expected future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax basis. A valuation allowance is recognized if it is “more likely than not” that at least some portion of the deferred tax asset will not be realized.

Earnings Per Common Share (“EPS”). Basic and diluted EPS is computed using the two-class method, which is an earnings allocation formula that determines net income per share for each class of Common Stock and participating security according to dividends declared and participation rights in undistributed earnings. Basic EPS amounts are computed by dividing net income attributable to common shareholders by the weighted average shares outstanding during each period. Diluted EPS is computed using the if-converted method by dividing the net income attributable to common shareholders by the weighted average shares outstanding, inclusive of the impact of the Convertible Senior Notes, except for where the result would be anti-dilutive as of the balance sheet date.

Translation of Foreign Currencies. Assets and liabilities of Niche Drinks Co., Ltd. (“Niche”), a wholly owned subsidiary of the Company whose functional currency is the British pound sterling, are translated to U.S. dollars using the exchange rate in effect at the condensed consolidated balance sheet date. Results of operations are translated using average rates during the period. Adjustments resulting from the translation process are included as a component of Accumulated other comprehensive income.

Business Combinations. Assets acquired and liabilities assumed during a business combination are generally recorded at fair market value as of the acquisition date. Goodwill is recognized to the extent that the purchase consideration exceeds the value of the assets acquired and liabilities assumed. The Company uses its best estimate and third party valuation specialists to determine the fair value of the assets acquired and liabilities assumed. During the measurement period, which can be up to one year after the acquisition date, the Company can make adjustments to the fair value of the assets acquired and liabilities assumed, with the offset being an adjustment to goodwill.

Goodwill and Indefinite-Lived Intangible Assets. The Company records goodwill and other indefinite-lived intangible assets in connection with various acquisitions of businesses and allocates the goodwill and other indefinite-lived intangible assets to its respective reporting units. The Company evaluates goodwill for impairment at least annually, in the fourth quarter, or on an interim basis if events and circumstances occur that would indicate it is more likely than not that the fair value of a reporting unit is less than the carrying value. To the extent that the carrying amount exceeds fair value, an impairment of goodwill is recognized. Judgment is required in the determination of reporting units, the assignment of assets and liabilities to reporting units, including goodwill, and the determination of fair value of the reporting units. The Company separately evaluates indefinite-lived intangible assets for impairment. As of September 30, 2022, the Company determined that goodwill and indefinite-lived intangible assets were not impaired.

Fair Value of Financial Instruments. The Company determines the fair values of its financial instruments based on a fair value hierarchy, which requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. The hierarchy is broken down into three levels based upon the observability of inputs. Fair values determined by Level 1 inputs utilize quoted prices (unadjusted) in active markets for identical assets or liabilities that the Company has the ability to access. Level 2 inputs include quoted prices for similar assets and liabilities in active markets and inputs other than quoted prices that are observable for the asset or liability. Level 3 inputs are unobservable inputs for the asset or liability, and include situations where there is little, if any, market activity for the asset or liability. In certain cases, the inputs used to measure fair value may fall into different levels of the fair value hierarchy. In such cases, the level in the fair value hierarchy within which the fair value measurement in its entirety falls has been determined based on the lowest level input that is significant to the fair value measurement in its entirety. The Company’s assessment of the significance of a particular input to the fair value in its entirety requires judgment and considers factors specific to the asset or liability.

The Company's short-term financial instruments include cash and cash equivalents, accounts receivables and accounts payable. The carrying value of the short-term financial instruments approximates the fair value due to their short-term nature. These financial instruments have no stated maturities or the financial instruments have short-term maturities that approximate market.

The fair value of the Company's debt is estimated based on current market interest rates for debt with similar maturities and credit quality. The fair value of the Company's debt was \$178,062 and \$272,971 at September 30, 2022 and December 31, 2021, respectively. The financial statement carrying value of total debt was \$231,051 (including unamortized loan fees) and \$233,399 (including unamortized loan fees) at September 30, 2022 and December 31, 2021, respectively. These fair values are considered Level 2 under the fair value hierarchy. Fair value disclosure for deferred compensation plan investments is included in Note 9, Employee and Non-Employee Benefit Plans. See Note 3, Business Combination, for discussion related to the fair value of tangible and intangible assets acquired and liabilities assumed as part of the merger with Luxco.

Equity Method Investments. The Company holds 50 percent interests in DGL Destiladores, S.de R.L. de C.V. ("DGL") and Agricola LG, S.de R.L. de C.V. ("Agricola") (combined "LMX"), which are accounted for as equity method investments since the date of acquisition and are considered affiliates of the Company. The investment in LMX, which is recorded in Investment in joint ventures on the Condensed Consolidated Balance Sheet, was \$6,140 and \$4,944 at September 30, 2022 and December 31, 2021, respectively. During the quarter ended September 30, 2022 and 2021, the Company recorded a loss of \$856 and \$405 from our equity method investments, respectively, which is recorded in Other income (expense), net on the Condensed Consolidated Statement of Income. During the year to date ended September 30, 2022 and 2021, the Company recorded a loss of \$1,036 and \$739 from our equity method investments, respectively, which is recorded in Other (income) expense, net on the Condensed Consolidated Statement of Income. During the quarter and year to date ended September 30, 2022, the Company purchased \$8,265 and \$28,194, respectively, of bulk beverage alcohol from LMX, and during the quarter and year to date ended September 30, 2021, the Company purchased \$8,052 and \$19,724, respectively, of bulk beverage alcohol from LMX.

Recently Adopted Accounting Standard Updates. The Company did not adopt any new Accounting Standard Updates during the quarter ended September 30, 2022.

Note 2. Revenue

The Company generates revenues from the Distilling Solutions segment by the sale of products and by providing warehouse services related to the storage and aging of customer products. The Company generates revenues from the Branded Spirits segment by the sale of products and by providing contract bottling services. The Company generates revenues from Ingredient Solutions segment by the sale of products. Revenue related to sales of products is recognized at a point in time whereas revenue generated from warehouse services and contract bottling services is recognized over time. Contracts with customers include a single performance obligation (either the sale of products, the provision of warehouse services or contract bottling services).

The following table presents the Company's sales by segment and major products and services:

	Quarter Ended September 30,		Year to Date Ended September 30,	
	2022	2021	2022	2021
Distilling Solutions				
Brown goods	\$ 57,423	\$ 42,793	\$ 175,899	\$ 129,600
White goods	20,469	21,187	57,996	56,049
Premium beverage alcohol	77,892	63,980	233,895	185,649
Industrial alcohol	10,761	14,790	35,141	46,896
Food grade alcohol	88,653	78,770	269,036	232,545
Fuel grade alcohol	3,713	3,592	10,307	10,862
Distillers feed and related co-products	9,943	4,016	30,127	13,660
Warehouse services	6,335	4,666	17,821	12,949
Total Distilling Solutions	108,644	91,044	327,291	270,016
Branded Spirits				
Ultra premium	13,804	11,363	35,836	19,491
Super premium	3,350	2,798	9,522	6,393
Premium	6,013	5,683	17,928	11,012
Mid	20,834	22,992	63,408	48,399
Value	12,097	12,756	36,304	25,984
Other	6,663	5,969	14,080	11,278
Total Branded Spirits	62,761	61,561	177,078	122,557
Ingredient Solutions				
Specialty wheat starches	16,241	12,231	47,445	35,051
Specialty wheat proteins	9,697	8,901	29,225	23,299
Commodity wheat starches	3,803	2,626	10,286	7,572
Commodity wheat proteins	—	248	38	1,378
Total Ingredient Solutions	29,741	24,006	86,994	67,300
Total sales	\$ 201,146	\$ 176,611	\$ 591,363	\$ 459,873

Note 3. Business Combination

Description of the Transaction. On January 22, 2021, the Company entered into a definitive agreement to acquire Luxco, and subsequently completed the merger on April 1, 2021 (the "Merger"). Luxco is a leading branded beverage alcohol company across various categories, with a more than 60-year business heritage. As a result of the Merger, MGP increased its scale and market position in the branded-spirits sector and believes it strengthened its platform for future growth of higher valued-added products.

Following the Merger, Luxco became a wholly owned subsidiary of MGP and is included within the Branded Spirits segment. The aggregate consideration paid by the Company in connection with the Merger was \$237,500 in cash (less assumed indebtedness) and 5,007,833 shares of common stock of the Company, subject to adjustment for fractional shares (the "Company Shares," and together with the cash portion, the "Merger Consideration"). The Company Shares were valued at \$296,213 and represented approximately 22.8 percent of the Company's outstanding common stock immediately following the closing of the Merger. The Merger Consideration was subject to customary purchase price adjustments related to, among other things, net working capital, acquired cash and assumed debt. The consideration paid at closing included a preliminary estimated purchase price adjustment. In September 2021, the parties finalized the purchase price adjustment, which decreased the cash consideration paid by approximately \$608 and increased stock consideration by an additional 1,373 shares from the preliminary amounts that were paid at closing.

The cash portion of the Merger Consideration, the repayment of assumed debt, and transaction-related expenses were financed with borrowings under the Company's existing Credit Agreement which was drawn down on April 1, 2021. See Note 5, Corporate Borrowings, for further details.

For tax purposes, the transaction was structured partially as a tax-free reorganization and partially as a taxable acquisition, as defined in the Internal Revenue Code. The amount transferred in a tax deferred manner, under the tax-free reorganization rules, did not create additional tax basis for the Company. The taxable component of the transaction created additional tax basis and a corresponding future tax deduction for the Company.

Purchase Price Allocation. The Merger was accounted for as a business combination in accordance with Financial Accounting Standards Board Accounting Standard Codification 805, Business Combinations ("ASC 805"), and as such, assets acquired, liabilities assumed, and consideration transferred were recorded at their estimated fair values on the acquisition date. The following table summarizes the allocation of the consideration paid for Luxco to the estimated fair value of the assets acquired and liabilities assumed at the acquisition date, with the excess recorded to goodwill.

Consideration:

Cash, net of assumed debt	\$	149,484
Value of MGP Common Stock issued at close ^(a)		296,279
Fair value of total consideration transferred	\$	<u>445,763</u>

Recognized amounts of identifiable assets acquired and liabilities assumed:

Cash	\$	479
Receivables		29,675
Inventory		90,854
Prepaid expenses		1,454
Property, plant and equipment, net		41,279
Investments in joint ventures		5,085
Intangible assets ^(b)		219,500
Other assets		4,257
Total assets		<u>392,583</u>
Current maturities of long-term debt ^(c)		87,509
Accounts payable		14,453
Federal and state excise taxes payable		8,352
Accrued expenses and other		2,832
Other noncurrent liabilities		196
Deferred income taxes		57,034
Total liabilities		<u>170,376</u>
Goodwill		223,556
Total	\$	<u>445,763</u>

(a) On April 1, 2021, the Company issued 5,007,833 shares of MGP Common Stock which was valued at \$59.15 per share. In September 2021, the parties finalized the purchase price adjustments which increased stock consideration by an additional 1,373 shares from the preliminary amounts that were paid at closing.

(b) Intangible assets acquired included trade names with an estimated fair value of \$178,100 and distributor relationships with an estimated fair value of \$41,400.

(c) The fair value of Luxco's debt that was assumed by MGP in the transaction and repaid on the closing date.

In accordance with ASC 805 assets acquired, liabilities assumed, and consideration transferred were recorded at their estimated fair values on the acquisition date. The fair value measurements of tangible and intangible assets and liabilities were based on significant inputs not observable in the market and represent Level 3 measurements within the fair value hierarchy. Level 3 inputs include discount rates that would be used by a market participant in valuing these assets and liabilities, projections of revenues and cash flows, distributor attrition rates, royalty rates and market comparables, among others. The fair value of work-in-process and finished goods inventory was determined using the comparative sales method and raw materials was determined using the replacement cost method. The fair value of personal property assets was determined using the market approach and the indirect and direct method of the cost approach, and the fair value of real property was determined using the

cost approach and the sales comparison approach.

Goodwill of \$223,556, none of which is deductible for tax purposes, represents the excess of the consideration transferred over the estimated fair value of assets acquired net of liabilities assumed. The Intangible assets acquired included indefinite-lived intangible assets, trade names, with an estimated fair value of \$178,100 and definite-lived intangible assets, distributor relationships, with an estimated fair value of \$41,400 and a useful life of 20 years. The trade names and distributor relationships acquired by the Company have been recorded at the estimated fair values using the relief from royalty method and multi-period earnings method, respectively. Management engaged a third party valuation specialist to assist in the valuation analysis of certain acquired assets including trade names and distributor relationships.

Pro Forma Information. The following table summarizes the unaudited pro forma financial results for the quarter and year to date ended September 30, 2021, as if the Merger had occurred on January 1, 2020:

	Pro Forma Financial Information	
	Quarter Ended September 30, 2021	Year to Date Ended September 30, 2021
Sales	\$ 176,611	\$ 504,243
Net income	23,673	68,934
Basic and diluted earnings per common share	1.08	3.38

The pro forma results are adjusted for items that are non-recurring in nature and directly attributable to the Merger, including the income tax effect of the adjustments. Merger related costs incurred by the Company of \$294 and \$8,922 for the quarter and year to date ended September 30, 2021, respectively, were excluded and \$7,032 is assumed to have been incurred on January 1, 2020. Merger related costs incurred by Luxco of \$3,132 were excluded from the year to date ended September 30, 2021 pro forma results. A non-recurring expense of \$2,529 for the quarter and year to date ended September 30, 2021 related to the fair value adjustment of finished goods inventory estimated to have been sold was removed. Other acquired tangible and intangible assets are assumed to be recorded at estimated fair value on January 1, 2020 and are amortized or depreciated over their estimated useful lives.

The summary pro forma financial information is for informational purposes only, is based on estimates and assumptions, and does not purport to represent what the Company's consolidated results of operations actually would have been if the Merger had occurred at an earlier date, and such data does not purport to project the Company's results of operations for any future period. The basic and diluted shares outstanding used to calculate the pro forma net income per share amounts presented above have been adjusted to assume shares issued at the closing of the Merger were outstanding since January 1, 2020.

Note 4. Goodwill and Intangible Assets

Definite-Lived Intangible Assets. The Company has a definite-lived intangible asset which was acquired as a result of the Merger. The distributor relationships have a carrying value of \$38,295, net of accumulated amortization of \$3,105. The distributor relationships have a useful life of 20 years. The amortization expense for the quarter and year to date ended September 30, 2022 was \$518 and \$1,553, respectively, and the amortization expense for the quarter and year to date ended September 30, 2021 was \$17 and \$1,035, respectively.

As of September 30, 2022, the expected future amortization expense related to definite-lived intangible assets are as follows:

Remainder of 2022	\$ 517
2023	2,070
2024	2,070
2025	2,070
2026	2,070
Thereafter	29,498
Total	\$ 38,295

Goodwill and Indefinite-Lived Intangible Assets. The Company records goodwill and indefinite-lived intangible assets in connection with various acquisitions of businesses and allocates the goodwill and indefinite-lived intangible assets to its respective reporting units.

Changes in carrying amount of goodwill by business segment were as follows:

	Distilling Solutions	Branded Spirits	Ingredient Solutions	Total
Balance, December 31, 2021	\$ —	\$ 226,294	\$ —	\$ 226,294
Acquisitions	—	—	—	—
Balance, September 30, 2022	\$ —	\$ 226,294	\$ —	\$ 226,294

Changes in carrying amount of trade name intangible assets by business segment were as follows:

	Distilling Solutions	Branded Spirits	Ingredient Solutions	Total
Balance, December 31, 2021	\$ —	\$ 178,990	\$ —	\$ 178,990
Acquisitions	—	—	—	—
Balance, September 30, 2022	\$ —	\$ 178,990	\$ —	\$ 178,990

Note 5. Corporate Borrowings

The following table presents the Company's outstanding indebtedness:

Description ^(a)	September 30, 2022	December 31, 2021
Credit Agreement - Revolver, 4.14% (variable rate) due 2025	\$ —	\$ —
Convertible Senior Notes, 1.88% (fixed rate) due 2041	201,250	201,250
Note Purchase Agreement		
Series A Senior Secured Notes, 3.53% (fixed rate) due 2027	16,000	18,400
Senior Secured Notes, 3.80% (fixed rate) due 2029	20,000	20,000
Other long-term borrowings	—	203
Total indebtedness outstanding	237,250	239,853
Less unamortized loan fees ^(b)	(6,199)	(6,454)
Total indebtedness outstanding, net	231,051	233,399
Less current maturities of long-term debt	(4,800)	(3,227)
Long-term debt and Credit Agreement - Revolver	\$ 226,251	\$ 230,172

(a) Interest rates are as of September 30, 2022.

(b) Loan fees are being amortized over the life of the debt instruments.

Credit Agreement. On February 14, 2020, the Company entered into a credit agreement (the "Credit Agreement") with multiple participants led by Wells Fargo Bank, National Association ("Wells Fargo Bank") that matures on February 14, 2025. The Credit Agreement provided for a \$300,000 revolving credit facility. On May 14, 2021, the Credit Agreement was amended to increase the principal amount to \$400,000 and to increase the amount of the revolving credit facility by up to an additional \$100,000. On August 31, 2022, the Credit Agreement was amended to change the interest rate benchmark from LIBOR to SOFR. The Credit Agreement includes certain requirements and covenants, which the Company was in compliance with at September 30, 2022. The cash portion of the Merger Consideration, the repayment of assumed debt, and transaction-related expenses were financed with \$242,300 borrowings under the Credit Agreement which was drawn down on April 1, 2021. As of September 30, 2022, the Company had no outstanding borrowings under the Credit Agreement leaving \$400,000 available.

Convertible Senior Notes. On November 16, 2021, the Company issued \$201.250 in aggregate principal of 1.875% convertible senior notes due in 2041 ("2041 Notes"). The 2041 Notes were issued pursuant to an indenture, dated as of November 16, 2021 (the "Indenture"), by and among the Company, as issuer, Luxco, Inc., MGPI Processing, Inc. and MGPI of Indiana, LLC as subsidiary guarantors, and U.S. Bank National Association, as trustee. The 2041 Notes are senior, unsecured obligations of the Company and interest is payable semi-annually in arrears at a fixed interest rate of 1.875% on May 15 and November 15 of each year. The 2041 Notes mature on November 15, 2041 ("Maturity Date") unless earlier repurchased, redeemed or converted, per the agreement. Upon conversion, the Company will pay cash up to the aggregate principal amount of the 2041 Notes to be converted and pay or deliver, as the case may be, cash, shares of the Company's common stock, or a combination of cash and shares of the Company's common stock, at its election, in respect to the remainder, if any, of the Company's conversion obligation in excess of the aggregate principal amount of the 2041 Notes being converted.

Note Purchase Agreements. The Company's Note Purchase and Private Shelf Agreement (the "Note Purchase Agreement"), with PGIM, Inc., ("Prudential"), an affiliate of Prudential Financial, Inc., and certain affiliates of Prudential, provides for the issuance of \$20,000 of Series A Senior Secured Notes and the issuance of up to \$105,000 of additional Senior Secured Notes (or any higher amount solely to the extent Prudential has provided written notice to the Company of its authorization of such a higher amount). On July 29, 2021, Prudential provided the Company notice pursuant to Section 1.2 of the Note Agreement that Prudential has authorized an increase in the amount of additional Senior Secured Notes that may be issued under the uncommitted shelf facility under the Note Agreement from \$105,000 to \$140,000, effective as of July 29, 2021. The deadline for issuing the notes under the shelf facility is August 23, 2023.

During 2017, the Company issued \$20,000 of Series A Senior Secured Notes with a maturity date of August 23, 2027. During 2019, the Company issued \$20,000 of additional Senior Secured Notes with a maturity date of April 30, 2029. The Note Purchase Agreement includes certain requirements and covenants, which the Company was in compliance with at September 30, 2022. As of September 30, 2022, the Company has \$16,000 of Series A Senior Secured Notes and \$20,000 of additional Senior Secured Notes outstanding under the Note Purchase Agreement leaving \$120,000 available of Senior Secured Notes.

Other long-term borrowings. As part of the Merger, the Company acquired additional long-term notes payable to certain counties in Kentucky and during the quarter ended September 30, 2022, the Company paid off the outstanding balances.

Note 6. Income Taxes

The Company's tax provision for interim periods is determined using an estimated annual effective tax rate, adjusted for discrete items arising in that quarter. In each quarter, the estimated annual effective tax rate is updated and a year to date adjustment is made to the provision. The Company's quarterly effective tax rate can be subject to significant change due to the effect of discrete items arising in a given quarter. Beginning in the second quarter of 2021, the estimated annual effective tax rate includes both domestic and foreign entities acquired in the Merger. See Note 3, Business Combination, for further details.

Income tax expense for the quarter and year to date ended September 30, 2022, was \$7,533 and \$26,037 for an effective tax rate of 24.2 percent and 23.2 percent, respectively. The effective tax rate for the quarter and year to date ended September 30, 2022 differed from the 21 percent federal statutory rate on pretax income primarily due to state and foreign income taxes, partially offset by state and federal tax credits, and the deduction applicable to export activity. The increase in Income tax expense for the year to date ended September 30, 2022 was primarily due to higher Income before income taxes as compared to the prior year periods.

Income tax expense for the quarter and year to date ended September 30, 2021, was \$7,674 and \$18,701 for an effective tax rate of 24.5 percent and 24.0 percent, respectively. The effective tax rate for the quarter and year to date ended September 30, 2021 differed from the 21 percent federal statutory rate on pretax income primarily due to state taxes, income taxes on foreign subsidiaries acquired as a result of the Merger, nondeductible transaction costs, partially offset by state and federal credits and the deduction applicable to export activity.

Note 7. Equity and EPS

The computations of basic and diluted EPS:

	Quarter Ended September 30,		Year to Date Ended September 30,	
	2022	2021	2022	2021
Operations:				
Net income ^(a)	\$ 23,628	\$ 23,673	\$ 86,361	\$ 59,159
Net loss attributable to noncontrolling interest	180	203	444	279
Income attributable to participating securities (unvested shares and units) ^(b)	(188)	(175)	(688)	(471)
Net income used in EPS calculation	\$ 23,620	\$ 23,701	\$ 86,117	\$ 58,967
Share information:				
Basic weighted average common shares ^(c)	22,008,381	21,981,201	22,000,026	20,293,818
Diluted weighted average common shares ^{(c)(d)}	22,228,814	21,981,201	22,000,026	20,293,818
Basic EPS	\$ 1.07	\$ 1.08	\$ 3.91	\$ 2.91
Diluted EPS	\$ 1.06	\$ 1.08	\$ 3.91	\$ 2.91

(a) Net income attributable to all shareholders.

(b) Participating securities included 176,398 and 163,024 unvested restricted stock units ("RSUs"), at September 30, 2022 and 2021, respectively.

(c) Under the two-class method, basic and diluted weighted average common shares at September 30, 2022 and 2021 exclude unvested participating securities.

(d) The impacts of the Convertible Senior Notes were included in the diluted weighted average common shares if the inclusion was dilutive. The Convertible Senior Notes would only have a dilutive impact if the average market price per share during the quarter and year to date period exceeds the conversion price of \$96.24 per share.

Share Issuance. On April 1, 2021, as part of the consideration for the Merger, the Company issued 5,007,833 shares of common stock. In September 2021, the parties finalized the purchase price adjustments, which increased stock consideration by an additional 1,373 shares from the preliminary amounts that were paid at closing.

Share Repurchase. On February 25, 2019, MGP's Board of Directors approved a \$25,000 share repurchase authorization commencing February 27, 2019, through February 27, 2022. Under the share repurchase program, the Company could have repurchased stock from time to time for cash in open market purchases, block transactions, and privately negotiated transactions in accordance with applicable federal securities laws. The Company did not repurchase any shares under the share repurchase program during 2022, prior to its expiration on February 27, 2022. The Company did not renew the share repurchase program upon its expiration.

Common Stock Share Activity.

	Shares Outstanding	
	Capital Stock Preferred	Common Stock
Balance, December 31, 2021	437	21,964,314
Issuance of Common Stock	—	29,807
Repurchase of Common Stock ^(a)	—	(9,021)
Balance, March 31, 2022	437	21,985,100
Issuance of Common Stock	—	7,655
Repurchase of Common Stock ^(a)	—	(4)
Balance, June 30, 2022	437	21,992,751
Issuance of Common Stock	—	606
Repurchase of Common Stock ^(a)	—	(2)
Balance, September 30, 2022	437	21,993,355

	Shares Outstanding	
	Capital Stock Preferred	Common Stock
Balance, December 31, 2020	437	16,915,862
Issuance of Common Stock	—	35,114
Repurchase of Common Stock ^(a)	—	(10,376)
Balance, March 31, 2021	437	16,940,600
Issuance of Common Stock	—	5,022,122
Repurchase of Common Stock ^(a)	—	(1,489)
Balance, June 30, 2021	437	21,961,233
Issuance of Common Stock	—	2,361
Repurchase of Common Stock ^(a)	—	(20)
Balance, September 30, 2021	437	21,963,574

(a) The Common Stock repurchases were for tax withholding on equity based compensation

Note 8. Commitments and Contingencies

There are various legal and regulatory proceedings involving the Company and its subsidiaries. The Company accrues estimated costs for a contingency when management believes that a loss is probable and can be reasonably estimated.

Shareholder matters. On May 11, 2020, Mitchell Dorfman, a shareholder in MGP, filed an action in the United States District Court for the District of Kansas, under the caption *Dorfman, derivatively on behalf of MGP Ingredients v. Griffin, et al*, Case 2:20-cv-02239. On June 4, 2020, Justin Carter, a shareholder in MGP, filed an action in the United States District Court for the District of Kansas, under the caption *Carter, derivatively on behalf of MGP Ingredients v. Griffin, et al*, Case 2:20-cv-02281. On June 18, 2020, Alexandra Kearns, a shareholder in MGP, filed an action in the District Court of Atchison County, Kansas, under the caption *Kearns, derivatively on behalf of MGP Ingredients v. Griffin, et al.*, Case 2020-CV-000042. The defendants were certain of the Company's current and former officers and directors. The Company was a nominal defendant in each action. Plaintiffs alleged that the Company was damaged as a result of the commencement of securities litigation against defendants, the repurchase of Company stock at artificially inflated prices, and compensation paid to the individual defendants. The Complaint in *Dorfman* asserted claims for violations of Sections 14(a), 10(b), and 20(a) of the Securities Exchange Act of 1934, breach of fiduciary duties, waste of corporate assets, and unjust enrichment. The Complaint in *Carter* asserted claims for violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, breach of fiduciary duties, waste of corporate assets, and unjust enrichment. The Petition in *Kearns* asserted claims for breach of fiduciary duties, waste of corporate assets, and unjust enrichment. The pleadings prayed for an award of compensatory damages, including interest, in favor of the Company, for equitable relief related to the Company's corporate governance, for disgorgement of compensation, and for an award of attorneys' fees and costs.

On August 31, 2021, the court dismissed with prejudice the securities litigation on which some of the derivative claims were based. On January 4, 2022, the court dismissed the *Carter* action. On January 11, 2022, the court dismissed the *Dorfman* action. On February 2, 2022, the plaintiffs and defendants entered into a stipulation of dismissal of the *Kearns* action. The federal claims alleged in *Carter* were dismissed with prejudice. All other derivative claims were dismissed without prejudice.

2016 Atchison Chemical Release. A chemical release occurred at the Company's Atchison facility on October 21, 2016, which resulted in emissions venting into the air ("the Atchison Chemical Release"). Private plaintiffs initiated legal proceedings against the Company for damages resulting from the Atchison Chemical Release. The Company reached a settlement with the plaintiffs in December 2021 and the legal proceedings were dismissed with prejudice in January 2022.

Note 9. Employee and Non-Employee Benefit Plans

Share-Based Compensation Plans. The Company's share-based compensation plans provide for the awarding of stock options, stock appreciation rights, shares of restricted stock ("Restricted Stock"), and RSUs for senior executives and salaried employees, as well as non-employee directors. The Company has two active equity-based compensation plans: the Employee Equity Incentive Plan of 2014 (the "2014 Plan") and the Non-Employee Director Equity Incentive Plan (the "Directors' Plan").

As of September 30, 2022, 585,353 RSUs had been granted of the 1,500,000 shares approved under the 2014 Plan, and 130,982 shares had been granted of the 300,000 shares approved under the Directors' Plan. As of September 30, 2022, there were 178,608 unvested RSUs under the Company's long-term incentive plans and 176,398 were participating securities (Note 7).

Deferred Compensation Plan. The Company established an unfunded Executive Deferred Compensation Plan ("EDC Plan") effective as of June 30, 2018, with a purpose to attract and retain highly-compensated key employees by providing participants with an opportunity to defer receipt of a portion of their salary, bonus, and other specified compensation. The Company's obligations under this plan will change in conjunction with the performance of the participants' investments, along with contributions to and withdrawals from the plan. Realized and unrealized gains (losses) on deferred compensation plan investments were included as a component of Other income (expense), net on the Company's Condensed Consolidated Statements of Income for the quarter and year to date ended September 30, 2022. For quarter and year to date ended September 30, 2022, the Company had a loss on deferred compensation plan investments of \$103 and \$931, respectively. For quarter ended September 30, 2021, the Company had a loss on deferred compensation plan investments of \$15 and for the year to date ended September 30, 2021, the Company had a gain on deferred compensation plan investments of \$261.

Plan investments are classified as Level 1 in the fair value hierarchy since the investments trade with sufficient frequency and volume to enable the Company to obtain pricing information on an ongoing basis. Participants were able to direct the deferral of a portion of their base salary and a portion of their estimated accrued Short-term incentive plan ("STI Plan") amounts that were paid during the first quarter of the following year. Base salary amounts elected for deferral are deposited into the EDC Plan by the Company on a weekly basis and allocated by participants among Company-determined investment options. STI Plan deferral amounts are deposited, at the time of payment, into the EDC Plan by the Company and allocated by participants among Company-determined investment options.

At September 30, 2022 and December 31, 2021, the EDC Plan investments were \$2,510 and \$3,072, respectively, which were recorded in Other assets on the Company's Condensed Consolidated Balance Sheets. The EDC Plan current liabilities were \$617 at both September 30, 2022 and December 31, 2021, which were included in Accrued expenses and other on the Company's Condensed Consolidated Balance Sheets. The EDC Plan non-current liabilities were \$2,310 and \$2,981 at September 30, 2022 and December 31, 2021, respectively, and were included in Other noncurrent liabilities on the Company's Condensed Consolidated Balance Sheets.

Note 10. Operating Segments

At September 30, 2022, the Company had three segments: Distilling Solutions, Branded Spirits, and Ingredient Solutions. The Distilling Solutions segment consists of food grade alcohol and distillery co-products, such as distillers feed (commonly called dried distillers grain in the industry) and fuel grade alcohol. The Distilling Solutions segment also includes warehouse services, including barrel put away, storage, retrieval, and blending services. The Branded Spirits segment consists of producing, importing, bottling and rectifying of distilled spirits. Ingredient Solutions segment consists of specialty starches and proteins and commodity starches and proteins.

Operating profit for each segment is based on sales less identifiable operating expenses. Non-direct selling, general and administrative expenses, interest expense, other special charges, and other general miscellaneous expenses are excluded from segment operations and are classified as Corporate. Receivables, inventories, property, plant and equipment, leases, goodwill and intangible assets have been identified with the segments to which they relate. All other assets are considered as Corporate.

	Quarter Ended September 30,		Year to Date Ended September 30,	
	2022	2021	2022	2021
Sales to Customers				
Distilling Solutions	\$ 108,644	\$ 91,044	\$ 327,291	\$ 270,016
Branded Spirits	62,761	61,561	177,078	122,557
Ingredient Solutions	29,741	24,006	86,994	67,300
Total	\$ 201,146	\$ 176,611	\$ 591,363	\$ 459,873
Gross Profit				
Distilling Solutions	\$ 25,917	\$ 26,981	\$ 94,630	\$ 87,211
Branded Spirits	25,067	23,217	70,809	41,737
Ingredient Solutions	8,064	6,888	24,654	17,264
Total	\$ 59,048	\$ 57,086	\$ 190,093	\$ 146,212
Depreciation and Amortization				
Distilling Solutions	\$ 2,929	\$ 2,695	\$ 8,716	\$ 7,900
Branded Spirits	1,434	1,743	4,618	3,481
Ingredient Solutions	613	531	1,838	1,487
Corporate	357	274	1,085	800
Total	\$ 5,333	\$ 5,243	\$ 16,257	\$ 13,668
Income (loss) before Income Taxes				
Distilling Solutions	\$ 25,213	\$ 26,047	\$ 92,332	\$ 84,225
Branded Spirits	9,776	9,293	28,016	15,182
Ingredient Solutions	6,822	6,214	21,770	15,121
Corporate	(10,650)	(10,207)	(29,720)	(36,668)
Total	\$ 31,161	\$ 31,347	\$ 112,398	\$ 77,860

The following table allocates assets to each segment as of:

	September 30, 2022	December 31, 2021
Identifiable Assets		
Distilling Solutions	\$ 330,487	\$ 314,816
Branded Spirits	699,354	658,826
Ingredient Solutions	57,061	43,009
Corporate	45,173	24,816
Total	\$ 1,132,075	\$ 1,041,467

Note 11. Subsequent Events

Dividend. On November 3, 2022, the Company's Board of Directors declared a quarterly dividend payable to stockholders of record as of November 18, 2022, of the Company's Common Stock, and a dividend equivalent payable to holders of certain RSUs as of November 18, 2022, of \$0.12 per share and per unit, payable on December 2, 2022.

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

(Dollar amounts in thousands, unless otherwise noted)

CAUTIONARY NOTE CONCERNING FACTORS THAT MAY AFFECT FUTURE RESULTS

This Report on Form 10-Q contains forward looking statements as well as historical information. All statements, other than statements of historical facts, regarding the prospects of our industry and our prospects, plans, financial position, and strategic plan may constitute forward looking statements. In addition, forward looking statements are usually identified by or are associated with such words as "intend," "plan," "believe," "estimate," "expect," "anticipate," "hopeful," "should," "may," "will," "could," "encouraged," "opportunities," "potential," and/or the negatives or variations of these terms or similar terminology. Forward looking statements are based on current expectations and assumptions that are subject to risks and uncertainties which may cause actual results to differ materially from those expressed or implied in the forward looking statements. A detailed discussion of risks and uncertainties that could cause actual results and events to differ materially from such forward looking statements is included in the section titled "Risk Factors" (Item 1A) of our Annual Report on Form 10-K for the year ended December 31, 2021 and the additional risk factors included in our Form 10-Q for the quarter ended June 30, 2022 in Part II, Item 1A. Forward looking statements are made as of the date of this report, and we undertake no obligation to update or revise publicly any forward looking statements, whether because of new information, future events or otherwise.

OVERVIEW

MGP is a leading producer and supplier of premium distilled spirits, branded spirits and food ingredients. Distilled spirits include premium bourbon and rye whiskeys and grain neutral spirits ("GNS"), including vodka and gin. We are also a top producer of high quality industrial alcohol for use in both food and non-food applications. Our distilled spirits are either packaged and sold under our own brands to distributors, sold, directly or indirectly, to manufacturers of other branded spirits, or direct to consumer. Our Branded Spirits consist of producing, importing, bottling and rectifying distilled spirits through our distilleries and bottling facilities. The Company's protein and starch food ingredients provide a host of functional, nutritional, and sensory benefits for a wide range of food products to serve the packaged goods industry.

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our unaudited condensed consolidated financial statements and accompanying notes included in this Form 10-Q, as well as our audited consolidated financial statements and accompanying notes and Management's Discussion and Analysis of Financial Condition and Results of Operations - General, set forth in our Annual Report on Form 10-K for the year ended December 31, 2021.

RESULTS OF OPERATIONS

Consolidated Results

The table below details the consolidated results for the quarters ended September 30, 2022 and 2021:

	Quarter Ended September 30,		2022 v. 2021
	2022	2021	
Sales	\$ 201,146	\$ 176,611	14 %
Cost of sales	142,098	119,525	19
Gross profit	59,048	57,086	3
Gross margin %	29.4 %	32.3 %	(2.9) pp ^(a)
Advertising and promotion expenses	7,279	5,664	29
Selling, general, and administrative (“SG&A”) expenses	17,904	18,527	(3)
Other operating (income) expense, net	1	11	(91)
Operating income	33,864	32,884	3
Operating margin %	16.8 %	18.6 %	(1.8) pp
Interest expense, net	(1,350)	(1,116)	(21)
Other income (expense), net	(1,353)	(421)	(221)
Income before income taxes	31,161	31,347	(1)
Income tax expense	7,533	7,674	(2)
Effective tax expense rate %	24.2 %	24.5 %	(0.3) pp
Net income	\$ 23,628	\$ 23,673	— %
Net income margin %	11.7 %	13.4 %	(1.7) pp

(a) Percentage points (“pp”).

Sales - Sales for quarter ended September 30, 2022 were \$201,146, an increase of 14 percent compared to the year-ago quarter, which was the result of increased sales in the Distilling Solutions, Ingredient Solutions and Branded Spirits segments. Within the Distilling Solutions segment, sales were up 19 percent, primarily due to an increase in the sales of brown goods within premium beverage alcohol and distillers feed and related co-products. Within the Ingredient Solutions segment, sales were up 24 percent, primarily due to increased sales of specialty wheat starches and commodity wheat starches. Within the Branded Spirits segment, sales were up 2 percent, primarily due to increased sales of brands in the ultra premium price tier (see Segment Results).

Gross profit - Gross profit for quarter ended September 30, 2022 was \$59,048, an increase of 3 percent compared to the year-ago quarter. The increase was driven by an increase in gross profit in the Branded Spirits and Ingredient Solutions segments, partially offset by a decrease in Distilling Solutions segment gross profit. In the Branded Spirits segment, gross profit increased by \$1,850, or 8 percent. In the Ingredient Solutions segment, gross profit increased by \$1,176, or 17 percent. In the Distilling Solutions segment, gross profit declined by \$1,064, or 4 percent (see Segment Results).

Advertising and promotion expenses - Advertising and promotion expenses for quarter ended September 30, 2022 were \$7,279, an increase of 29 percent compared to the year-ago quarter, primarily driven by increased advertising and promotion investment in the Branded Spirits segment, specifically in the ultra premium, super premium and premium price tiers.

SG&A expenses - SG&A expenses for quarter ended September 30, 2022 were \$17,904, a decrease of 3 percent compared to the year-ago quarter, primarily due to lower incentive compensation expense and one-time acquisition costs in 2021 related to the Merger with Luxco that did not recur in 2022.

Operating income - Operating income for quarter ended September 30, 2022 increased to \$33,864 from \$32,884 for quarter ended September 30, 2021, primarily due to an increase in gross profit in the Branded Spirits and Ingredient Solutions segments as well as a decrease in the previously described SG&A expenses. These were partially offset by an increase in the previously described Advertising and promotion expenses and a decrease in gross profit in the Distilling Solutions segment.

Operating income, quarter versus quarter	Operating Income	Change
Operating income for quarter ended September 30, 2021	\$ 32,884	
Increase in gross profit - Branded Spirits segment ^(a)	1,850	5 pp ^(b)
Increase in gross profit - Ingredient Solutions segment ^(a)	1,176	4 pp
Decrease in gross profit - Distilling Solutions segment ^(a)	(1,064)	(3) pp
Increase in Advertising and promotion expenses	(1,615)	(5) pp
Decrease in SG&A expenses	623	2 pp
Change in Other operating income (expense), net	10	— pp
Operating income for quarter ended September 30, 2022	\$ 33,864	3 %

(a) See segment discussion.

(b) Percentage points ("pp").

Income tax expense - Income tax expense for quarter ended September 30, 2022 was \$7,533, for an effective tax rate of 24.2 percent. Income tax expense for the quarter ended September 30, 2021, was \$7,674, for an effective tax rate of 24.5 percent. The decrease in Income tax expense, quarter versus quarter, was due primarily to lower Income before income taxes. The decrease in effective tax rate, quarter versus quarter, was due primarily to favorable tax benefits, related to certain tax credits concerning our capital spend.

Earnings per common share ("EPS") - Basic EPS was \$1.07 for quarter ended September 30, 2022, compared to \$1.08 for quarter ended September 30, 2021. The change in Basic EPS, quarter versus quarter, was primarily due to a change in Other income (expense), net and a change in interest expense, net, partially offset by an increase in Operating income. Dilutive EPS was \$1.06 for the quarter ended September 30, 2022, compared to \$1.08 for the quarter ended September 30, 2021. The change in Diluted EPS, quarter versus quarter, was primarily due to the same changes as Basic EPS as well as the impact of dilutive shares outstanding.

Change in basic and diluted EPS, quarter versus quarter	Basic and Diluted EPS	Change
Basic and diluted EPS for quarter ended September 30, 2021	\$ 1.08	
Increase in Operating income ^(a)	0.03	3 pp ^(b)
Change in Other income (expense), net ^(a)	(0.03)	(3) pp
Change in Interest expense, net ^(a)	(0.01)	(1) pp
Basic EPS for quarter ended September 30, 2022	\$ 1.07	(1) %
Impact of dilutive shares outstanding	(0.01)	(1) pp
Diluted EPS for quarter ended September 30, 2022	\$ 1.06	(2) %

(a) Item is net of tax based on the effective tax rate for the base year (2021).

(b) Percentage points ("pp").

The table below details the consolidated results for year to date ended September 30, 2022 and 2021:

	Year to Date Ended September 30,		2022 v. 2021
	2022	2021	
Sales	\$ 591,363	\$ 459,873	29 %
Cost of sales	401,270	313,661	28
Gross profit	190,093	146,212	30
Gross margin %	32.1 %	31.8 %	0.3 pp ^(a)
Advertising and promotion expenses	18,848	9,888	91
SG&A expenses	52,029	55,266	(6)
Other operating (income) expense, net	(34)	11	(409)
Operating income	119,250	81,047	47
Operating margin %	20.2 %	17.6 %	2.6 pp
Interest expense, net	(4,491)	(2,708)	(66)
Other income (expense), net	(2,361)	(479)	(393)
Income before income taxes	112,398	77,860	44
Income tax expense	26,037	18,701	39
Effective tax expense rate %	23.2 %	24.0 %	(0.8) pp
Net income	\$ 86,361	\$ 59,159	46 %
Net income margin %	14.6 %	12.9 %	1.7 pp

(a) Percentage points ("pp").

Sales - Sales for year to date ended September 30, 2022 were \$591,363, an increase of 29 percent compared to the year-ago period, which was the result of increased sales in the Distilling Solutions, Branded Spirits and Ingredient Solutions segments. Within the Distilling Solutions segment, sales were up 21 percent, primarily due to an increase in the sales of brown goods within premium beverage alcohol and distillers feed and related co-products. Within the Branded Spirits segment, sales were up 44 percent, primarily due to the additional brands acquired as part of the April 1, 2021 Merger. Within the Ingredient Solutions segment, sales were up 29 percent, primarily due to increased sales of specialty wheat starches and proteins, and commodity wheat starches (see Segment Results).

Gross profit - Gross profit for year to date ended September 30, 2022 was \$190,093, an increase of 30 percent compared to the year-ago period. The increase was driven by an increase in gross profit in the Branded Spirits, Distilling Solutions, and Ingredient Solutions segments. In the Branded Spirits segment, gross profit increased by \$29,072, or 70 percent. In the Distilling Solutions segment, gross profit increased by \$7,419, or 9 percent. In the Ingredient Solutions segment, gross profit increased by \$7,390, or 43 percent (see Segment Results).

Advertising and promotion expenses - Advertising and promotion expenses for year to date ended September 30, 2022 were \$18,848, an increase of 91 percent compared to the year-ago period, primarily driven by the assumption of Luxco's Advertising and promotion expenses as well as increased advertising and promotion investment in the Branded Spirits segment, specifically in the ultra premium, super premium and premium price tiers.

SG&A expenses - SG&A expenses for year to date ended September 30, 2022 were \$52,029, a decrease of 6 percent compared to the year-ago period. The decrease in SG&A expenses was driven primarily by the one-time acquisition costs in 2021 related to the Merger with Luxco that did not recur in 2022, partially offset by the assumption of Luxco's SG&A expenses.

Operating income - Operating income for year to date ended September 30, 2022 increased to \$119,250 from \$81,047 for year to date period ended September 30, 2021, primarily due to an increase in gross profit in the Branded Spirits, Distilling Solutions, and Ingredient Solutions segments as well as a decrease in the previously described SG&A expenses. These were partially offset by an increase in the previously described Advertising and promotion expenses.

Operating income, year to date versus year to date	Operating Income	Change
Operating income for year to date ended September 30, 2021	\$ 81,047	
Increase in gross profit - Branded Spirits segment ^(a)	29,072	36 pp ^(b)
Increase in gross profit - Distilling Solutions segment ^(a)	7,419	9 pp
Increase in gross profit - Ingredient Solutions segment ^(a)	7,390	9 pp
Increase in Advertising and promotion expenses	(8,960)	(11) pp
Decrease in SG&A expenses	3,237	4 pp
Change in Other operating income (expense), net	45	— pp
Operating income for year to date ended September 30, 2022	\$ 119,250	47 %

(a) See segment discussion.

(b) Percentage points ("pp").

Income tax expense - Income tax expense for year to date ended September 30, 2022 was \$26,037, for an effective tax rate of 23.2 percent. Income tax expense for the year to date ended September 30, 2021, was \$18,701, for an effective tax rate of 24.0 percent. The increase in Income tax expense, year to date versus year to date, was primarily due to higher Income before income taxes. The decrease in effective tax rate, year to date versus year to date, was due to favorable tax benefits, related to certain tax credits concerning our capital spend.

Earnings per common share - EPS was \$3.91 for year to date ended September 30, 2022, compared to \$2.91 for year to date ended September 30, 2021. EPS increased, year to date versus year to date, primarily due to an increase in operating income, partially offset by an increase in shares outstanding as a result of shares issued as part of the consideration paid for the Merger with Luxco.

Change in basic and diluted EPS, year to date versus year to date	Basic and Diluted EPS	Change
Basic and diluted EPS for year to date ended September 30, 2021	\$ 2.91	
Increase in operating income ^(a)	1.63	56 pp ^(b)
Change in interest expense, net ^(a)	(0.08)	(3) pp
Change in other income (expense), net ^(a)	(0.06)	(2) pp
Tax: Change in effective tax rate	0.02	1 pp
Change in weighted average shares outstanding	(0.51)	(18) pp
Basic and diluted EPS for year to date ended September 30, 2022	\$ 3.91	34 %

(a) Item is net of tax based on the effective tax rate for the base year (2021).

(b) Percentage points ("pp").

SEGMENT RESULTS

Distilling Solutions

The following tables show selected financial information for the Distilling Solutions segment for the quarters ended September 30, 2022 and 2021.

	DISTILLING SOLUTIONS SALES			
	Quarter Ended September 30,		Quarter versus Quarter Sales Change Increase/(Decrease)	
	2022	2021	\$ Change	% Change
Brown goods	\$ 57,423	\$ 42,793	\$ 14,630	34 %
White goods	20,469	21,187	(718)	(3)
Premium beverage alcohol	77,892	63,980	13,912	22
Industrial alcohol	10,761	14,790	(4,029)	(27)
Food grade alcohol	88,653	78,770	9,883	13
Fuel grade alcohol	3,713	3,592	121	3
Distillers feed and related co-products	9,943	4,016	5,927	148
Warehouse services	6,335	4,666	1,669	36
Total Distilling Solutions	\$ 108,644	\$ 91,044	\$ 17,600	19 %

	Change in Quarter versus Quarter Sales Attributed to:		
	Total ^(a)	Volume ^(b)	Net Price/Mix ^(c)
Premium beverage alcohol	22%	4%	18%

	Other Financial Information			
	Quarter Ended September 30,		Quarter versus Quarter Increase / (Decrease)	
	2022	2021	\$ Change	% Change
Gross profit	\$ 25,917	\$ 26,981	\$ (1,064)	(4) %
Gross margin %	23.9 %	29.6 %		(5.7) pp ^(d)

(a) Total sales change is calculated by taking the difference between current period sales dollars and prior period sales dollars, divided by prior period sales dollars.

(b) Volume change is calculated by taking the difference between current period sales volume and prior period sales volume, multiplied by prior period sales per unit. The product is then divided by prior period sales dollars.

(c) Price/Mix change is calculated by taking the difference between current period sales-per-unit and prior period sales-per unit, multiplied by current period sales volume. The product is then divided by prior period sales dollars.

(d) Percentage points ("pp").

Total sales of Distilling Solutions for quarter ended September 30, 2022 increased by \$17,600, or 19 percent, compared to the prior year quarter. Sales of brown goods within premium beverage alcohol, distillers feed and related co-products, warehouse services, and fuel grade alcohol increased while industrial alcohol and white goods within premium beverage alcohol decreased compared to the prior year quarter. The increase in sales of brown goods was driven by higher sales volume. The increase in sales of distillers feed and related co-products was due to higher average selling price, partially offset by lower sales volumes, both of which primarily resulted from the previously disclosed dryer fire at our Atchison facility which occurred in 2020. These increases were partially offset by a decrease in sales of industrial alcohol and white goods which were driven primarily by lower sales volume, partially offset by higher average selling price.

Gross profit decreased quarter versus quarter by \$1,064, or 4 percent. Gross margin for the quarter ended September 30, 2022 decreased to 23.9 percent from 29.6 percent for the prior year quarter. The decrease in gross profit was primarily due to higher input costs for white goods and industrial alcohol. The average selling price for these products also increased, but not enough to offset the higher input costs. This decrease in gross profit was partially offset by an increase in brown goods gross profit.

The following tables show selected financial information for the Distilling Solutions segment for the year to date ended September 30, 2022 and 2021.

DISTILLING SOLUTIONS SALES				
	Year to Date Ended September 30,		Year to Date versus Year to Date Sales Change Increase/(Decrease)	
	2022	2021	\$ Change	% Change
Brown Goods	\$ 175,899	\$ 129,600	\$ 46,299	36 %
White Goods	57,996	56,049	1,947	3
Premium beverage alcohol	233,895	185,649	48,246	26
Industrial alcohol	35,141	46,896	(11,755)	(25)
Food grade alcohol	269,036	232,545	36,491	16
Fuel grade alcohol	10,307	10,862	(555)	(5)
Distillers feed and related co-products	30,127	13,660	16,467	121
Warehouse services	17,821	12,949	4,872	38
Total Distilling Solutions	\$ 327,291	\$ 270,016	\$ 57,275	21 %

Change in Year to Date versus Year to Date Sales Attributed to:			
	Total^(a)	Volume^(b)	Net Price/Mix^(c)
Premium beverage alcohol	26%	6%	20%

Other Financial Information				
	Year to Date Ended September 30,		Year to Date versus Year to Date Increase / (Decrease)	
	2022	2021	\$ Change	% Change
Gross profit	\$ 94,630	\$ 87,211	\$ 7,419	9 %
Gross margin %	28.9 %	32.3 %		(3.4) pp ^(d)

(a) Total sales change is calculated by taking the difference between current period sales dollars and prior period sales dollars, divided by prior period sales dollars.

(b) Volume change is calculated by taking the difference between current period sales volume and prior period sales volume, multiplied by prior period sales per unit. The product is then divided by prior period sales dollars.

(c) Price/Mix change is calculated by taking the difference between current period sales-per-unit and prior period sales-per unit, multiplied by current period sales volume. The product is then divided by prior period sales dollars.

(d) Percentage points ("pp").

Total sales of Distilling Solutions for year to date ended September 30, 2022 increased by \$57,275, or 21 percent compared to the year-ago period. Sales of brown goods within premium beverage alcohol, distillers feed and related co-products, warehouse services and white goods within premium beverage alcohol increased while industrial alcohol and fuel grade alcohol decreased compared to the prior year to date period. The increase in sales of brown goods was driven by higher sales volume and higher average selling price. The increase in sales of distillers feed and related co-products was due to higher average selling price, partially offset by lower sales volumes, both of which primarily resulted from the previously disclosed dryer fire at our Atchison facility which occurred in 2020. The increase in sales of white goods was driven by higher average selling price, partially offset by lower sales volume. These increases were partially offset by a decrease in sales of industrial alcohol which was driven by lower sales volume, partially offset by higher average selling price.

Gross profit for year to date ended September 30, 2022 increased by \$7,419, or 9 percent compared to the year-ago period. Gross margin for year to date ended September 30, 2022 decreased to 28.9 percent from 32.3 percent for the prior year period. The increase in gross profit was due primarily to higher average selling price and higher sales volume on brown goods. These increases were partially offset by higher input costs for industrial alcohol, white goods, and fuel grade alcohol. The average selling price for these products also increased, but not enough to offset the higher input costs which caused a decrease in the gross margin percentage.

Branded Spirits

The following tables show selected financial information for the Branded Spirits segment for the quarters ended September 30, 2022 and 2021.

BRANDED SPIRITS SALES					
	Quarter Ended September 30,		Quarter versus Quarter Sales Change Increase/(Decrease)		
	2022	2021	\$ Change	% Change	
Ultra premium	\$ 13,804	\$ 11,363	\$ 2,441	21 %	
Super premium	3,350	2,798	552	20	
Premium	6,013	5,683	330	6	
Mid	20,834	22,992	(2,158)	(9)	
Value	12,097	12,756	(659)	(5)	
Other	6,663	5,969	694	12	
Total Branded Spirits	\$ 62,761	\$ 61,561	\$ 1,200	2 %	

Change in Quarter versus Quarter Sales Attributed to:		
Total ^(a)	Volume ^(b)	Net Price/Mix ^(c)
Total Branded Spirits	2%	(6)%
		8%

Other Financial Information				
	Quarter Ended September 30,		Quarter versus Quarter Increase / (Decrease)	
	2022	2021	\$ Change	% Change
Gross profit	\$ 25,067	\$ 23,217	\$ 1,850	8 %
Gross margin %	39.9 %	37.7 %		2.2 pp ^(d)

(a) Total sales change is calculated by taking the difference between current period sales dollars and prior period sales dollars, divided by prior period sales dollars.

(b) Volume change is calculated by taking the difference between current period sales volume and prior period sales volume, multiplied by prior period sales per unit. The product is then divided by prior period sales dollars.

(c) Price/Mix change is calculated by taking the difference between current period sales-per-unit and prior period sales-per unit, multiplied by current period sales volume. The product is then divided by prior period sales dollars.

(d) Percentage points ("pp").

Total sales of Branded Spirits for quarter ended September 30, 2022 increased by \$1,200, or 2 percent compared to the prior year quarter. Sales increased primarily due to an increase in the ultra premium price tier due primarily to increased sales of American whiskey brands as well as an increase in the other tier due to timing of certain contracted private label sales. These increases were partially offset by a decrease in sales of brands within the mid price tier as a result of a change in the product mix towards more premium brands as well as the re-opening of on-premise locations during the prior year period.

Gross profit increased quarter versus quarter by \$1,850, or 8 percent. Gross margin for the quarter ended September 30, 2022 increased to 39.9 percent from 37.7 percent for the prior year quarter. The increase in gross profit was primarily driven by increased sales volume and higher average selling price of brands within the ultra premium price tier. These increases were partially offset by increased inputs costs in the mid and value price tier categories.

The following tables show selected financial information for the Branded Spirits segment for year to date ended September 30, 2022 and 2021.

BRANDED SPIRITS SALES

	Year to Date Ended September 30,		Year to Date versus Year to Date Sales Change Increase/(Decrease)	
	2022	2021	\$ Change	% Change
Ultra premium	\$ 35,836	\$ 19,491	\$ 16,345	84 %
Super premium	9,522	6,393	3,129	49
Premium	17,928	11,012	6,916	63
Mid	63,408	48,399	15,009	31
Value	36,304	25,984	10,320	40
Other	14,080	11,278	2,802	25
Total Branded Spirits	\$ 177,078	\$ 122,557	\$ 54,521	44 %

Change in Year to Date versus Year to Date Sales Attributed to:

	Total ^(a)	Volume ^(b)	Net Price/Mix ^(c)
Total Branded Spirits	44%	31%	13%

Other Financial Information

	Year to Date Ended September 30,		Year to Date versus Year to Date Increase / (Decrease)	
	2022	2021	\$ Change	% Change
Gross profit	\$ 70,809	\$ 41,737	\$ 29,072	70 %
Gross margin %	40.0 %	34.1 %		5.9 pp ^(d)

(a) Total sales change is calculated by taking the difference between current period sales dollars and prior period sales dollars, divided by prior period sales dollars.

(b) Volume change is calculated by taking the difference between current period sales volume and prior period sales volume, multiplied by prior period sales per unit. The product is then divided by prior period sales dollars.

(c) Price/Mix change is calculated by taking the difference between current period sales-per-unit and prior period sales-per unit, multiplied by current period sales volume. The product is then divided by prior period sales dollars.

(d) Percentage points ("pp").

Total sales of Branded Spirits for year to date ended September 30, 2022 increased by \$54,521, or 44 percent compared to the year-ago period. Sales across all pricing tiers increased compared to the year-ago period, primarily due to the additional brands acquired as part of the Merger.

Gross profit for year to date ended September 30, 2022 increased by \$29,072, or 70 percent. Gross margin for year to date ended September 30, 2022 increased to 40.0 percent from 34.1 percent for the prior year. The increase in gross profit was primarily driven by the additional brands acquired as part of the Merger as well as a required step up in value of certain assets due to purchase accounting related to the Merger in 2021 that did not recur in 2022. Of the purchase accounting step ups, \$2,529 was associated with marking the finished goods inventory to fair value and fully flowed through in the prior year period.

Ingredient Solutions

The following tables show selected financial information for the Ingredient Solutions segment for the quarters ended September 30, 2022 and 2021.

	INGREDIENT SOLUTIONS SALES			
	Quarter Ended September 30,		Quarter versus Quarter Sales Change Increase / (Decrease)	
	2022	2021	\$ Change	% Change
Specialty wheat starches	\$ 16,241	\$ 12,231	\$ 4,010	33 %
Specialty wheat proteins	9,697	8,901	796	9
Commodity wheat starches	3,803	2,626	1,177	45
Commodity wheat proteins	—	248	(248)	(100)
Total Ingredient Solutions	\$ 29,741	\$ 24,006	\$ 5,735	24 %

	Change in Quarter versus Quarter Sales Attributed to:		
	Total ^(a)	Volume ^(b)	Net Price/Mix ^(c)
Total Ingredient Solutions	24%	5%	19%

	Other Financial Information			
	Quarter Ended September 30,		Quarter versus Quarter Increase / (Decrease)	
	2022	2021	\$ Change	% Change
Gross profit	\$ 8,064	\$ 6,888	\$ 1,176	17 %
Gross margin %	27.1 %	28.7 %		(1.6) pp ^(d)

(a) Total sales change is calculated by taking the difference between current period sales dollars and prior period sales dollars, divided by prior period sales dollars.

(b) Volume change is calculated by taking the difference between current period sales volume and prior period sales volume, multiplied by prior period sales per unit. The product is then divided by prior period sales dollars.

(c) Price/Mix change is calculated by taking the difference between current period sales-per-unit and prior period sales-per unit, multiplied by current period sales volume. The product is then divided by prior period sales dollars.

(d) Percentage points ("pp").

Total Ingredient Solutions sales for quarter ended September 30, 2022 increased by \$5,735, or 24 percent, compared to the prior year quarter. The increase was primarily driven by higher sales of specialty wheat starches due to higher sales volume and higher average selling prices. Commodity wheat starches and specialty wheat proteins increased due primarily to higher average selling price.

Gross profit increased quarter versus quarter by \$1,176, or 17 percent. Gross margin for the quarter ended September 30, 2022 decreased to 27.1 percent from 28.7 percent for the prior year quarter. The increase in gross profit was primarily driven by higher average selling price of specialty wheat starches and proteins, and commodity wheat starches, partially offset by higher input costs for specialty wheat starches and proteins, and commodity starches. These increased input costs are the primary driver for the decrease in gross margin percentage.

The following tables show selected financial information for the Ingredient Solutions segment for the year to date September 30, 2022 and 2021.

INGREDIENT SOLUTIONS SALES

	Year to Date Ended September 30,		Year to Date versus Year to Date Sales Change Increase/(Decrease)	
	2022	2021	\$ Change	% Change
	Specialty wheat starches	\$ 47,445	\$ 35,051	\$ 12,394
Specialty wheat proteins	29,225	23,299	5,926	25
Commodity wheat starches	10,286	7,572	2,714	36
Commodity wheat proteins	38	1,378	(1,340)	(97)
Total Ingredient Solutions	\$ 86,994	\$ 67,300	\$ 19,694	29 %

Change in Year to Date versus Year to Date Sales Attributed to:

	Total ^(a)	Volume ^(b)	Net Price/Mix ^(c)
Total Ingredient Solutions	29%	9%	20%

Other Financial Information

	Year to Date Ended September 30,		Year to Date versus Year to Date Increase / (Decrease)	
	2022	2021	\$ Change	% Change
	Gross profit	\$ 24,654	\$ 17,264	\$ 7,390
Gross margin %	28.3 %	25.7 %		2.6 pp ^(d)

(a) Total sale changes is calculated by taking the difference between current period sales dollars and prior period sales dollars, divided by prior period sales dollars.

(b) Volume change is calculated by taking the difference between current period sales volume and prior period sales volume, multiplied by prior period sales per unit. The product is then divided by prior period sales dollars.

(c) Price/Mix change is calculated by taking the difference between current period sales-per-unit and prior period sales-per unit, multiplied by current period sales volume. The product is then divided by prior period sales dollars.

(d) Percentage points ("pp").

Total Ingredient Solutions sales for year to date ended September 30, 2022 increased by \$19,694, or 29 percent, compared to the prior year period. The increase in Ingredient Solutions sales was primarily driven by higher sales of specialty wheat starches primarily due to higher sales volume and higher average selling prices. Additionally, the increase in Ingredient Solutions sales was driven by higher sales of specialty wheat proteins primarily due to higher average selling price and higher sales volume. Sales of commodity wheat starches were also up due to higher average selling price. These increases were partially offset by a decrease in sales of commodity wheat proteins due to lower sales volume.

Gross profit increased by \$7,390, or 43 percent for year to date ended September 30, 2022 compared to the prior year period. Gross margin for the year to date ended September 30, 2022 increased to 28.3 percent from 25.7 percent for the prior year period. The increase in gross profit was primarily driven by higher average selling price and higher sales volumes of specialty wheat starches and proteins and commodity wheat starches. These increases were partially offset by higher input costs for all product lines within the segment. Gross profit in the prior year to date period was impacted by a temporary curtailment of natural gas usage due to extreme weather conditions which caused the Company to shut down the Atchison facilities for several days.

CASH FLOW, FINANCIAL CONDITION AND LIQUIDITY

We believe our financial condition continues to be of high quality, as evidenced by our ability to generate adequate cash from operations while having ready access to capital at competitive rates.

Operating cash flow and borrowings through our Credit Agreement, Convertible Senior Notes and Note Purchase Agreement (Note 5) provide the primary sources of cash to fund operating needs and capital expenditures. These same sources of cash are used to fund shareholder dividends and other discretionary uses. Our overall liquidity reflects our strong business results and an effective cash management strategy that takes into account liquidity management, economic factors, and tax considerations. We expect our sources of cash to be adequate to provide for budgeted capital expenditures, potential mergers or acquisitions, and anticipated operating requirements for the foreseeable future.

Cash Flow Summary

	Year to Date Ended September 30,		Changes, year versus year Increase / (Decrease)
	2022	2021	
Cash provided by operating activities	\$ 72,253	\$ 70,785	\$ 1,468
Cash used in investing activities	(31,764)	(189,166)	157,402
Cash provided by (used in) financing activities	(11,301)	112,883	(124,184)
Effect of exchange rate changes on cash	(82)	(2)	(80)
Increase (decrease) in cash and cash equivalents	\$ 29,106	\$ (5,500)	\$ 34,606

Cash increased \$29,106 for year to date ended September 30, 2022, compared to a decrease of \$5,500 for year to date ended September 30, 2021, for a net increase in cash of \$34,606, period versus period.

Operating Activities. Cash provided by operating activities for year to date ended September 30, 2022 was \$72,253. The cash provided by operating activities resulted primarily from net income of \$86,361, adjustments for non-cash or non-operating charges of \$20,503, including depreciation and amortization, and share-based compensation, partially offset by cash used in operating assets and liabilities of \$34,611. The primary drivers of the changes in operating assets and liabilities were \$30,599 use of cash related to an increase in inventories, primarily due to an increase in finished goods inventory and barreled distillate, as well as \$15,582 use of cash related to increased accounts receivables, net due to increased sales during the year to date period, as well as timing of customer payments. These uses of cash were partially offset, primarily by \$12,613 cash provided by an increase in accounts payable.

Cash provided by operating activities for year to date ended September 30, 2021 was \$70,785. The cash provided by operating activities resulted primarily from net income of \$59,159, adjustments for non-cash or non-operating charges of \$19,149, including depreciation and amortization, and share-based compensation, as well as cash used in operating assets and liabilities of \$7,523. The primary drivers of the changes in operating assets and liabilities, excluding the asset and liability balances acquired as part of the Merger, were \$7,588 use of cash related to an increase in inventories, primarily barreled distillate, \$6,678 use of cash related to a decrease in accounts payable, and \$5,593 use of cash related to accounts receivables, net due to increased sales during the quarter as well as an increase in insurance recoveries receivable. These uses of cash were partially offset by \$15,859 cash provided by accrued expenses and other primarily related to legally committed insurance recovery amounts obtained prior to contingencies related to the insurance claim being resolved.

Investing Activities. Cash used in investing activities for year to date ended September 30, 2022 was \$31,764, which primarily resulted from additions to property, plant and equipment of \$29,217 (see Capital Spending). Cash used in investing activities for year to date ended September 30, 2021 was \$189,166, which primarily resulted from \$149,613 related to the Merger with Luxco, and additions to property, plant and equipment of \$37,257 (see Capital Spending).

Capital Spending. We manage capital spending to support our business growth plans. We have incurred \$28,524 and \$33,882 of capital expenditures and have paid \$29,217 and \$37,257 for capital expenditures for year to date ended September 30, 2022 and 2021, respectively. The difference between the amount of capital expenditures incurred and amount paid is due to the change in capital expenditures in accounts payable. We expect approximately \$47,200 in capital expenditures in 2022, which will be used for facility improvement and expansion, facility sustaining projects, and environmental health and safety projects.

Financing Activities. Cash used in financing activities for year to date ended September 30, 2022 was \$11,301, due to payments of dividends and dividend equivalents of \$7,984 (see Dividends and Dividend Equivalents), net payments on debt of \$2,603 (see Long-Term and Short-Term Debt) and purchases of treasury stock of \$714 (see Treasury Purchases).

Cash provided by financing activities for year to date ended September 30, 2021 was \$112,883, due to net proceeds from debt of \$208,521 (see Long-term and Short-term Debt), partially offset by \$87,509 payment on assumed debt as part of the Merger, payments of dividends and dividend equivalents of \$7,362 (see Dividends and Dividend Equivalents) and purchases of treasury stock of \$767 (see Treasury Purchases).

Treasury Purchases. 29,366 RSUs vested and converted to common shares for employees during year to date ended September 30, 2022, of which we withheld and purchased for treasury 9,027 shares valued at \$714 to cover payment of associated withholding taxes.

38,059 RSUs vested and converted to common shares for employees during year to date ended September 30, 2021, of which we withheld and purchased for treasury 11,885 shares valued at \$767 to cover payment of associated withholding taxes.

Share Repurchases. On February 25, 2019, our Board of Directors approved a \$25,000 share repurchase authorization commencing February 27, 2019, through February 27, 2022. The Company did not repurchase any shares during 2022 prior to the expiration of the program on February 27, 2022.

Dividends and Dividend Equivalents

Dividend and Dividend Equivalent Information (per Share and Unit)

Declaration date	Record date	Payment date	Declared ^(c)	Paid ^(c)	Dividend payment	Dividend equivalent payment ^{(a)(b)}	Total payment ^(b)
2022							
February 22, 2022	March 11, 2022	March 25, 2022	\$ 0.12	\$ 0.12	\$ 2,638	\$ 23	\$ 2,661
May 5, 2022	May 20, 2022	June 3, 2022	0.12	0.12	2,638	23	2,661
August 4, 2022	August 19, 2022	September 2, 2022	0.12	0.12	2,639	23	2,662
			<u>\$ 0.36</u>	<u>\$ 0.36</u>	<u>\$ 7,915</u>	<u>\$ 69</u>	<u>\$ 7,984</u>
2021							
February 23, 2021	March 12, 2021	March 26, 2021	\$ 0.12	\$ 0.12	\$ 2,033	\$ 19	\$ 2,052
May 3, 2021	May 21, 2021	June 4, 2021	0.12	0.12	2,635	20	2,655
August 2, 2021	August 20, 2021	September 3, 2021	0.12	0.12	2,635	20	2,655
			<u>\$ 0.36</u>	<u>\$ 0.36</u>	<u>\$ 7,303</u>	<u>\$ 59</u>	<u>\$ 7,362</u>

(a) Dividend equivalent payments on unvested participating securities.

(b) Includes estimated forfeitures.

(c) Per share amount

On November 3, 2022, our Board of Directors declared a quarterly dividend payable to stockholders of record as of November 18, 2022, of the Company's Common Stock, and a dividend equivalent payable to holders of certain RSUs as of November 18, 2022, of \$0.12 per share and per unit, payable on December 2, 2022.

Long-Term and Short-Term Debt. We maintain debt levels we consider appropriate after evaluating a number of factors, including cash flow expectations, cash requirements for ongoing operations, investment and financing plans (including brand development and share repurchase activities) and the overall cost of capital. Total debt was \$231,051 (net of unamortized loan fees of \$6,199) at September 30, 2022, and \$233,399 (net of unamortized loan fees of \$6,454) at December 31, 2021.

Financial Condition and Liquidity. Our principal uses of cash in the ordinary course of business are for input costs used in our production processes, salaries, capital expenditures, and investments supporting our strategic plan, such as the aging of barreled distillate and potential mergers and acquisitions. Generally, during periods when commodities prices are rising, our operations require increased use of cash to support inventory levels.

Our principal sources of cash are product sales and borrowing on our various debt agreements. Under our debt agreements, we must meet certain financial covenants and restrictions, and at September 30, 2022, we met those covenants and restrictions.

At September 30, 2022, our current assets exceeded our current liabilities by \$339,853, largely due to our inventories, at cost, of \$275,478. At September 30, 2022, our cash balance was \$50,674 and we have used our various debt agreements for liquidity purposes, with \$400,000 under our Credit Agreement remaining for additional borrowings and up to \$120,000 potentially available under the Note Purchase Agreement. We anticipate being able to support our short-term liquidity and operating needs largely through cash generated from operations. We regularly assess our cash needs and the available sources to fund these needs. We utilize short-term and long-term debt to fund discretionary items, such as capital investments, dividend payments as well as potential mergers and acquisitions. Subject to market conditions, we could also fund future mergers and acquisitions through the issuance of additional shares of common stock. In addition, we have strong operating results such that we believe financial institutions should provide sufficient credit funding to meet short-term financing requirements, if needed.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We are exposed to commodity price and interest rate market risks. We monitor and manage these exposures as part of our overall risk management program. Our risk management program focuses on the unpredictability of financial markets and seeks to reduce the potentially adverse effects that the volatility of these markets may have on our operating results.

Commodity Costs. Certain commodities we use in our production process, or input costs, expose us to market price risk due to volatility in the prices for those commodities. Through our grain supply contracts for our Atchison and Lawrenceburg facilities, our wheat flour supply contract for our Atchison facility, and our natural gas contracts for both facilities, we purchase grain, wheat flour, and natural gas, respectively, for delivery from one to 24 months into the future at negotiated prices. We have determined that the firm commitments to purchase grain, wheat flour, and natural gas under the terms of our supply contracts meet the normal purchases and sales exception as defined under Accounting Standards Codification (“ASC”) 815, *Derivatives and Hedging*, because the quantities involved are for amounts to be consumed within the normal expected production process.

Interest Rate Exposures. Our various debt agreements (Note 5) expose us to market risks arising from adverse changes in interest rates. Established procedures and internal processes govern the management of this market risk.

Increases in market interest rates would cause interest expense under our variable interest rate debt to increase and earnings before income taxes to decrease. The change in interest expense and earnings before income taxes would be dependent upon the weighted average outstanding borrowings under variable interest rate debt during the reporting period following an increase in market interest rates. Based on weighted average outstanding variable-rate borrowings at September 30, 2022, a 100 basis point increase over the current rates actually in effect at such date would have a minimal impact on interest expense. Based on weighted average outstanding fixed-rate borrowings at September 30, 2022, a 100 basis point increase in market rates would result in a decrease in the fair value of our outstanding fixed-rate debt of \$28,936, and a 100 basis point decrease in market rates would result in an increase in the fair value of our outstanding fixed-rate debt of \$38,728.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures. As of the quarter ended September 30, 2022, our Chief Executive Officer and Chief Financial Officer have each reviewed and evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act). Based on that evaluation, the Chief Executive Officer and Chief Financial Officer have each concluded that our current disclosure controls and procedures are effective to ensure that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in the Securities and Exchange Commission rules and forms, and include controls and procedures designed to ensure that information required to be disclosed by us in such reports is accumulated and communicated to our management, including the Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

Changes in Internal Controls. There were no changes in the Company’s internal controls over financial reporting during the fiscal quarter ended September 30, 2022, that have materially affected, or are reasonably likely to materially affect, the Company’s internal controls over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

Reference is made to Part I, Item 3, Legal Proceedings of our Annual Report on Form 10-K for the year ended December 31, 2021, and Note 8 to this Report on Form 10-Q for information on certain proceedings to which we are subject.

ITEM 1A. RISK FACTORS

The risk factors are described in “Item 1A. Risk Factors” of our Annual Report on Form 10-K for the year ended December 31, 2021 as updated in Part II, Item 1A. Risk Factors on the Form 10-Q for the quarter ended June 30, 2022, have not materially changed.

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

There was no unregistered sale of equity securities during the quarter ended September 30, 2022.

ISSUER PURCHASES OF EQUITY SECURITIES

	(1) Total Number of Shares (or Units) Purchased	(2) Average Price Paid per Share (or Unit)	(3) Total Number of Shares (or Units) Purchased as Part of Publicly Announced Plans or Programs	(4) Maximum Number (or Approximate Dollar Value) of Shares (or Units) that May Yet Be Purchased Under the Plans or Programs
July 1, 2022 through July 31, 2022	2 ^(a)	\$ 101.44	\$ —	\$ —
August 1, 2022 through August 31, 2022	—	\$ —	\$ —	\$ —
September 1, 2022 through September 30, 2022	—	\$ —	\$ —	\$ —
Total	2		\$ —	

(a) Vested RSUs awarded under the 2014 Plan purchased to cover employee withholding taxes.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

ITEM 5. OTHER INFORMATION

None.

ITEM 6. EXHIBITS

Exhibit Number	Description of Exhibit
** * 10.1	Letter agreement dated August 5, 2022 between MGP Ingredients, Inc. and David Dykstra
** * 10.2	MGP Ingredients, Inc. Amended and Restated Short-Term Incentive Plan for years beginning January 1, 2022
*10.3	Amendment No. 3 to Credit Agreement between MGP Ingredients, Inc. and Wells Fargo Bank, National Association, dated August 31, 2022
*31.1	CEO Certification pursuant to Rule 13a-14(a)
*31.2	CFO Certification pursuant to Rule 13a-14(a)
*32.1	CEO Certification furnished pursuant to Rule 13a-14(b) and 18 U.S.C. 1350
*32.2	CFO Certification furnished pursuant to Rule 13a-14(b) and 18 U.S.C. 1350
*101	The following financial information from MGP Ingredients, Inc.'s Quarterly Report on Form 10-Q for the quarter ended September 30, 2022, formatted in iXBRL (Inline Extensible Business Reporting Language) includes: (i) Condensed Consolidated Balance Sheets as of September 30, 2022, and December 31, 2021, (ii) Condensed Consolidated Statements of Income for the three and nine months ended September 30, 2022 and 2021, (iii) Condensed Consolidated Statements of Comprehensive Income for the three and nine months ended September 30, 2022 and 2021, (iv) Condensed Consolidated Statements of Cash Flows for the nine months ended September 30, 2022 and 2021, (v) Condensed Consolidated Statement of Changes in Stockholders' Equity for the three and nine months ended September 30, 2022 and 2021, and (vi) the Notes to Unaudited Condensed Consolidated Financial Statements.
*104	Cover Page Interactive Data Filed - formatted in iXBRL (Inline Extensible Business Reporting Language) and contained in Exhibit 101
*Filed herewith ** Management contract or compensatory plan or arrangement	

SIGNATURES

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

MGP INGREDIENTS, INC.

Date: November 3, 2022

By

/s/ David J. Colo

David J. Colo, President and Chief Executive Officer

Date: November 3, 2022

By

/s/ Brandon M. Gall

Brandon M. Gall, Vice President, Finance and Chief Financial Officer



August 1, 2022

David Dykstra
Vice President of Alcohol Sales
MGP Ingredients, Inc.
100 Commercial Street
Atchison, KS 66002

Dear David:

The purpose of this letter is to detail the terms of the transition of your role as Vice President of Alcohol Sales of MGP Ingredients, Inc. in connection with your decision to retire on December 31, 2022.

Transition Period

Your last day of employment will be December 31, 2022. You will remain in the role of Vice President of Alcohol Sales. You will earn your normal compensation and benefits for work performed from the date of this letter through December 31, 2022.

Eligibility for Additional Compensation

Subject to you executing (and not revoking) a Separation and Release Agreement in a form satisfactory to MGP, which is as attached to this letter, you will be eligible to earn the following payments subject to these terms:

- (a) A lump sum payment in an amount equal to the value of all outstanding unvested restricted stock units held by you as of the December 31, 2022, less all applicable withholdings. Value will be computed based on MGP stock price at the close of the markets on December 30, 2022. This payment will be made as soon as administratively feasible following your execution of the Separation and Release Agreement and the expiration of the revocation period; and
 - (b) A lump sum payment equal to the value of what your FY 2022 STIP payment would have been had you remained employed until the spring 2023 payment date, less all applicable withholdings. This payment will be made at the same time FY 2022 STIP payments are made by MGP.
-

Additional Terms

Between the execution of this letter until December 31, 2022, you acknowledge and agree that:

1. You must remain employed, in good standing, and demonstrate expected positive engagement with business objectives through your December 31, 2022. You must also continue to comply with Company policies, including, but not limited to, all policies related to confidential business information, conduct expectations and business ethics.
2. You will not be eligible for the additional compensation as outlined in this letter if your employment is terminated for Cause between the date of this letter and December 31, 2022. For purposes of this letter, "Cause" shall have the same meaning as set forth in MGP Ingredients, Inc. Amended and Restated Executive Severance Plan.
3. You will not be eligible for the additional compensation as outlined in this letter if the Separation and Release Agreement as attached is not executed by you on December 31, 2022, or after signing the Separation and Release Agreement, you revoke as provided for in the Agreement.
4. This letter Agreement does not constitute a guarantee of a specific period or term of employment and does not constitute an employment contract. Your employment remains "at will," and you continue to be subject to all MGP's policies and guidelines.
5. You agree that your separation does not constitute a "Qualifying Termination" under the Amended and Restated Executive Severance Plan.
6. This letter and attached Separation and Release Agreement constitutes the entire agreement between the parties with respect to the subject matter of this letter and the letter and attached Separation and Release Agreement shall not be modified or rescinded, except by another written Agreement signed by MGP and you.

The details of this letter supersede all prior discussions, writings and understandings of the parties with respect to the subject matter of this letter and the Separation and Release Agreement and all other Agreements, either written or oral with MGP.

If you wish to accept the terms of this letter, please indicate your concurrence below and return two original copies to Eri Lapish by no later than **August 5, 2022**.

Sincerely,

/s/ David Bratcher 8/1/2022

MGP Ingredients, Inc. Date

/s/ David Dykstra 8/1/2022

Agreed and Accepted by: Date
David Dykstra

SEPARATION AND RELEASE AGREEMENT

This SEPARATION AND RELEASE AGREEMENT (“Agreement”) is entered into by and between, MGP Ingredients, Inc. and its present and future divisions, subsidiaries, successors, affiliates, and owners, and each of their directors, officers, employees, trustees, employee benefit plans, employee benefit plan administrators, agents and representatives, affiliates, subsidiaries and successors (the “Company”) and David Dykstra (“Employee”). In consideration of the mutual covenants, conditions and promises set forth in this Agreement, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties agree as follows:

I. EMPLOYMENT SEPARATION

A. Separation Date. Employee’s last day of employment with the Company was December 30, 2022 (the “Separation Date”).

B. Effective Date. The “Effective Date” of this Agreement is the eighth (8th) day after Employee’s execution of this Agreement, as set forth in Section III.B below, provided that Employee does not exercise the Employee’s right to revoke as set forth in that paragraph.

C. Separation. Effective on the Separation Date, Employee’s employment, offices and directorships shall terminate in all capacities and Employee shall have no duties and no authority to make any representations or commitments on behalf of Company as an employee or in any capacity whatsoever. Thereafter, Employee shall have no further rights deriving from Employee’s employment by or with the Company and shall not be entitled to any further compensation or non-vested benefits, except as provided in this Agreement. Employee agrees to take any actions requested by the Company to effectuate Employee’s termination of any offices or directorships, as applicable. Employee agrees to timely update all social media accounts to reflect that Employee is no longer employed with the Company.

II. CONSIDERATION

A. In consideration and exchange for the promises contained in Section III, including, but not limited to, the Waiver and Release of Claims and Covenant Not To Sue set forth in Section III, and subject to the terms and conditions set forth in this Agreement, the Company agrees to provide Employee with the following payments:

- (1) A lump sum payment in an amount equal to the value of all outstanding unvested restricted stock units held by Employee as of the Separation Date, less all applicable withholdings. Value will be computed based on the Company stock price at the close of the markets on December 30, 2022. This payment will be made as soon as administratively feasible following the Effective Date; and
- (b) A lump sum payment equal to the value of what Employee’s fiscal year (FY) 2022 STIP payment would have been had Employee remained employed until the spring 2023 payment date, less all applicable withholdings. This payment will be made at the same time FY 2022 STIP payments are made by the Company.

B. Termination of Employee Benefits. Employee further agrees that after the Separation Date, Employee no longer has any coverage or entitlement to benefits or contributions under any of Company’s benefit plans, except as stated herein or required by applicable law and with the exception of employee’s vested 401K account. The Employee will have the right to claim health benefits under the Consolidated Omnibus Budget Reconciliation Act (COBRA) per federal and/or state guidelines.

C . Not Otherwise Entitled. The parties agree that, apart from this Agreement, Employee is not entitled to any payments or other consideration from the Company. This includes, but is not limited to, any restricted stock awards, cash or equity based incentives or severance pay, under any such agreements providing for the same between Employee and the Company.

Employee acknowledges that the Severance Payment is good and valuable consideration in exchange for this Agreement, and that (i) other than the Severance Payment, the Company has paid Employee all compensation due to Employee related to any employment relationship between Employee and the Company and its affiliates including all salary or wages due for hours Employee worked, commissions, bonuses, incentive compensation, sick pay, vacation pay and other benefits, and (ii) that as of the Separation Date, Employee is no longer an employee of the Company, its affiliates, or the Released Parties.

D. Medicare Acknowledgement. Employee further affirms, covenants, and warrants that Employee is not a Medicare beneficiary and is not currently receiving, has not received in the past, will not have received at the time of any payment pursuant to this Agreement, is not entitled to, is not eligible for, and has not applied for or sought Social Security or Medicare benefits. In the event any statement in the preceding sentence is incorrect (for example, but not limited to, if the Employee is a Medicare beneficiary, etc.), the remaining sentences of this paragraph apply. The Employee affirms, covenants, and warrants that Employee has made no claim against, nor is Employee aware of any facts supporting any claim against, the Company, under which the Company could be liable for medical expenses incurred by the Employee before or after the execution of this Agreement. Furthermore, the Employee is aware of no medical expenses which Medicare has paid and for which the Company is or could be liable. The Employee agrees and affirms that, to the best of Employee's knowledge, no liens of any governmental entities, including those for Medicare conditional payments, exist. The Employee will indemnify, defend, and hold the Company harmless from Medicare claims, liens, damages, conditional payments, and rights to payment, if any, including attorneys' fees, and the Employee further agrees to waive any and all future private causes of action for damages pursuant to 42 U.S.C. SS 1395y(b)(3)(A) et seq.

III. GENERAL WAIVER, RELEASE AND COVENANT NOT TO SUE BY EMPLOYEE

A . Release and Covenant Not to Sue. In consideration of the Severance Payment and other promises herein, and as a material inducement to the Company to enter into this Agreement, Employee agree, for himself, his heirs, executors, administrators, representatives, successors and assigns and anyone claiming by, through or for Employee, or anyone making a claim on Employee's behalf, to irrevocably and unconditionally waive, release and forever discharge the Company, and its present, past, and future parents, subsidiaries, and affiliated corporations, divisions, affiliates, predecessors, principals, partners, joint ventures, representatives, successors, and assigns, and their past and present owners, directors, officers, employees, stockholders, attorneys, agents, and insurers, and all persons acting by, through, under or in concert with any of them and all other persons, firms and corporations whomsoever in their individual, corporate, or official capacities (collectively "Released Parties"), from any and all liability, actions, causes of actions, common law claims, statutory claims under state or federal law including any rights and claims under Title VII of the Civil Rights Act of 1964, as amended, the Equal Pay Act, the Employee Retirement Income Security Act, the Americans with Disabilities Act, the Family & Medical Leave Act, the Age Discrimination in Employment Act, the Sarbanes-Oxley Act, the Worker Adjustment Retraining Notification Act ("WARN"), the Kansas Act Against Discrimination (K.S.A. § 44-1001 *et seq.*), Kansas Equal Pay Law (K.S.A. § 44-1205), the Kansas Age Discrimination in Employment Act (K.S.A. § 44-1111 *et seq.*), Kansas

Minimum Wage and Maximum Hour Laws (K.S.A. § 44-1201 *et seq.*), Section 44-808 of the Kansas Labor and Industries Code, and any state's human rights act, wage payment act, civil rights laws, or similar laws, any law governing any aspect of employment, and any amendments thereto, any claim under any state or federal common law, statute, regulation or ordinance, breach of contract claims, breach of any collective bargaining agreement claims, and all demands, damages expenses, fees (including attorney's fees, court costs, expert witness fees, etc.), which Employee may now or hereafter have against the Released Parties and/or have on account of, arising out of, or in connection with all interactions, transactions or contracts, express or implied, between Employee and the Released Parties, including, but not limited to Employee's employment and the termination thereof, or any acts, transactions, or occurrences between the Employee and the Released Parties through the date of this Agreement.

Without waiving any prospective or retrospective rights under the Fair Labor Standards Act ("FLSA") and/or any equivalent state law, Employee admits that Employee has received from the Company all rights and benefits, if any, potentially due to Employee pursuant to the FLSA and/or any other relevant laws. It is the parties' intent to release all claims which can legally be released, as such, this release does not apply to those claims which as a matter of law cannot be released. Employee states that Employee is aware of no facts (including any injuries or illnesses) which might lead to Employee's filing of a workers' compensation claim against the Released Parties, and Employee warrants and agrees that Employee has not suffered any work injury that Employee has not previously disclosed to the Company.

Nothing in this Agreement shall limit or impede Employee's right to file or pursue an administrative charge with, or participate in, any investigation before the Equal Employment Opportunity Commission or any Federal, State, or Local Agency; to file a claim for unemployment benefits; or to file a claim asserting any causes of action which by law you may not legally waive. You agree, however, that if you or anyone on your behalf brings any action concerning or related to any cause of action or liability released in this agreement, you waive your right to, and will not accept, any payments, monies, damages, or other relief, awarded in connection therewith. Additionally, nothing in this Agreement shall be interpreted or applied in a manner that affects or limits Employee's ability to challenge this Agreement's compliance with notice and other requirements of the Age Discrimination in Employment Act and/or the Older Workers Benefit Protection Act.

THIS MEANS THAT BY SIGNING THIS AGREEMENT EMPLOYEE WILL HAVE WAIVED ANY RIGHT HE MAY HAVE TO RECOVER IN A LAWSUIT OR OTHER ACTION AGAINST RELEASED PARTIES, INCLUDING BUT NOT LIMITED TO THE COMPANY BASED ON ANY ACTIONS OR OMISSIONS MADE BY THE RELEASED PARTIES, INCLUDING, BUT NOT LIMITED TO, CLAIMS WHICH IN ANY WAY ARISE FROM OR RELATE TO EMPLOYEE'S EMPLOYMENT RELATIONSHIP AND THE SEPARATION OF EMPLOYEE'S EMPLOYMENT WITH THE COMPANY OR ANY ACTS, TRANSACTIONS, OR OCCURRENCES BETWEEN EMPLOYEE AND THE RELEASED PARTIES THAT TOOK PLACE AT ANY TIME, UP TO THE DATE OF THE SIGNING OF THIS AGREEMENT.

B. Acknowledgements. Employee acknowledges that Employee has read and understands this Agreement, and Employee specifically acknowledges the following:

- (1) That Employee has been advised by the Company to consult with an attorney, and has had the opportunity to consult with an attorney, before signing this Agreement;
-

- (2) That Employee has been given twenty-one (21) calendar days in which to consider and sign this Agreement and Employee understands this signed Agreement must be returned to the Company no later than January 21, 2023;
- (3) That Employee is waiving age discrimination claims under the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. §621, *et seq.*, and all amendments thereto, in addition to other claims as described in Section III (A) above;
- (4) That if Employee signs this Agreement, pursuant to the Age Discrimination in Employment Act (ADEA), Employee may revoke a waiver or release of rights under the ADEA within seven (7) calendar days after signing this agreement. To be effective, any rescission or revocation must be in writing and delivered to the Company, in care of Erika Lapish, Vice President, Human Resources, 100 Commercial Street, Atchison, Kansas 66002 either by hand or by mail, within the applicable seven-day period. Should Employee exercise Employee’s right to rescind or revoke a waiver and release pursuant to the terms of this section, Employee will have no right to the Severance Payment and other consideration described in Section II herein, but the other terms of this Agreement shall continue in full force and effect and, in particular, Employee’s release of any other claims shall not be affected; and
- (5) That Employee states and warrants that the information provided in this Agreement provide sufficient information for Employee to knowingly and voluntarily release any claims based upon the Age Discrimination in Employment Act.

C . Continuing Rights. Nothing in Paragraph III.A of this Agreement limits Employee’s right to: (1) elect any rights to health care coverage under COBRA or applicable state law; or (2) apply for unemployment compensation benefits (the Company does not decide whether Employee will receive such benefits).

IV. MISCELLANEOUS PROVISIONS

A . Return of Company Property. Employee must return all records, correspondence, property, equipment and documents in Employee’s possession belonging to the Company or containing confidential information regarding the Company or its businesses. By signing this Agreement, Employee acknowledges and represents that Employee will return on the Separation Date all Company documents, property, and confidential information, and is not in possession of any such items, and has not removed, copied, or forwarded any such items from Company premises, systems, or networks. Employee further agrees to destroy any and all intangible property of the Company in his possession and he further agrees not to access the Company’s networks of confidential or proprietary information following his separation.

B . Confidentiality of Agreement. Except as allowed by Section III.A, Employee agrees that Employee will not disclose the contents of this Agreement, including the amount of monetary payment or other consideration described in Section II, to anyone other than Employee’s attorneys, financial advisers, or spouse, or pursuant to an appropriate order from a court or other entity with competent jurisdiction. Nothing in this provision (or the Agreement) prohibits or restricts Employee’s right to provide truthful information to a government agency.

C . Non-Disclosure of Confidential Information. Employee, by virtue of his position with the Company, had access to and/or received trade secrets and other confidential and proprietary information about the Company’s business and personnel that is not generally

available to the public and which has been developed or acquired by the Company at considerable effort and expense (hereinafter "Confidential Information"). Confidential Information includes, but is not limited to, the following types of proprietary information (whether or not reduced to writing or still in development) that is not generally known to the public or to competitors of the Company because the Company has engaged in reasonable efforts to maintain its secrecy: information about the Company's business plans and strategy, environmental strategy, legal strategy, confidential personnel information, legislative strategy, finances, marketing, management, operations, and/or personnel.

Employee agrees that Employee will hold the Confidential Information in strictest confidence and take reasonable efforts to protect such Confidential Information from disclosure to any third party who is not authorized to receive, review, or access the Confidential Information. Employee also agrees to not use Confidential Information on behalf of Employee or any third party and, by signing this Agreement, affirms that Employee has returned all Confidential Information to the Company and, as such, does not possess or have access to the Company Confidential Information. The purpose of this provision is to protect the Company's proprietary, confidential, and trade secret information from improper use or disclosure, to the maximum extent permitted by law. This confidentiality obligation does not prohibit or restrict Employee from initiating any communications with, or responding to any inquiry from, or providing testimony before any federal, state or local regulatory authority, regarding this Agreement or its underlying facts or circumstances.

D . Indemnification. Employee agrees that Employee is solely responsible for payment of all federal, state, and local taxes on the amounts paid under this Agreement. In the event that the Company is required to pay back taxes or Social Security, or fines or assessments, because of Employee's non-payment of taxes on the amounts paid under this Agreement, Employee agrees to indemnify the Company for any such amounts.

E . Non-Admission of Liability. Employee and the Company acknowledge and agree that this Separation and General Release Agreement does not constitute an admission concerning any liability or wrongdoing on the part of either the Company or Employee, and each party expressly denies any such liability or violation.

F . Governing Law and Venue. This Agreement is made and shall be enforced pursuant to the laws of the State of Kansas without regard to its conflict of laws principles. The Parties agree that any and all litigation surrounding Employee's employment, termination thereof, or this Agreement will be subject to the substantive laws of Kansas and brought in the State or Federal Courts in Kansas.

G . Non-Assignment of Claims. Employee represents and warrants that Employee has not sold, assigned, transferred, conveyed or otherwise disposed of to any third-party, by operation of law or otherwise, any action, cause of action, suit, debt, obligation, account, contract, agreement, covenant, guarantee, controversy, judgment, damage, claim, counterclaim, liability or demand of any nature whatsoever relating to any matter covered by this Agreement.

H . Severability. Each provision of this Agreement is intended to be severable. If any court of competent jurisdiction determines that any provision of this Agreement is invalid, illegal or unenforceable in any respect, the rest of the Agreement will remain in force.

I . Non-disparagement. Employee agrees that he shall not in any way disparage or make negative statements about the Company or any of their respective officers, directors, agents or employees or act in any way that could harm, jeopardize, or otherwise negatively affect the Company's good will, including but not limited to its relationships with its customers, suppliers, vendors, payers, regulators, or the general public. This prohibited conduct applies to all oral and

written communications, including internet content or postings. Nothing in this provision (or the Agreement) prohibits or restricts Employee's right to provide truthful information to a government agency.

J. Immunity under the Defend Trade Secrets Act of 2016. The federal Defend Trade Secrets Act of 2016 provides immunity in certain circumstances to Company employees, contractors, and consultants for limited disclosures of Company Trade Secrets. Specifically, Company employees, contractors, and consultants may disclose Trade Secrets:

- (1) in confidence, either directly or indirectly, to a Federal, State, or local government official, or to an attorney, "solely for the purpose of reporting or investigating a suspected violation of law," or
- (2) "in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal."

Additionally, Company employees, contractors, and consultants who file retaliation lawsuits for reporting a suspected violation of law may also use and disclose related Trade Secrets in the following manner:

- (1) the individual may disclose the Trade Secret to his attorney, and
- (2) the individual may use the information in related court proceeding, as long as the individual files documents containing the Trade Secret under seal, and does not otherwise disclose the trade secret "except pursuant to court order."

K. Employee Availability/Cooperation. Employee agrees to be reasonably available to the Company to respond to requests by the Company for information pertaining to or relating to the Company, or their respective past and present agents, officers, executives, employees, attorneys, directors, and assigns, on topics that may be within the knowledge of the Employee. Employee also agrees to cooperate fully with the Company in connection with any and all existing or future litigation, arbitrations, or investigations brought by or against the Company, or their respective past and present agents, officers, executives, employees, attorneys, directors, and assigns, whether administrative, civil or criminal in nature, in which and to the extent the Company deems the Employee's cooperation necessary. The Company will reimburse the Employee for reasonable out-of-pocket expenses incurred as a result of Employee's availability or cooperation. To the extent the Employee has received a Preservation Notice/Legal Hold from the Company's Legal Department, Employee shall take all necessary steps to preserve information related in any way to the Preservation Notice/Legal Hold in its original format and location and will not modify, delete or destroy such information. Employee will notify the Company's Legal Department of the nature and location of any and all such information.

L. Section 409A. The payments under this Agreement are intended to comply with Section 409A of the Internal Revenue Code and the regulations and guidance promulgated thereunder ("Section 409A") or an exemption thereunder and will be construed and administered in accordance with Section 409A or an applicable exemption to the maximum extent possible. Any payments under this Agreement that may be excluded from Section 409A either as separation pay due to the separation pay plan exception and/or the short-term deferral exception will be excluded from Section 409A to the maximum extent possible. For purposes of Section 409A, each installment payment provided under this Agreement shall be treated as a separate payment. Any payments to be made under this Agreement upon a termination of employment shall only be made upon a "separation from service" under Section 409A. If payment of any amount subject to Section 409A is triggered by a separation from service that occurs while Employee is a "specified employee" (as defined by Section 409A) with, and if such amount is scheduled to be paid within six months after such separation from service, the amount shall accrue without interest and shall be paid on the first business day after the end of such six-month

period, or, if earlier, within 15 days after Employee's death. If any payment subject to Section 409A is contingent on the delivery of a release by Employee and could occur in either of two years, the payment will occur in the later year. Nothing herein shall be construed as a guarantee of any particular tax treatment. Company makes no representation that this Agreement or any payments hereunder comply with Section 409A and in no event shall the Company be liable for the payment of any taxes and penalties that Employee may incur under Section 409A.

M. Entire Agreement; Modification. The parties agree that this is the entire agreement between the parties. This Agreement overrides and replaces all prior negotiations and terms proposed or discussed, whether in writing or orally, about the subject matter of this Agreement, with the exception of any non-competition agreement, non-solicitation agreements, confidentiality agreement or other obligation which, by its terms or by operation of law, survives the termination of Employee's employment. In such event, the confidentiality obligations of this Agreement will supplement, but not replace, such agreement or agreements. No modification of this Agreement will be valid unless it is in writing identified as an Amendment to the Agreement and is signed by Employee and an authorized executive of the Company.

EMPLOYEE ACKNOWLEDGES THAT EMPLOYEE HAS CAREFULLY READ THIS SEPARATION AND RELEASE AGREEMENT, AND KNOWS AND UNDERSTANDS ITS CONTENTS, AND VOLUNTARILY SIGNS IT OF EMPLOYEE'S OWN FREE WILL.

IN WITNESS WHEREOF, the parties sign this Agreement on the dates indicated below with the intent to be bound by its terms and conditions.

David Dykstra

Date: _____

MGP Ingredients, Inc.

By: _____

Date: _____

**THE MGP INGREDIENTS, INC.
SHORT TERM INCENTIVE PLAN**

(As Amended and Restated)

1. Background and Purpose.

1.1 Purpose. The purpose of the MGP Ingredients, Inc. Short Term Incentive Plan (the "**Plan**") is to motivate and reward eligible employees by making a portion of their cash compensation dependent on the achievement of certain corporate, business unit and individual performance goals.

1.2 Effective Date. The Plan is effective as of January 1, 2022 (the "**Effective Date**"), and shall remain in effect until it has been terminated pursuant to Section 9.6.

2. Definitions. The following terms shall have the following meanings:

"**Affiliate**" means any corporation or other entity controlled by the Company.

"**Award**" means an award granted pursuant to the Plan, the payment of which shall be contingent on the attainment of Performance Goals with respect to a Performance Period, as determined by the Committee pursuant to Section 6.1.

"**Base Salary**" means the Participant's annualized rate of base salary on the last day of the Performance Period before (a) deductions for taxes or benefits and (b) deferrals of compensation pursuant to any Company or Affiliate-sponsored plans.

"**Board**" means the Board of Directors of the Company, as constituted from time to time.

"**Cash Bonus Pool**" has the meaning set forth in Section 6.2.

"**Cause**" means:

(a) If the Participant is a party to an employment agreement with the Company or an Affiliate and such agreement provides for a definition of Cause, the definition contained therein; or

(b) If no such agreement exists, or if such agreement does not define Cause:

(i) the Participant's willful failure to perform his or her duties (other than any such failure resulting from incapacity due to physical or mental illness);

(ii) the Participant's engagement in dishonesty, illegal conduct or gross misconduct, which is, in each case, materially injurious to the Company or its Affiliates;

(iii) the Participant's embezzlement, misappropriation or fraud, whether or not related to the Participant's employment with the Company;

(iv) the Participant's conviction of or plea of guilty or nolo contendere to a crime that constitutes a felony (or state law equivalent) or a crime that constitutes a misdemeanor involving moral turpitude, if such felony or other crime is work-related, materially impairs the Participant's ability to perform services for the Company or results in material harm to the Company or its Affiliates; or

(v) the Participant's violation of any restrictive covenants entered into between the Participant and the Company or the Company's Code of Conduct.

"Change in Control" means:

(c) The direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of the Company and its Affiliates, taken as a whole, to any person that is not an Affiliate of the Company;

(a) The Incumbent Directors cease for any reason to constitute at least a majority of the Board;

(b) The date which is 10 business days prior to the consummation of a complete liquidation or dissolution of the Company;

(c) The acquisition by any person of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Securities Exchange Act of 1934, as amended), of 50 % or more (on a fully diluted basis) of either (i) the then outstanding Shares of the Company, taking into account as outstanding for this purpose such Shares issuable upon the exercise of options or warrants, the conversion of convertible stock or debt, and the exercise of any similar right to acquire such Shares or (ii) the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the "**Outstanding Company Voting Securities**"); provided, however, that for purposes of this Plan, the following acquisitions shall not constitute a Change in Control: (A) any acquisition by the Company or any Affiliate, (B) any acquisition by any employee benefit plan sponsored or maintained by the Company or any Affiliate or (C) any acquisition which complies with clauses, (i), (ii) and (iii) of subsection (e) of this definition; or

(d) The consummation of a reorganization, merger, consolidation, statutory share exchange or similar form of corporate transaction involving the Company that requires the approval of the Company's shareholders, whether for such transaction or the issuance of securities in the transaction (a "**Business Combination**"), unless immediately following such Business Combination: (i) more than 50% of the total voting power of (A) the entity resulting from such Business Combination (the "**Surviving Company**"), or (B) if applicable, the ultimate parent entity that directly or indirectly has beneficial ownership of sufficient voting securities eligible to elect a majority of the members of the board of directors (or the analogous governing body) of the Surviving Company (the "**Parent Company**"), is represented by the Outstanding Company Voting Securities that were outstanding immediately prior to such Business Combination (or, if applicable, is represented by shares into which the Outstanding Company Voting Securities were converted pursuant to such Business Combination), and such voting power among the holders thereof is in substantially the same proportion as the voting power of the Outstanding Company Voting Securities among the holders thereof immediately prior to the Business Combination; (ii) no person (other than any employee benefit plan sponsored or maintained by the Surviving Company or the Parent Company) is or becomes the beneficial owner, directly or indirectly, of 50% or more of the total voting power of the outstanding voting securities eligible to elect members of the board of directors of the Parent Company (or the analogous governing body) (or, if there is no Parent Company, the Surviving Company); and (iii) at least a majority of the members of the board of directors (or the analogous governing body) of the Parent Company (or, if there is no Parent Company, the Surviving Company) following the consummation of the Business Combination were Board members at the time of the Board's approval of the execution of the initial agreement providing for such Business Combination.

"Code" means the U.S. Internal Revenue Code of 1986, as amended from time to time, including any regulations or authoritative guidance promulgated thereunder and successor provisions thereto.

"Committee" means the Board's Human Resources and Compensation Committee or such other committee appointed by the Board to administer the Plan pursuant to Section 3.1.

"Company" means MGP Ingredients, Inc., a Kansas corporation, and any successor thereto.

"Disability" means unless otherwise defined in an employment agreement between the Participant and the Company, permanent and total disability within the meaning of Section 22(e)(3) of the Code.

"Incumbent Directors" means the individuals who, as of the date the Plan is adopted, are directors of the Company and any individual who becomes a director subsequent to such date whose election, nomination for election by the Company's shareholders, or appointment, was approved by a vote of at least two-thirds of the then-Incumbent Directors (either by a specific vote or by approval of the proxy statement of the Company in which such person is named as a nominee for director, without objection to such nomination).

"Participant" means as to any Performance Period, the employees of the Company or an Affiliate who are designated by the Committee to participate in the Plan for that Performance Period.

"Performance Criteria" means the performance criteria upon which the Performance Goals for a particular Performance Period are based, which may include any of the following, or such other criteria as determined by the Committee in accordance with Section 5.2:

- (a) net earnings or net income (before or after taxes);
- (b) basic or diluted earnings per share (before or after taxes);
- (c) net revenues or net revenue growth;
- (d) gross revenue;
- (e) gross profit or gross profit growth;
- (f) net operating profit (before or after taxes);
- (g) return on assets, capital, invested capital, equity or sales;
- (h) cash flow (including, but not limited to, operating cash flow, free cash flow, and cash flow return on capital);
- (i) earnings before or after taxes, interest, depreciation and/or amortization (including EBIT, EBITDA, or adjusted EBITDA);
- (j) gross or operating margins;
- (k) improvements in capital structure;
- (l) budget and expense management;
- (m) productivity ratios;
- (n) economic value added or other value-added measurements;
- (o) share price (including, but not limited to, growth measures and total shareholder return);
- (p) expense targets;
- (q) margins;
- (r) operating efficiency;

- (s) working capital targets;
- (t) enterprise value;
- (u) safety record; and
- (v) completion of acquisitions or business expansion.

Such Performance Criteria may relate to the performance of the Company as a whole, a business unit, division, department, individual or any combination of these and may be applied on an absolute basis and/or relative to one or more peer group companies or indices, or any combination thereof, as the Committee shall determine.

"Performance Goals" means the goals selected by the Committee, in its discretion, to be applicable to a Participant for any Performance Period. Performance Goals shall be based upon one or more Performance Criteria. Performance Goals may include a threshold level of performance below which no Award will be paid and levels of performance at which specified percentages of the Target Award will be paid and may also include a maximum level of performance above which no additional Award amount will be paid.

"Performance Period" means the period for which performance is calculated, which unless otherwise indicated by the Committee, shall be the Plan Year.

"Plan" means the MGP Ingredients, Inc. Short Term Incentive Plan, as hereafter amended from time to time.

"Plan Year" means the Company's fiscal year, which commences on January 1st and ends on December 31st.

"Pro-Rated Award" means an amount equal to the Award otherwise payable to the Participant for a Performance Period in which the Participant was actively employed by the Company or an Affiliate for only a portion thereof, multiplied by a fraction, the numerator of which is the number of days the Participant was actively employed by the Company or an Affiliate during the Performance Period and the denominator of which is the number of days in the Performance Period.

"Shares" means the shares of the Company's common stock.

"Target Award" means the target award payable under the Plan to a Participant for a particular Performance Period, expressed as a percentage of the Participant's Base Salary. In special circumstances, the target award may be expressed as a fixed amount of cash.

3. Administration.

3.1 Administration by the Committee. The Plan shall be administered by the Committee which shall consist of not less than two (2) members of the Board. Members of the Committee shall be appointed by the Board.

3.2 Authority of the Committee. Subject to the provisions of the Plan and applicable law, the Committee shall have the power, in addition to other express powers and authorizations conferred on the Committee by the Plan, to: (a) designate Participants; (b) determine the terms and conditions of any Award; (c) determine whether, to what extent, and under what circumstances Awards may be forfeited or suspended; (d) determine whether, to what extent, and under what circumstances a Cash Bonus Pool will be established for a Plan Year; (e) interpret, administer, reconcile any inconsistency, correct any defect and/or supply any omission in the Plan or any instrument or agreement relating to, or Award granted under, the Plan; (f) establish, amend, suspend, or waive any rules for the administration, interpretation and application of the Plan; (g) adopt such procedures and subplans as are necessary or appropriate to permit participation in the Plan by employees who are foreign nationals or employed outside of the United

States; and (h) make any other determination and take any other action that the Committee deems necessary or desirable for the administration of the Plan.

3.3 Decisions Binding. All determinations and decisions made by the Committee, the Board, and any delegate of the Committee pursuant to the provisions of the Plan shall be final, conclusive and binding on all persons, and shall be given the maximum deference permitted by law.

3.4 Delegation by the Committee. The Committee, in its sole discretion, may delegate all or part of its authority and powers under the Plan to one or more directors and/or officers of the Company; provided, however, that the Committee may not delegate its responsibility to make Awards to executive officers.

3.5 Agents; Limitation of Liability. The Committee may appoint agents to assist in administering the Plan. The Committee and each member thereof shall be entitled to, in good faith, rely or act upon any report or other information furnished to it or him by any officer or employee of the Company, the Company's certified public accountants, consultants or any other agent assisting in the administration of the Plan. Members of the Committee and any officer or employee of the Company acting at the direction or on behalf of the Committee shall not be personally liable for any action or determination taken or made in good faith with respect to the Plan, and shall, to the extent permitted by law, be fully indemnified and protected by the Company with respect to any such action or determination.

4. Eligibility and Participation.

9.1 Eligibility. Employees of the Company and its participating Affiliates, are eligible to participate in the Plan.

9.2 Participation. The Committee, in its discretion, shall select the persons who shall be Participants for each Performance Period. Only eligible individuals who are designated by the Committee to participate in the Plan with respect to a particular Performance Period may participate in the Plan for that Performance Period. An individual who is designated as a Participant for a given Performance Period is not guaranteed or assured of being selected for participation in any subsequent Performance Period.

9.3 New Hires; Newly Eligible Participants. A newly hired or newly eligible Participant will be eligible to receive a Pro-Rated Award.

9.4 Leaves of Absence. If a Participant is on a leave of absence for a portion of a Performance Period, the Participant will be eligible to receive a Pro-Rated Award reflecting participation for the period during which he or she was actively employed and not any period when he or she was on leave.

5. Terms of Awards.

8.1 Determination of Target Awards. Prior to, or reasonably promptly following the commencement of each Performance Period, the Committee, in its sole discretion, shall establish the Target Award for each Participant, the payment of which shall be conditioned on the achievement of the Performance Goals for the Performance Period.

8.2 Determination of Performance Goals and Performance Formula. Prior to, or reasonably promptly following the commencement of, each Performance Period, the Committee, in its sole discretion, shall establish in writing and communicate to each Participant (as applicable from Participant to Participant) the Performance Goals for the Performance Period and, subject to Section 5.3, the prescribed formula for determining the percentage of the Target Award which may be payable based upon the level of attainment of the Performance Goals for the Performance Period. The Performance Goals shall be based on one or more Performance Criteria, each of which may carry a different weight, and which may differ from Participant to Participant.

8.3 Adjustments. The Committee is authorized to adjust or modify the calculation of a Performance Goal for a Performance Period in its sole discretion.

6. Payment of Awards.

9.1 Determination of Awards.

(a) Following the completion of each Performance Period and as soon as administratively practicable following the availability of financial results for the Plan Year and any other information necessary to evaluate the achievement of the Performance Goals, the Committee shall determine the extent to which the Performance Goals have been achieved or exceeded. Subject to Section 6.1(c), if the minimum Performance Goals established by the Committee are not achieved, then no payment will be made. Notwithstanding the foregoing, in the final month of each Plan Year, the Committee may use projections of the Performance Criteria for such Plan Year to determine estimated annual incentive compensation payments where the Committee, in its sole discretion, wishes to make a partial payment thereon in the final month of such Plan Year (a "**December Payment**"). After the financial results for the Plan Year are available, the annual incentive compensation payment of those Participants who received December Payments shall be determined, and any unpaid amount thereof (net of the December Payment) shall be calculated (a "**Remainder Payment**"). In the event that a December Payment is in excess of the finally determined amount of actual incentive compensation, the Participant shall be promptly notified thereof and the Participant shall pay to the Company the amount of such excess payment within 15 days of the Company's demand (or the Company may setoff any amount it otherwise owes to Participant by the amount of such excess payment, at its election).

(b) To the extent that the Performance Goals are achieved, the Committee shall determine the extent to which the Performance Goals applicable to each Participant have been achieved and shall then determine the amount of each Participant's Award.

(c) In determining the amount of each Award, the Committee may reduce, eliminate or increase the amount of an Award if, in its sole discretion, such reduction, elimination or increase is appropriate.

6.2 Establishment of Cash Bonus Pool. At the time that the Committee establishes the applicable Performance Goals for the Plan Year, the Committee shall also be deemed to have established a minimum amount of bonuses to be paid by the Company under the Plan to all Participants for the Plan Year as a group (the "**Cash Bonus Pool**"). The Cash Bonus Pool is 90% of the bonuses that would be required to be paid to all Participants, collectively, as a result of the Company's actual performance during the Plan Year without regard to any adjustments made after December 31 of the Plan Year. The Cash Bonus Pool does not represent or contain a separate source of funds or additional amounts to be paid to Participants, but only represents the minimum amount of incentive payments that are otherwise eligible to be paid under the Plan for the Plan Year and for which (i) the right to pay the eligible Participants (as a group) is fixed, (ii) the aggregate amount of such incentive payments can be determined with reasonable accuracy, and (iii) the economic performance has occurred with respect to such liability. Notwithstanding any other provision in the Plan to the contrary, in all events the Company must pay an amount equal to the Cash Bonus Pool in accordance with this Section 6 and Section 7. Nothing in this Plan shall prevent the Committee from paying bonuses exceeding the amount of the Cash Bonus Pool; provided that any excess payment will generally only be deductible for income tax purposes by the Company in the year of payment rather than in the year of accrual.

6.3 Form and Timing of Payment. Except as otherwise provided herein (including the December Payments and the Remainder Payment (in the case of December Payments)), as soon as practicable following the Committee's determination pursuant to Section 6.1 for the applicable Performance Period, each Participant shall receive a cash lump sum payment of his or her Award, less required withholding. In no event shall such payment be made later than 2 1/2 months following the date the Committee determines that the Performance Goals have been achieved. December Payments, if any, shall be paid in the final month of the Plan Year.

6.4 Employment Requirement. Except as otherwise provided in Section 7, no Award shall be paid to any Participant who is not actively employed by the Company or an Affiliate on the date that Awards are paid.

6.5 Deferral of Awards. The Committee, in its sole discretion, may permit a Participant to defer the payment of an Award that would otherwise be paid under the Plan. Any deferral election shall be subject to such rules and procedures as shall be determined by the Committee in its sole discretion.

7. Termination of Employment.

9.1 Employment Requirement. Except as otherwise provided in Section 7.2, if a Participant's employment terminates for any reason prior to the date that Awards are paid, all of the Participant's rights to an Award for the Performance Period shall be forfeited. However, the Committee, in its sole discretion, may pay a Pro-Rated Award, subject to the Committee's determination that the Performance Goals for the Performance Period have been met. Such Pro-Rated Award will be paid at the same time and in the same manner as Awards are paid to other Participants. Notwithstanding the foregoing, if a Participant's employment is terminated for Cause, the Participant shall in all cases forfeit any Award not already paid.

9.2 Termination of Employment Due to Death or Disability. If a Participant's employment is terminated by reason of his or her death or Disability during a Performance Period or following a Performance Period but before the date that Awards are paid, the Participant or his or her beneficiary will be paid a Pro-Rated Award or (if death or disability occurs following a Performance Period) the Award that would otherwise be payable if the Participant remained employed through the date that Awards are paid. In the case of a Participant's Disability, the employment termination shall be deemed to have occurred on the date that the Committee determines that the Participant is Disabled. Payment of such Award or Pro-Rated Award, as applicable, will be made at the same time and in the same manner as Awards are paid to other Participants.

8. Change in Control.

8.1 If a Change in Control occurs during a Performance Period, each Participant will receive his or her Target Award, without regard to actual performance and without proration for less than the full Performance Period. Awards paid in connection with a Change in Control will be paid within 30 days following the Change in Control.

9. General Provisions.

9.1 Compliance with Legal Requirements. The Plan and the granting of Awards shall be subject to all applicable federal and state laws, rules and regulations, and to such approvals by any regulatory or governmental agency as may be required.

9.2 Non-transferability. A person's rights and interests under the Plan, including any Award previously made to such person or any amounts payable under the Plan may not be assigned, pledged, or transferred, except in the event of the Participant's death, to a designated beneficiary in accordance with the Plan, or in the absence of such designation, by will or the laws of descent or distribution.

9.3 No Right to Employment. Nothing in the Plan or in any notice of Award shall confer upon any person the right to continue in the employment of the Company or any Affiliate or affect the right of the Company or any Affiliate to terminate the employment of any Participant.

9.4 No Right to Award. Unless otherwise expressly set forth in an employment agreement signed by the Company and a Participant, a Participant shall not have any right to any Award under the Plan until such Award has been paid to such Participant and participation in the Plan in one Performance Period does not connote any right to become a Participant in the Plan in any future Performance Period.

9.5 Withholding. The Company shall have the right to withhold from any Award, any federal, state or local income and/or payroll taxes required by law to be withheld and to take such other

action as the Committee may deem advisable to enable the Company and Participants to satisfy obligations for the payment of withholding taxes and other tax obligations relating to an Award.

9.6 Amendment or Termination of the Plan. The Board or the Committee may, at any time, amend, suspend or terminate the Plan in whole or in part. Notwithstanding the foregoing, no amendment shall adversely affect the rights of any Participant to Awards allocated prior to such amendment, suspension or termination.

9.7 Unfunded Status. Nothing contained in the Plan, and no action taken pursuant to its provisions, shall create or be construed to create a trust of any kind or a fiduciary relationship between the Company and any Participant, beneficiary or legal representative or any other person. To the extent that a person acquires a right to receive payments under the Plan, such right shall be no greater than the right of an unsecured general creditor of the Company. All payments to be made hereunder shall be paid from the general funds of the Company and no special or separate fund shall be established and no segregation of assets shall be made to assure payment of such amounts except as expressly set forth in the Plan. The Plan is not intended to be subject to the Employee Retirement Income Security Act of 1974, as amended (ERISA).

9.8 Governing Law. The Plan shall be construed, administered and enforced in accordance with the laws of Kansas without regard to conflicts of law.

9.9 Beneficiaries. To the extent that the Committee permits beneficiary designations, any payment of Awards due under the Plan to a deceased Participant shall be paid to the beneficiary duly designated by the Participant in accordance with the Company's practices. If no such beneficiary has been designated or survives the Participant, payment shall be made by will or the laws of descent or distribution.

9.10 Section 409A of the Code. It is intended that payments under the Plan qualify as short-term deferrals exempt from the requirements of Section 409A of the Code. In the event that any Award does not qualify for treatment as an exempt short-term deferral, it is intended that such amount will be paid in a manner that satisfies the requirements of Section 409A of the Code. The Plan shall be interpreted and construed accordingly.

9.11 Expenses. All costs and expenses in connection with the administration of the Plan shall be paid by the Company.

9.12 Section Headings. The headings of the Plan have been inserted for convenience of reference only and in the event of any conflict, the text of the Plan, rather than such headings, shall control.

9.13 Severability. In the event that any provision of the Plan shall be considered illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining provisions of the Plan, but shall be fully severable, and the Plan shall be construed and enforced as if such illegal or invalid provision had never been contained therein.

9.14 Gender and Number. Except where otherwise indicated by the context, wherever used, the masculine pronoun includes the feminine pronoun; the plural shall include the singular, and the singular shall include the plural.

9.15 Non-exclusive. Nothing in the Plan shall limit the authority of the Company, the Board or the Committee to adopt such other compensation arrangements, as it may deem desirable for any Participant.

9.16 Notice. Any notice to be given to the Company or the Committee pursuant to the provisions of the Plan shall be in writing and directed to the Secretary of the Company at 100 Commercial Street, Atchison, Kansas 66002.

9.17 Successors. All obligations of the Company under the Plan with respect to Awards granted hereunder shall be binding upon any successor to the Company, whether the existence of such successor is the result of a direct or indirect purchase, merger, consolidation or otherwise, of all or substantially all of the assets of the Company.

9.18 Clawback. All Awards are subject to the Company's Clawback Policy as in effect from time to time and, in accordance with such policy, may be subject to the requirement that the Awards be repaid to the Company after they have been distributed to the Participant.

The action permitted to be taken by the Board under this Section 9.18 is in addition to, and not in lieu of, any and all other rights of the Board and/or the Company under applicable law and shall apply notwithstanding anything to the contrary in the Plan.

AMENDMENT NO. 3 TO CREDIT AGREEMENT

This AMENDMENT NO. 3 TO CREDIT AGREEMENT dated as of August 31, 2022 (this “Amendment”), is among MGP INGREDIENTS, INC. a Kansas corporation (the “Borrower”), EACH OF THE UNDERSIGNED SUBSIDIARIES OF THE BORROWER (each a “Guarantor” and collectively, the “Guarantors”), WELLS FARGO BANK, NATIONAL ASSOCIATION as Administrative Agent (in such capacity, the “Administrative Agent”) and the Lenders (as defined below) party hereto.

RECITALS:

A. The Borrower, the Agent and the lenders from time to time party thereto (the “Lenders”) have entered into a Credit Agreement dated as of February 14, 2020 (as amended by Amendment No. 1 to Credit Agreement dated as of January 25, 2021 and Amendment No. 2 to Credit Agreement dated as of January 25, 2021 and in effect on the date hereof, the “Existing Credit Agreement”; and the Existing Credit Agreement as amended by this Amendment, the “Credit Agreement”). Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Credit Agreement.

B. The Guarantors have entered into a Guaranty Agreement dated of even date with the Credit Agreement (the “Subsidiary Guaranty Agreement”) in favor of the Administrative Agent and other Secured Parties and various Security Documents.

C. The Borrower has requested that the Administrative Agent and Lenders amend certain provisions of the Existing Credit Agreement.

D. Subject to the terms and conditions set forth below, the Administrative Agent and Lenders party hereto are willing to so amend the Existing Credit Agreement.

In furtherance of the foregoing, the parties agree as follows:

Section 1. AMENDMENTS. Subject to the covenants, terms and conditions set forth herein and in reliance upon the representations and warranties set forth herein and in the documents delivered in connection herewith, on the Amendment Effective Date (as defined below), the parties hereto acknowledge and agree that:

(a) the body of the Existing Credit Agreement (excluding the Schedules and Exhibits thereto, other than as set forth in clause (b) of this Section 1) is hereby amended to (i) delete red or green stricken text (indicated textually in the same manner as the following examples: ~~stricken-text~~ and ~~stricken-text~~) and (ii) to add the blue or green double-underlined text (indicated textually in the same manner as the following examples: double-underlined text and double-underlined text), in each case, as set forth in the conformed copy of the Credit Agreement attached as Annex A hereto; and

(b) Exhibit B (Form of Notice of Borrowing), Exhibit D (Form of Notice of Prepayment) and Exhibit E (Form of Notice of Conversion/Continuation) to the Existing Credit Agreement is hereby amended and restated in its entirety as set forth as Annex B hereto.

The amendments to the Existing Credit Agreement are limited to the extent specifically described herein and no other terms, covenants or provisions of the Existing Credit Agreement or any other Loan Document are intended to be affected hereby.

Section 2. CONDITIONS PRECEDENT. The parties hereto agree that the amendments set forth in Section 1 above shall not be effective until the satisfaction of each of the following conditions precedent (the date on which such conditions are satisfied, the “Amendment Effective Date”):

(a) **Documentation.** The Administrative Agent’s receipt of a counterpart of this Amendment, duly executed and delivered by the Borrower, the Guarantors, and each Lender; and

(b) **Fees and Expenses.** All fees and expenses of counsel to the Administrative Agent estimated to date shall have been paid in full (without prejudice to final settling of accounts for such fees and expenses).

Without limiting the generality of the provisions of the last paragraph of Section 10.3 of the Credit Agreement, for purposes of determining compliance with the conditions specified in this Section 2, each Lender that has signed this Amendment shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Amendment Effective Date specifying its objection thereto.

Section 3. REPRESENTATIONS AND WARRANTIES.

(a) In order to induce the Administrative Agent and the Lenders party hereto to enter into this Amendment, each Loan Party represents and warrants to the Administrative Agent and the Lenders as follows:

(i) The representations and warranties made by the Loan Parties in Article VI of the Credit Agreement are true and correct in all material respects (except to the extent already subject to a materiality standard in which case such representation or warranty shall be true and correct in all respects) on and as of the date hereof with the same effect as if made on and as of such date, except that (x) 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 (except to the extent already subject to a materiality standard in which case such representation or warranty shall be true and correct in all respects) as of such earlier date and (y) the representations and warranties contained in Section 6.5 of the Credit Agreement shall be deemed to refer to the most recent statements furnished pursuant to Sections 7.3(a) and (b) of the Credit Agreement, respectively.

(ii) Since December 31, 2021, no act, event, condition or circumstance has occurred or arisen which, individually or in the aggregate, has had or could reasonably be expected to have a Material Adverse Effect.

(iii) No Default or Event of Default has occurred and is continuing or will exist after giving effect to this Amendment.

(b) In order to induce the Administrative Agent and the Lenders party hereto to enter into this Amendment, the Borrower and each Guarantor represents and warrants to the Administrative Agent and the Lenders that (i) it has the corporate or limited liability company power and authority to execute and deliver this Amendment and the Borrower has the power and authority to perform this Amendment, (ii) it has taken all necessary corporate or limited liability company action to authorize the execution, delivery and performance of this Amendment, (iii) this Amendment has been duly executed and delivered on behalf of such Loan Party, and (iv) this Amendment constitutes a legal, valid and binding obligation of such Loan Party, enforceable against it in accordance with its terms, except as enforceability 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.

(c) The Borrower represents and warrants to the Administrative Agent and the Lenders that, prior to the date hereof, each of the following former Subsidiaries of the Borrower has merged, directly or indirectly, into Luxco, Inc. with Luxco, Inc. being the surviving entity: (i) KY Limestone Holdings LLC, (ii) LDL Holdings DE, LLC, (iii) LFL LLC, (iv) Limestone Branch Distillery, LLC, (v) LRD Holdings LLC, (vi) Lux Row Distillers LLC, and (vii) Luxco Group Holdings, LLC.

Section 4. MISCELLANEOUS.

(a) **Ratification and Confirmation of Loan Documents.** Each of the Borrower and each Guarantor hereby consents, acknowledges and agrees to the amendments set forth herein and hereby confirms and ratifies in all respects the Loan Documents to which such Person is a party (including without limitation, with respect to each Guarantor, the continuation of its payment and performance obligations under the Subsidiary Guaranty Agreement upon and after the effectiveness of the amendments

contemplated hereby and, with respect to both the Borrower and each Guarantor, the continuation and extension of the liens granted under the Security Documents to secure the Obligations).

(b) **Fees and Expenses.** The Borrower shall pay on demand all reasonable costs and expenses of the Administrative Agent in connection with the preparation, reproduction, execution, and delivery of this Amendment and any other documents prepared in connection herewith, including, without limitation, the reasonable fees and out-of-pocket expenses of counsel for the Administrative Agent.

(c) **Headings.** Section and subsection headings in this Amendment are included herein for convenience of reference only and shall not constitute a part of this Amendment for any other purpose or be given any substantive effect.

(d) **Governing Law; Waiver of Jury Trial.** This Amendment shall be governed by and construed in accordance with the laws of the State of New York, and shall be further subject to the provisions of Sections 11.5 and 11.6 of the Credit Agreement.

(e) **Counterparts.** This Amendment 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. Delivery of an executed counterpart of a signature page of this Amendment by facsimile or other electronic transmission (including .pdf file) shall be effective as delivery of a manually executed counterpart hereof. The execution and delivery of this Amendment shall be deemed to include electronic signatures on electronic platforms approved by the Administrative Agent, which shall be of the same legal effect, validity or enforceability as delivery of a manually executed signature, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that, upon the request of any party hereto, such facsimile transmission or electronic mail transmission shall be promptly followed by the original thereof.

(f) **Entire Agreement.** This Amendment, together with all the Loan Documents (collectively, the “Relevant Documents”), sets forth the entire understanding and agreement of the parties hereto in relation to the subject matter hereof and supersedes any prior negotiations and agreements among the parties relating to such subject matter. No promise, condition, representation or warranty, express or implied, not set forth in the Relevant Documents shall bind any party hereto, and no such party has relied on any such promise, condition, representation or warranty. Each of the parties hereto acknowledges that, except as otherwise expressly stated in the Relevant Documents, no representations, warranties or commitments, express or implied, have been made by any party to the other. None of the terms or conditions of this Amendment may be changed, modified, waived or canceled orally or otherwise except in a writing signed by the Administrative Agent and requisite Lenders for such purpose.

(g) **Enforceability.** Should any one or more of the provisions of this Amendment be determined to be illegal or unenforceable as to one or more of the parties hereto, all other provisions nevertheless shall remain effective and binding on the parties hereto.

(h) **Successors and Assigns.** This Amendment shall be binding upon and inure to the benefit of the Borrower, each Guarantor, the Administrative Agent, the Lenders and their respective successors and assigns (subject to Section 11.9 of the Credit Agreement).

[Remainder of page intentionally left blank; signature pages follow]

The following parties have caused this Amendment to be executed as of the date first written above.

BORROWER:

MGP INGREDIENTS, INC., a Kansas corporation

By: /s/ Brandon Gall
Name: Brandon Gall
Title: Chief Financial Officer

GUARANTORS:

MGPI PROCESSING, INC., a Kansas corporation

By: /s/ Brandon Gall
Name: Brandon Gall
Title: Chief Financial Officer

MGPI PIPELINE, INC., a Kansas corporation

By: /s/ Brandon Gall
Name: Brandon Gall
Title: Chief Financial Officer

MGPI OF INDIANA, LLC, a Delaware limited liability company

By: /s/ Brandon Gall
Name: Brandon Gall
Title: Chief Financial Officer

LMX, LLC, a Nevada limited liability company

By: /s/ Brandon Gall
Name: Brandon Gall
Title: Chief Financial Officer

LUXCO, INC., a Missouri corporation

By: /s/ Brandon Gall
Name: Brandon Gall
Title: Chief Financial Officer

ADMINISTRATIVE AGENT, ISSUING LENDER AND LENDERS:

**WELLS FARGO BANK, NATIONAL
ASSOCIATION**, as Administrative Agent

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

MGP Ingredients, Inc.
Signature Page to Amendment No. 3 to Credit Agreement

**WELLS FARGO BANK, NATIONAL
ASSOCIATION**, as Swingline Lender, Issuing Lender and a Lender

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

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TRUIST BANK, as a Lender

By: /s/ John P. Wofford
Name: John P. Wofford
Title: Authorized Officer

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AGCOUNTRY FARM CREDIT SERVICES, FLCA, as a Lender

By: /s/ Lisa Caswell
Name: Lisa Caswell
Title: Vice President

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COMPEER FINANCIAL, PCA, as a Lender

By: /s/ Daniel J. Best
Name: Daniel J. Best
Title: Director, Capital Markets

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FIFTH THIRD BANK, NATIONAL ASSOCIATION, as a Lender

By: /s/ Benjamin L. Dodd
Name: Benjamin L. Dodd
Title: Senior Vice President

MGP Ingredients, Inc.
Signature Page to Amendment No. 3 to Credit Agreement

Annex A

Amended Credit Agreement

See attached.

to Amendment No. ~~23~~ to Credit Agreement dated as of ~~May 14~~ August 31, 2021 ~~2022~~ **Annex A:**

Published CUSIP Number: 55302QAA9
Revolver CUSIP Number: 55302QAB7

\$400,000,000

CREDIT AGREEMENT

dated as of February 14, 2020

(as amended by Amendment No. 1 to Credit Agreement, dated as of January 25, 2021, ~~and~~ Amendment No. 2 to Credit Agreement, dated as of May 14, 2021, and Amendment No. 3 to Credit Agreement, dated as of August 31, 2022)

by and among

MGP INGREDIENTS, INC.,
as Borrower,

the Lenders referred to herein,
as Lenders,

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Administrative Agent,
Swingline Lender and Issuing Lender,

and

WELLS FARGO SECURITIES, LLC and TRUIST SECURITIES, INC.,
as Joint Lead Arrangers and Joint Bookrunners

ARTICLE I DEFINITIONS 1

- SECTION 1.1 Definitions 1
- SECTION 1.2 Other Definitions and Provisions ~~37~~[36](#)
- SECTION 1.3 Accounting Terms; Accounting for Derivatives; Changes in GAAP 37
- SECTION 1.4 UCC Terms ~~38~~[37](#)
- SECTION 1.5 Rounding 38
- SECTION 1.6 References to Agreement and Laws 38
- SECTION 1.7 Times of Day ~~39~~[38](#)
- SECTION 1.8 Letter of Credit Amounts ~~39~~[38](#)
- SECTION 1.9 Adjustments for Material Acquisitions and Material Dispositions ~~39~~[38](#)
- SECTION 1.10 Divisions ~~39~~[38](#)
- SECTION 1.11 Rates 39

ARTICLE II REVOLVING CREDIT FACILITY ~~40~~[39](#)

- SECTION 2.1 Revolving Credit Loans ~~40~~[39](#)
- SECTION 2.2 Swingline Loans ~~40~~[39](#)
- SECTION 2.3 Procedure for Borrowings of Revolving Credit Loans and Swingline Loans 41
- SECTION 2.4 Repayment and Prepayment of Revolving Credit and Swingline Loans ~~42~~[41](#)
- SECTION 2.5 Permanent Reduction of the Commitments ~~43~~[42](#)
- SECTION 2.6 Termination of Revolving Credit Facility 43
- SECTION 2.7 Increases in Commitments 43

ARTICLE III LETTER OF CREDIT FACILITY ~~45~~[44](#)

- SECTION 3.1 L/C Commitment ~~45~~[44](#)
- SECTION 3.2 Procedure for Issuance of Letters of Credit ~~46~~[45](#)
- SECTION 3.3 Commissions and Other Charges ~~46~~[45](#)
- SECTION 3.4 L/C Participations 46
- SECTION 3.5 Reimbursement Obligation of the Borrower 47
- SECTION 3.6 Obligations Absolute ~~48~~[47](#)
- SECTION 3.7 Effect of Letter of Credit Application 48

ARTICLE IV GENERAL LOAN PROVISIONS 48

- SECTION 4.1 Interest ~~49~~[48](#)
 - SECTION 4.2 Notice and Manner of Conversion or Continuation of Loans 50
 - SECTION 4.3 Fees ~~50~~[51](#)
 - SECTION 4.4 Manner of Payment 51
 - SECTION 4.5 Evidence of Indebtedness ~~51~~[52](#)
 - SECTION 4.6 Sharing of Payments by Lenders 52
-

SECTION 4.7	Administrative Agent's Clawback	53
SECTION 4.8	Changed Circumstances	53
SECTION 4.9	Indemnity	56
SECTION 4.10	Increased Costs	57 <u>56</u>
SECTION 4.11	Taxes	58
SECTION 4.12	Mitigation Obligations; Replacement of Lenders	61
SECTION 4.13	Cash Collateral	62
SECTION 4.14	Defaulting Lenders	63
ARTICLE V	CONDITIONS OF EXTENSIONS OF CREDIT	65
SECTION 5.1	Conditions to Initial Extensions of Credit	65
SECTION 5.2	Conditions to All Extensions of Credit	68 <u>67</u>
ARTICLE VI	REPRESENTATIONS AND WARRANTIES	68
SECTION 6.1	Legal Status	68
SECTION 6.2	Organizational Power; Authorization; Enforceability	69 <u>68</u>
SECTION 6.3	Governmental Approvals; No Conflicts	69 <u>68</u>
SECTION 6.4	Litigation	69
SECTION 6.5	Correctness of Financial Statements; Absence of Material Adverse Change	69
SECTION 6.6	Taxes	69
SECTION 6.7	No Subordination	70 <u>69</u>
SECTION 6.8	Permits, Franchises	70 <u>69</u>
SECTION 6.9	ERISA	70
SECTION 6.10	Compliance with Laws and Agreements	70
SECTION 6.11	Environmental Matters	70
SECTION 6.12	Collateral	71 <u>70</u>
SECTION 6.13	Employee Relations	71
SECTION 6.14	Disclosure	71
SECTION 6.15	Properties	71
SECTION 6.16	Insurance	71
SECTION 6.17	Use of Proceeds	71
SECTION 6.18	Subsidiaries	72 <u>71</u>
SECTION 6.19	Investment Company Act, Etc	72 <u>71</u>
SECTION 6.20	Solvency	72
SECTION 6.21	Burdensome Provisions	72
SECTION 6.22	Material Contracts	72
SECTION 6.23	Intellectual Property Matters	72
SECTION 6.24	Anti-Corruption Laws; Anti-Money Laundering Laws and Sanctions	73 <u>72</u>
ARTICLE VII	AFFIRMATIVE COVENANTS	73

SECTION 7.1	Punctual Payments	73
SECTION 7.2	Accounting Records	74 <u>73</u>
SECTION 7.3	Financial Statements	74 <u>73</u>
SECTION 7.4	Compliance	75 <u>74</u>
SECTION 7.5	Insurance	75
SECTION 7.6	Facilities	75
SECTION 7.7	Taxes and Other Liabilities	75
SECTION 7.8	Notice to the Administrative Agent	76 <u>75</u>
SECTION 7.9	Additional Subsidiaries	76
SECTION 7.10	Information Regarding Collateral	77 <u>76</u>
SECTION 7.11	Further Assurances	77
SECTION 7.12	Deposit Accounts and Collections	78
SECTION 7.13	Visits and Inspections	78
SECTION 7.14	Compliance with Anti-Corruption Laws; Beneficial Ownership Regulation; Anti-Money Laundering Laws and Sanctions	79 <u>78</u>
ARTICLE VIII	NEGATIVE COVENANTS	79
SECTION 8.1	Financial Covenants	79
SECTION 8.2	Indebtedness	80 <u>79</u>
SECTION 8.3	Liens	84 <u>83</u>
SECTION 8.4	Merger, Consolidation, Etc	85
SECTION 8.5	Transfer of Assets	86 <u>85</u>
SECTION 8.6	Loans, Advances, Investments	87 <u>86</u>
SECTION 8.7	Restricted Payments	88
SECTION 8.8	Transactions with Affiliates	89
SECTION 8.9	Burdensome Agreements	89
SECTION 8.10	Amendment of Certain Agreements	90
SECTION 8.11	Use of Funds; Anti-Corruption	90
SECTION 8.12	Accounting Changes; Fiscal Year	90
SECTION 8.13	Sale-Leasebacks	90
SECTION 8.14	Restrictions Pertaining to Certain Debt	91 <u>90</u>
ARTICLE IX	DEFAULT AND REMEDIES	91
SECTION 9.1	Events of Default	91
SECTION 9.2	Remedies	93
SECTION 9.3	Rights and Remedies Cumulative; Non-Waiver; etc	94
SECTION 9.4	Crediting of Payments and Proceeds	94
SECTION 9.5	Administrative Agent May File Proofs of Claim	95
SECTION 9.6	Credit Bidding	96
ARTICLE X	THE ADMINISTRATIVE AGENT	96

SECTION 10.1	Appointment and Authority	96
SECTION 10.2	Rights as a Lender	97
SECTION 10.3	Exculpatory Provisions	97
SECTION 10.4	Reliance by the Administrative Agent	98
SECTION 10.5	Delegation of Duties	99
SECTION 10.6	Resignation of Administrative Agent	99
SECTION 10.7	Non-Reliance on Administrative Agent and Other Lenders	100
SECTION 10.8	No Other Duties, etc	100
SECTION 10.9	Collateral and Guaranty Matters	+00 101
SECTION 10.10	Secured Hedge Agreements and Secured Cash Management Agreements	101
SECTION 10.11	Erroneous Payments	+01 102
ARTICLE XI	MISCELLANEOUS	+02 103
SECTION 11.1	Notices	+02 103
SECTION 11.2	Amendments, Waivers and Consents	105
SECTION 11.3	Expenses; Indemnity	107
SECTION 11.4	Right of Setoff	+08 109
SECTION 11.5	Governing Law; Jurisdiction, Etc	109
SECTION 11.6	Waiver of Jury Trial	+09 110
SECTION 11.7	Reversal of Payments	110
SECTION 11.8	Injunctive Relief	110
SECTION 11.9	Successors and Assigns; Participations	+10 111
SECTION 11.10	Treatment of Certain Information; Confidentiality	114
SECTION 11.11	Performance of Duties	+14 115
SECTION 11.12	All Powers Coupled with Interest	+14 115
SECTION 11.13	Survival	115
SECTION 11.14	Titles and Captions	115
SECTION 11.15	Severability of Provisions	115
SECTION 11.16	Counterparts; Integration; Effectiveness; Electronic Execution	+15 116
SECTION 11.17	Term of Agreement	+16 117
SECTION 11.18	USA PATRIOT Act; Anti-Money Laundering Laws	+16 117
SECTION 11.19	Independent Effect of Covenants	+16 117
SECTION 11.20	Inconsistencies with Other Documents	117
SECTION 11.21	Keepwell	117
SECTION 11.22	Acknowledgement and Consent to Bail-In of Affected Financial Institutions	117
SECTION 11.23	Certain ERISA Matters	+17 118
SECTION 11.24	Acknowledgement Regarding Any Supported QFCs	+18 119

EXHIBITS

	<u>Form of:</u>
Exhibit A	- Note
Exhibit B	- Notice of Borrowing
Exhibit C	- Notice of Account Designation
Exhibit D	- Notice of Prepayment
Exhibit E	- Notice of Conversion/Continuation
Exhibit F	- Compliance Certificate
Exhibit G	- Assignment and Assumption
Exhibit H-1-4	- U.S. Tax Compliance Certificates

SCHEDULES

Schedule 2.1	- Commitments and Commitment Percentages
Schedule 6.11	- Environmental Matters
Schedule 6.12	- Real Property
Schedule 6.13	- Employee Relations
Schedule 6.18	- Subsidiaries
Schedule 6.22	- Material Contracts
Schedule 8.2	- Existing Indebtedness
Schedule 8.3	- Existing Liens
Schedule 8.6	- Existing Investments

CREDIT AGREEMENT

This CREDIT AGREEMENT is entered into as of February 14, 2020 (as amended by Amendment No. 1 to Credit Agreement, dated as of January 25, 2021, ~~and~~ Amendment No. 2 to Credit Agreement, dated as of May 14, 2021, and Amendment No. 3 to Credit Agreement, dated as of August 31, 2022), by and among MGP INGREDIENTS, INC., a Kansas corporation (the "Borrower"), the lenders who are party to this Agreement and the lenders who may become a party to this Agreement pursuant to the terms hereof, as Lenders, and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association, as Administrative Agent, Issuing Lender and Swingline Lender.

STATEMENT OF PURPOSE

The Borrower has requested that the Lenders provide a revolving credit facility, and the Lenders are willing to do so on the terms and conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I DEFINITIONS

SECTION 1.1 Definitions. The following terms when used in this Agreement shall have the meanings assigned to them below:

"Acquired Luxco Debt" means the following:

(a) (i) up to 8,000,000 British Pounds Sterling in aggregate outstanding principal amount of Indebtedness of Niche Drinks Co., Ltd. due the Bank of Ireland (UK) Plc and/or The Governor and Company of the Bank of Ireland under financing agreements in effect on the Luxco Merger Date or amended from time to time, and (ii) any guaranty, comfort letter or similar assurance of payment or performance provided by the Borrower or any Subsidiary of the Borrower in connection with such Indebtedness of Niche Drinks Co. Ltd., provided that any such guaranty, comfort letter or assurance of payment or performance is unsecured;

(b) to the extent constituting Indebtedness, (i) Indebtedness of Luxco, Inc. to BMO Harris Bank National Association in an aggregate principal amount not to exceed \$3,422,200 at any time outstanding in the form of a U.S. Small Business Administration paycheck protection loan, and (ii) Indebtedness of Lux Row Distillers LLC to BMO Harris Bank National Association in an aggregate principal amount not to exceed \$324,250 at any time outstanding in the form of a similar paycheck protection loan, so long as (A) to the Borrower's knowledge, the makers of such paycheck protection loans have applied for forgiveness thereof in accordance with applicable governmental regulations and (B) on the Luxco Merger Date, the Borrower will cause an amount equal to not less than the then outstanding principal balance of each such paycheck protection loan to be deposited in deposit accounts (one for each such paycheck protection loan) in the name of Luxco, Inc. (or Lux Row Distillers LLC, as applicable) with BMO Harris Bank National Association (each, a "PPP Deposit Account") pursuant to agreements (one for each such paycheck protection loan) to be entered into among Luxco, Inc. (or Lux Row Distillers LLC, as applicable), BMO Harris Bank National Association and the Seller's Representative referred to in the definition of Luxco Merger herein, whereby, with respect to each such PPP Deposit Account, (I) Luxco, Inc. (or Lux Row Distillers LLC, as applicable) shall grant to BMO Harris Bank National Association a security interest in such PPP Deposit Account as security for Luxco, Inc.'s (or Lux Row Distillers LLC's, as applicable) obligations to BMO Harris Bank National Association with respect to the related paycheck protection loan, (II) BMO Harris Bank National Association may at any time transfer the balance in such PPP Deposit Account into the name of BMO Harris Bank National Association or its nominee or nominees, (III) if the related paycheck protection loan is forgiven in accordance with applicable governmental regulations (as evidenced by the U.S. Small Business Administration remitting funds to BMO Harris Bank National Association in full satisfaction of the related paycheck protection loan), the balance in such PPP Deposit Account is to be remitted as directed by such Seller's Representative, and (IV) if the applicable paycheck protection loan is not so forgiven,

BMO Harris Bank National Association is to apply the balance in such PPP Deposit Account to the extent necessary to repay the related paycheck protection loan in its entirety;

(c) the following Indebtedness: (i) Indebtedness of Limestone Branch Distillery, LLC to the Marion County Industrial Foundation, Inc., or its assigns, pursuant to agreements as in effect on the Luxco Merger Date or as amended from time to time, in an aggregate principal amount not to exceed \$252,000 at any time outstanding, relating to the acquisition of certain equipment; and (ii) Indebtedness of Limestone Branch Distillery, LLC to the Lincoln Trail Area Development District, or its assigns, pursuant to agreements as in effect on the Luxco Merger Date or as amended from time to time, in an aggregate principal amount not to exceed \$37,859 at any time outstanding, relating to the acquisition of certain equipment;

(d) to the extent constituting Indebtedness, obligations existing on the Luxco Merger Date that are arising under any operating leases, finance leases or similar arrangements relating to any equipment or other assets acquired in connection with the Luxco Merger, provided that such leases or similar arrangements were not entered into in contemplation of the Luxco Merger;

(e) to the extent constituting Indebtedness, amounts owing by Luxco Drinks Limited or its affiliates in connection with its acquisition of the assets or equity interests of Niche Drinks Co., Ltd. in an aggregate principal amount not to exceed 1,801,322 British Pounds Sterling at any time outstanding;

(f) to the extent the same does not constitute a Permitted IRB Financing, amounts payable by LFL LLC in connection with the issuance of industrial revenue bonds by the County of Nelson, Kentucky, as issuer, in an aggregate principal amount not to exceed \$35,000,000, which industrial revenue bonds have been purchased in their entirety by LRD Holdings, LLC, as bond purchaser, and which payment obligations of LFL LLC are evidenced or secured by a lease agreement between the County of Nelson, Kentucky, as issuer and lessor, and LFL LLC, as lessee, and a mortgage from the County of Nelson, Kentucky, as issuer and mortgagor, to LRD Holdings, LLC, as bond purchaser and mortgagee; provided that such industrial revenue bonds continue to be owned in their entirety by a Loan Party;

(g) an amount, not to exceed \$630,049, due New Hope Spirits, LLC or its assigns in connection with the purchase of the remaining Equity Interests of Limestone Branch Distillery, LLC not owned by the Borrower or its Subsidiaries on the Luxco Merger Date; and

(h) Permitted Refinancings of Indebtedness outstanding pursuant to clauses (a), (c), (d), (e), (f) or (g) of this definition.

"Acquired Luxco Liens" means the following:

(a) Liens on assets of Niche Drinks Co., Ltd. to the extent such Liens secure Indebtedness or other obligations described in clause (a) of the definition of Acquired Luxco Debt or any Permitted Refinancings thereof;

(b) to the extent constituting Liens, any security interest or other rights of BMO Harris Bank National Association and/or the Seller's Representative referred to in clause (b) of the definition of Acquired Luxco Debt with respect to the PPP Deposit Accounts described in such clause (b);

(c) Liens on equipment or other assets of Limestone Branch Distillery, LLC to the extent such Liens secure Indebtedness or other obligations described in clause (c) of the definition of Acquired Luxco Debt or any Permitted Refinancings thereof; provided that such Liens encumber only the equipment or other assets originally encumbered by such Indebtedness or other obligations;

(d) to the extent constituting Liens, the rights of the lessors or equipment financiers or their respective assigns with respect to the equipment or other assets leased or financed pursuant to the Indebtedness or other obligations described in clause (d) of the definition of Acquired Luxco Debt; provided that such Liens do not extend to any other assets; and

(e) to the extent constituting Liens, the rights of the County of Nelson, Kentucky and/or LRD Holdings, LLC with respect to the real property or other assets leased and/or mortgaged in connection with the industrial revenue bonds described in clause (f) of the definition of Acquired Luxco Debt.

“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 a Person that is 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 pursuant to Section 8.4(a) or (b)) provided that the Borrower or a Person that is a Subsidiary (after giving effect to such merger, consolidation or other combination) is the surviving entity.

“Adjusted Daily Simple SOFR” means, for any day (a “Simple SOFR Rate Day”), a rate per annum equal to the greater of (a) the sum of (i) SOFR for the day (such day, a “SOFR Determination Day”) that is five (5) U.S. Government Securities Business Days prior to (A) if such Simple SOFR Rate Day is a U.S. Government Securities Business Day, such Simple SOFR Rate Day or (B) if such Simple SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such Simple SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator’s Website; provided that if by 5:00 p.m. on the second (2nd) U.S. Government Securities Business Day immediately following any SOFR Determination Day, SOFR in respect of such SOFR Determination Day has not been published on the SOFR Administrator’s Website and a Benchmark Replacement Date with respect to Adjusted Daily Simple SOFR has not occurred, then SOFR for such SOFR Determination Day will be SOFR as published in respect of the first preceding U.S. Government Securities Business Day for which such SOFR was published on the SOFR Administrator’s Website; provided further that SOFR as determined pursuant to this proviso shall be utilized for purposes of calculation of Adjusted Daily Simple SOFR for no more than three (3) consecutive Simple SOFR Rate Days and (ii) the Simple SOFR Adjustment and (b) the Floor. Any change in Adjusted Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to the Borrower.

“Adjusted Term SOFR” means, for purposes of any calculation, the rate per annum equal to (a) Term SOFR for such calculation plus (b) the Term SOFR Adjustment; provided that if Adjusted Term SOFR as so determined shall ever be less than the Floor, then Adjusted Term SOFR shall be deemed to be the Floor.

“Administrative Agent” means Wells Fargo, in its capacity as Administrative Agent hereunder, and any successor thereto appointed pursuant to Section 10.6.

“Administrative Agent’s Office” means the office of the Administrative Agent specified in or determined in accordance with the provisions of Section 11.1(c).

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

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

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

“Aggregate Commitments” means the Commitments of all the Lenders. The amount of the Aggregate Commitments as of the Amendment No. 2 Effective Date is \$400,000,000.

“Agreement” means this Credit Agreement.

“Amendment No. 2” means that certain Amendment No. 2 to Credit Agreement, dated as of the Amendment No. 2 Effective Date, by and among the Borrower, the Guarantors, the Lenders party thereto and the Administrative Agent.

“Amendment No. 2 Effective Date” means May 14, 2021.

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction from time to time concerning or relating to bribery or corruption, including the United States Foreign Corrupt Practices Act of 1977 and the rules and regulations thereunder and the U.K. Bribery Act 2010 and the rules and regulations thereunder.

“Anti-Money Laundering Laws” means any and all laws, statutes, regulations or obligatory government orders, decrees, ordinances or rules related to terrorism financing, money laundering, any predicate crime to money laundering or any financial record keeping, including any applicable provision of the PATRIOT Act and The Currency and Foreign Transactions Reporting Act (also known as the “Bank Secrecy Act,” 31 U.S.C. §§ 5311-5330 and 12 U.S.C. §§ 1818(s), 1820(b) and 1951-1959).

“Applicable Law” means all applicable provisions of constitutions, laws, statutes, ordinances, rules, treaties, regulations, permits, licenses, approvals, interpretations and orders of courts or Governmental Authorities and all orders and decrees of all courts and arbitrators.

“Applicable Margin” means the applicable percentage per annum set forth below determined by reference to the Consolidated Leverage Ratio set forth in the Compliance Certificate most recently delivered pursuant to Section 7.3(c).

Tier	Consolidated Leverage Ratio	Applicable Margin		
		LIBOR Rate Adjusted Daily Simple SOFR/Adjusted Term SOFR Loans	Base Rate Loans	Commitment Fee
I	Less than 2.00 to 1.00	1.000%	0.000%	0.150%
II	Greater than or equal to 2.00 to 1.00, but less than 2.50 to 1.00	1.250%	0.250%	0.175%
III	Greater than or equal to 2.50 to 1.00, but less than 3.00 to 1.00	1.500%	0.500%	0.200%
IV	Greater than or equal to 3.00 to 1.00, but less than 3.50 to 1.00	1.750%	0.750%	0.225%
V	Greater than or equal to 3.50 to 1.00	2.000%	1.000%	0.250%

Any increase or decrease in the Applicable Margin resulting from a change in the Consolidated Leverage Ratio after the Closing Date shall become effective as of the first Business Day following the date a Compliance Certificate is delivered pursuant to Section 7.3(c); provided that (i) if a Compliance Certificate is not delivered when due in accordance with such Section, then Tier V 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 following the date such Compliance Certificate is delivered, and (ii) if the Borrower does not appropriately complete the schedules attached to the Compliance Certificate (including, without limitation, indicating the appropriate Tier upon which the Applicable Margin shall be determined) indicating that the Borrower is entitled to the benefit of a lower pricing Tier, then the Administrative Agent shall not be required to institute any decrease in the Applicable Margin until the first Business Day after the date on which the Administrative Agent receives notice from the Borrower indicating such lower pricing Tier should apply, together with any appropriate supporting information required by the Administrative Agent. Notwithstanding the foregoing, the Applicable Margin in effect from the Closing Date until the first Business Day following the required date of delivery (or, if earlier, the actual date of delivery) of a Compliance Certificate for the fiscal quarter ending March 31, 2020 shall be based on Tier I.

Notwithstanding the foregoing, in the event that any financial statement or Compliance Certificate delivered pursuant to Section 7.3(a), (b) or (c) is shown to be inaccurate (regardless of whether (i) this Agreement is in effect, (ii) the Aggregate Commitments are in effect, or (iii) any Extension of Credit is outstanding when such inaccuracy is discovered or such financial statement or Compliance Certificate was delivered), and such inaccuracy, if corrected, would have led to the application of a higher Applicable Margin for any period (an “Applicable Period”) than the Applicable Margin applied for such Applicable Period, then (A) the Borrower shall promptly (and in any event within 5 Business Days after such inaccuracy is shown) deliver to the Administrative Agent a corrected Compliance Certificate for such Applicable Period, (B) the Applicable Margin for such Applicable Period shall be determined as if the Consolidated Leverage Ratio in the corrected Compliance Certificate were applicable for such Applicable Period, and (C) the Borrower shall retroactively be obligated to promptly (and in any event within 2 Business Days after such inaccuracy is shown) pay to the Administrative Agent the accrued additional interest and fees owing as a result of such increased Applicable Margin for such Applicable Period, which payment shall be promptly applied by the Administrative Agent in accordance with Section 4.4. Nothing in this paragraph shall limit the rights of the Administrative Agent, the Issuing Lender or any Lender with respect to Sections 4.1(c) and 9.2 nor any of their other rights under this Agreement or any other Loan Document. The Borrower’s obligations under this paragraph shall survive the termination of the Aggregate Commitments and the repayment of all Obligations hereunder.

“Approved Fund” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Arrangers” means, collectively, (a) Wells Fargo Securities, LLC and (b) Truist Securities, Inc., each in its capacity as a joint lead arranger and joint bookrunner.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 11.9), and accepted by the Administrative Agent, in substantially the form attached as Exhibit G or any other form approved by the Administrative Agent.

“Available Tenor” means, as of any date of determination and with respect to ~~the any~~ then-current Benchmark, as applicable, (a) if ~~the then-current~~ such Benchmark is a term rate, any tenor for such Benchmark ~~or (b) otherwise, any payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of an Interest Period pursuant to this Agreement (or component thereof) that is or may be used for determining the length of an Interest Period pursuant to this Agreement or (b) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark, in each case,~~ as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to Section 4.8(c)(iv).

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

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

“Bankruptcy Code” means 11 U.S.C. §§ 101 *et seq.*

“Base Rate” means, at any time, the highest of (a) the Prime Rate, (b) the Federal Funds Rate plus 0.50% and (c) ~~except during any period of time during which a notice delivered to the Borrower under Section 4.8 shall remain in effect, LIBOR for an Interest Period of one month~~ the Adjusted Daily Simple

SOFR in effect on such day plus 1.00%; each change in the Base Rate shall take effect simultaneously with the corresponding change or changes in the Prime Rate, the Federal Funds Rate or ~~LIBOR~~Adjusted Daily Simple SOFR, as applicable (provided that clause (c) shall not be applicable during any period in which Adjusted Daily Simple SOFR is unavailable or unascertainable). ~~Notwithstanding the foregoing, in no event shall the Base Rate be less than 1.00%.~~

“Base Rate Loan” means any Loan bearing interest at a rate based upon the Base Rate as provided in Section 4.1(a).

“Benchmark” means, initially, ~~USD LIBOR~~Adjusted Daily Simple SOFR or Adjusted Term SOFR, as applicable; provided that if a Benchmark Transition Event, ~~a has occurred with respect to Adjusted Daily Simple SOFR or Adjusted Term SOFR Transition Event, or an Early Opt-in Election,~~ as applicable, ~~and its related Benchmark Replacement Date have occurred with respect to USD LIBOR or the applicable~~ then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 4.8(c)(i).

“Benchmark Replacement” means, ~~for any Available Tenor, (a) with respect to any Benchmark Transition Event or Early Opt-in Election, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date:~~

~~(1) the sum of: (A) Term SOFR and (B) the related Benchmark Replacement Adjustment; provided, that, if the Borrower has provided a notification to the Administrative Agent in writing on or prior to such Benchmark Replacement Date that the Borrower has a Hedge Agreement in place with respect to any of the Loans as of the date of such notice (which such notification the Administrative Agent shall be entitled to rely upon and shall have no duty or obligation to ascertain the correctness or completeness of), then the Administrative Agent, in its sole discretion, may decide not to determine the Benchmark Replacement pursuant to this clause (a)(1) for such Benchmark Transition Event or Early Opt-in Election, as applicable;~~

~~(2) the sum of: (A) Daily Simple SOFR and (B) the related Benchmark Replacement Adjustment;~~

~~(3) the sum of: (A for any then-current Benchmark, the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower as the replacement for the then-current such Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the to such then-current Benchmark for Dollar-denominated syndicated credit facilities at such time and (B) the related Benchmark Replacement Adjustment; or~~

~~(b) with respect to any Term SOFR Transition Event, the sum of (i) Term SOFR and (ii) b) the related Benchmark Replacement Adjustment; provided that, (i) in the case of clause (a)(1), if the Administrative Agent decides that Term SOFR is not administratively feasible for the Administrative Agent, then Term SOFR will be deemed unable to be determined for purposes of this definition and (ii) in the case of clause (a)(1) or clause (b) of this definition, the applicable Unadjusted Benchmark Replacement is displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion. If the if such Benchmark Replacement as so determined pursuant to clause (a) (1), (a)(2) or (a)(3) or clause (b) of this definition would be less than the Floor, the such Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.~~

“Benchmark Replacement Adjustment” means, with respect to any replacement of ~~the any~~ then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable ~~Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement;~~

~~(1) — for purposes of clauses (a)(1) and (a)(2) of the definition of “Benchmark Replacement,” the first alternative set forth in the order below that can be determined by the Administrative Agent: (a) (if applicable), the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that has been selected or recommended by the Relevant Governmental Body for the replacement of such Available Tenor of such Benchmark with the applicable Unadjusted Benchmark Replacement;~~

~~(b) — the spread adjustment (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that would apply to the fallback rate for a derivative transaction referencing the ISDA Definitions to be effective upon an index cessation event with respect to such Available Tenor of such Benchmark;~~

~~(2) — for purposes of clause (a)(3) of the definition of “Benchmark Replacement,” the spread adjustment, or method for calculating or determining such spread adjustment (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower giving due consideration to (ia) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Available Tenor of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date or (iib) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Available Tenor of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities; and~~

~~(3) — for purposes of clause (b) of the definition of “Benchmark Replacement,” the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that has been selected or recommended by the Relevant Governmental Body for the replacement of such Available Tenor of USD LIBOR with a SOFR-based rate;~~

~~provided that, (x) in the case of clause (1) above, such adjustment is displayed on a screen or other information service that publishes such Benchmark Replacement Adjustment from time to time as selected by the Administrative Agent in its reasonable discretion and (y) if the then-current Benchmark is a term rate, more than one tenor of such Benchmark is available as of the applicable Benchmark Replacement Date and the applicable Unadjusted Benchmark Replacement that will replace such Benchmark in accordance with Section 4.8(c)(i) will not be a term rate, the Available Tenor of such Benchmark for purposes of this definition of “Benchmark Replacement Adjustment” shall be deemed to be, with respect to each Unadjusted Benchmark Replacement having a payment period for interest calculated with reference thereto, the Available Tenor that has approximately the same length (disregarding business day adjustments) as such payment period.~~

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

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

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

~~(b)~~(b) in the case of clause (c) of the definition of “Benchmark Transition Event,” the ~~first date~~ ~~of~~ ~~on~~ ~~which~~ ~~such~~ ~~Benchmark~~ ~~(or~~ ~~the~~ ~~published~~ ~~component~~ ~~used~~ ~~in~~ ~~the~~ ~~calculation~~ ~~thereof)~~ has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the ~~public~~ ~~most~~ ~~recent~~ statement or publication of information referenced therein; ~~(c)~~ ~~—~~ ~~in~~ ~~the~~ ~~case~~ ~~of~~ ~~a~~ ~~Term~~ ~~SOFPR~~ ~~Transition~~ ~~Event,~~ ~~the~~ ~~date~~ ~~that~~ ~~is~~ ~~thirty~~ ~~(30)~~ ~~days~~ ~~after~~ ~~the~~ ~~Administrative~~ ~~Agent~~ ~~has~~ ~~provided~~ ~~the~~ ~~Term~~ ~~SOFPR~~ ~~Notice~~ ~~to~~ ~~the~~ ~~Lenders~~ ~~and~~ ~~the~~ ~~Borrower~~ ~~pursuant~~ ~~to~~ ~~Section~~ ~~4.8(c)(i)(B);~~ ~~or~~ ~~in~~ ~~such~~ ~~clause~~ ~~(c)~~ ~~and~~ ~~even~~ ~~if~~ ~~any~~ ~~Available~~ ~~Tenor~~ ~~(if~~ ~~applicable)~~ ~~of~~ ~~such~~ ~~Benchmark~~ ~~(or~~ ~~such~~ ~~component~~ ~~thereof)~~ continues to be provided on such date.

~~(d)~~ ~~—~~ ~~in~~ ~~the~~ ~~case~~ ~~of~~ ~~an~~ ~~Early~~ ~~Opt-in~~ ~~Election,~~ ~~the~~ ~~sixth~~ ~~(6th)~~ ~~Business~~ ~~Day~~ ~~after~~ ~~the~~ ~~date~~ ~~notice~~ ~~of~~ ~~such~~ ~~Early~~ ~~Opt-in~~ ~~Election~~ ~~is~~ ~~provided~~ ~~to~~ ~~the~~ ~~Lenders,~~ ~~so~~ ~~long~~ ~~as~~ ~~the~~ ~~Administrative~~ ~~Agent~~ ~~has~~ ~~not~~ ~~received,~~ ~~by~~ ~~5:00~~ ~~p.m.~~ ~~(New~~ ~~York~~ ~~City~~ ~~time)~~ ~~on~~ ~~the~~ ~~fifth~~ ~~(5th)~~ ~~Business~~ ~~Day~~ ~~after~~ ~~the~~ ~~date~~ ~~notice~~ ~~of~~ ~~such~~ ~~Early~~ ~~Opt-in~~ ~~Election~~ ~~is~~ ~~provided~~ ~~to~~ ~~the~~ ~~Lenders,~~ ~~written~~ ~~notice~~ ~~of~~ ~~objection~~ ~~to~~ ~~such~~ ~~Early~~ ~~Opt-in~~ ~~Election~~ ~~from~~ ~~Lenders~~ ~~comprising~~ ~~the~~ ~~Required~~ ~~Lenders:~~

For the avoidance of doubt, ~~(i)~~ if the ~~event~~ ~~giving~~ ~~rise~~ ~~to~~ ~~the~~ ~~applicable~~ ~~then-current~~ Benchmark ~~Replacement~~ ~~Date~~ ~~occurs~~ ~~on~~ ~~the~~ ~~same~~ ~~day~~ ~~as,~~ ~~but~~ ~~earlier~~ ~~than,~~ the Reference Time in respect of any determination, ~~the~~ ~~Benchmark~~ ~~Replacement~~ ~~Date~~ ~~will~~ ~~be~~ ~~deemed~~ ~~to~~ ~~have~~ ~~occurred~~ ~~prior~~ ~~to~~ ~~the~~ ~~Reference~~ ~~Time~~ ~~for~~ ~~such~~ ~~determination~~ ~~and~~ ~~(ii)~~ ~~has~~ ~~any~~ ~~Available~~ ~~Tenors,~~ the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause ~~(1a)~~ or ~~(2b)~~ with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

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

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

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

(c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors ~~(if applicable)~~ of such Benchmark (or such component thereof) are ~~no~~ ~~longer~~ ~~not,~~ ~~or~~ ~~as~~ ~~of~~ ~~a~~ ~~specified~~ ~~future~~ ~~date~~ ~~will~~ ~~not~~ ~~be,~~ representative.

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

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

“Benchmark Unavailability Period” means, with respect to any then-current Benchmark, the period (if any) (x) beginning at the time that a Benchmark Replacement Date ~~pursuant to clauses (a) or (b) of that definition~~ with respect to such Benchmark has occurred if, at such time, no Benchmark Replacement has replaced ~~the then-current~~ such Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 4.8(c) and (y) ending at the time that a Benchmark Replacement has replaced ~~the then-current~~ such Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 4.8(c).

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

“Beneficial Ownership Regulation” means 31 CFR § 1010.230.

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

“Borrower” has the meaning specified in the introductory paragraph hereto.

“Borrower Materials” has the meaning assigned thereto in Section 7.3.

“Borrowing” means a Revolving Credit Borrowing or a Swingline Borrowing, as the context may require.

“Business Day” means ~~(a) for all purposes other than as set forth in clause (b) below,~~ any day ~~other than that (a) is not~~ a Saturday, Sunday or ~~legal holiday~~ other day on which the Federal Reserve Bank of New York is closed and (b) is not a day on which commercial banks in Charlotte, North Carolina ~~and New York, New York,~~ are ~~open for the conduct of their commercial banking business, and (b) with respect to all notices and determinations in connection with, and payments of principal and interest on, any LIBOR Rate Loan or any Base Rate Loan as to which the interest rate is determined by reference to LIBOR, any day that is a Business Day described in clause (a) and that is also a day for trading by and between banks in Dollar deposits in the London interbank market~~ closed.

“Capital Lease Obligations” of any Person means, subject to Section 1.3(b), 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 or finance 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 pledge and deposit with, or deliver to, the Administrative Agent, for the benefit of one or more of the Issuing Lender, the Swingline Lender or the Lenders, as collateral for L/C Obligations or obligations of the Lenders to fund participations in respect of L/C Obligations or Swingline Loans, cash or deposit account balances or, if the Administrative Agent, the Swingline Lender and the Issuing Lender shall agree, in their sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to the Administrative Agent, the Swingline Lender and

the Issuing Lender. “Cash Collateral” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“Cash Management Agreement” means any agreement to provide cash management services, including treasury, depository, overdraft, credit or debit card (including non-card electronic payables and purchasing cards), electronic funds transfer and other cash management arrangements (including any Treasury Management Agreement).

“Cash Management Bank” means any Person that, (a) at the time it (or its Affiliate) becomes a Lender on the Closing Date, is party to a Cash Management Agreement with a Loan Party, or (b) at the time it enters into a Cash Management Agreement with a Loan Party, is a Lender, an Affiliate of a Lender, the Administrative Agent or an Affiliate of the Administrative Agent, in each case in its capacity as a party to such Cash Management Agreement.

“Change of Control” means an 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 twelve (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 \$25,000,000 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.

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

“Closing Date” means the date of this Agreement.

“Code” means the Internal Revenue Code of 1986, and the rules and regulations promulgated thereunder.

“Collateral” means the collateral security for the Secured Obligations pledged or granted pursuant to the Security Documents.

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

“Commitment” means, as to any Lender, the obligation of such Lender to make Revolving Credit Loans to, and to purchase participations in L/C Obligations and Swingline Loans for the account of, the Borrower hereunder in an aggregate principal amount at any time outstanding not to exceed the amount set forth opposite such Lender’s name on the Register, as such amount may be modified at any time or from time to time pursuant to the terms hereof (including, without limitation, Section 2.7 and Amendment No. 2). The amount of each Lender’s Commitment as of the Amendment No. 2 Effective Date is set forth on Schedule 2.1, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Commitment, as applicable.

“Commitment Fee” has the meaning assigned thereto in Section 4.3(a).

“Commitment Percentage” means, as to any Lender at any time, the percentage (carried out to the ninth decimal place) of the Aggregate Commitments represented by (a) at any time prior to the expiration or termination of the Aggregate Commitments, such Lender’s Commitment at such time, and (b) thereafter, the principal amount of such Lender’s Revolving Credit Exposure at such time. The Commitment Percentage of each Lender as of the Amendment No. 2 Effective Date is set forth opposite the name of such Lender on Schedule 2.1 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

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

“Compliance Certificate” means a certificate substantially in the form attached as Exhibit F.

“Conforming Changes” means, with respect to either the use or administration of an initial Benchmark or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period” or any similar or analogous definition (or the addition of a concept of “interest period”), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 4.9 and other technical, administrative or operational matters) that the Administrative Agent reasonably decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent reasonably decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent reasonably determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

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

“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, minus (iii) income taxes (whether federal, state, local or otherwise) paid in cash during such period, minus (iv) Maintenance Capital Expenditures during such period, 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 (other than Permitted Convertible Indebtedness) (provided that (x) up to \$25,000,000 in the aggregate of share repurchases occurring during the period commencing February 27, 2019 and ending on February 27, 2022 and (y) 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 (1) \$7,500,000 in any period other than the 2019 fiscal year, or (2) \$14,200,000 in the 2019 fiscal year, in each case of clauses (x) and (y), shall be excluded from the amounts deducted in clause (a)(v) of this definition) 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 (including any Permitted Convertible Indebtedness), (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 Hedge Agreements 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 1.9.

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

~~“Corresponding Tenor” with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.~~

“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.

~~“Daily Simple SOFR” means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Administrative Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for syndicated business loans; provided that if the Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent may establish another convention in its reasonable discretion.~~ Loan” means any Loan bearing interest at a rate based on Adjusted Daily Simple SOFR (other than pursuant to the Adjusted Daily Simple SOFR component of the definition of “Base Rate”), as provided in Section 4.1(a).

“Debtor Relief Laws” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect.

“Default” means any event or condition which constitutes an Event of Default or which, with the giving or receipt of notice or lapse of time or both, would constitute an Event of Default hereunder.

“Defaulting Lender” means, subject to Section 4.14(b), any Lender that (a) has failed to (i) fund all or any portion of the Revolving Credit Loans, participations in L/C Obligations or participations in Swingline Loans required to be funded by it hereunder within two Business Days of the date such Loans or participations were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, the Issuing Lender, the Swingline Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swingline Loans) within two Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent, the Issuing Lender, the Swingline Lender or any other Lender in writing that it does not intend to comply with any of its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) become the subject of a Bail-In Action; provided that a Lender

shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 4.14(b)) upon delivery of written notice of such determination to the Borrower, the Issuing Lender, the Swingline Lender and each Lender.

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition of any property (including any sale and leaseback transaction, division, merger or disposition of Equity Interests), whether in a single transaction or a series of related transactions, 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. For the avoidance of doubt, (i) none of (w) the issuance or sale of any Permitted Convertible Indebtedness by the Borrower, (x) the sale of any Permitted Warrant Transaction by the Borrower, (y) the purchase of any Permitted Bond Hedge Transaction nor (z) the performance by the Borrower of its obligations under any Permitted Convertible Indebtedness (including any Person’s issuance of any Equity Interests of such Person in connection with its obligations under any Permitted Convertible Indebtedness), any Permitted Warrant Transaction or any Permitted Bond Hedge Transaction shall constitute a “Disposition”, and (ii) no issuance by the Borrower of Equity Interests of the Borrower shall constitute a Disposition.

“Disqualified Equity Interests” means, with respect to any Person, any Equity Interests of such Person that, by their terms (or by the terms of any security or other Equity Interest into which they are convertible or for which they are exchangeable) or upon the happening of any event or condition, (a) mature or are mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full in cash of the Loans and all other Obligations (other than contingent indemnification obligations not then due) and the termination of the Commitments), (b) are redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests) (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full in cash of the Loans and all other Obligations (other than contingent indemnification obligations not then due) and the termination of the Commitments), in whole or in part, (c) provide for the scheduled payment of dividends in cash or (d) are or become convertible into, or exchangeable for, Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case of clauses (a) through (d), prior to the date that is 91 days after the latest scheduled maturity date of the Loans and Commitments; provided that if such Equity Interests are issued pursuant to a plan for the benefit of the Borrower or its Subsidiaries or by any such plan to such officers or employees, such Equity Interests shall not constitute Disqualified Equity Interests solely because they may be required to be repurchased by the Borrower or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations.

“Dollars” or “\$” means, unless otherwise qualified, dollars in lawful currency of the United States.

“Domestic Subsidiary” means any Subsidiary organized under the laws of any political subdivision of the United States.

~~“Early Opt-in Election” means, if the then-current Benchmark is USD LIBOR, the occurrence of:~~

~~(a) — a notification by the Administrative Agent to (or the request by the Borrower to the Administrative Agent to notify) each of the other parties hereto that at least five currently outstanding Dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon~~

~~SOFR as a benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review), and~~

~~(b) — the joint election by the Administrative Agent and the Borrower to trigger a fallback from USD LIBOR and the provision by the Administrative Agent of written notice of such election to the Lenders.~~

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

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

“EEA Resolution Authority” means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any credit institution or investment firm established in any EEA Member Country.

“Electronic Record” has the meaning assigned to that term in, and shall be interpreted in accordance with, 15 U.S.C. 7006.

“Electronic Signature” has the meaning assigned to that term in, and shall be interpreted in accordance with, 15 U.S.C. 7006.

“Eligible Assignee” means any Person that meets the requirements to be an assignee under Section 11.9(b)(iii), (v) and (vi) (subject to such consents, if any, as may be required under Section 11.9(b)(iii)).

“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 or any agency thereof;

(b) obligations of any corporation organized under the laws of any state of the United States or under the laws of any other nation, payable in the United States, 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 Standard & Poor’s Rating Service, 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 any 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 Administrative Agent.

“Environmental Claims” means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, accusations, allegations, notices of noncompliance or violation,

investigations (other than internal reports prepared by any Person in the ordinary course of business and not in response to any third party action or request of any kind) or proceedings relating in any way to any actual or alleged violation of or liability under any Environmental Law or relating to any permit issued, or any approval given, under any such Environmental Law, including, without limitation, any and all claims by Governmental Authorities for enforcement, cleanup, removal, response, remedial or other actions or damages, contribution, indemnification cost recovery, compensation or injunctive relief resulting from Hazardous Materials or arising from alleged injury or threat of injury to human health or the environment.

“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 the Borrower or any of its Subsidiaries 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 Interest” 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. For the avoidance of doubt, none of (x) the Permitted Convertible Indebtedness nor (y) any Permitted Warrant Transactions, in either case, shall constitute Equity Interests of the Borrower or any of its Subsidiaries prior to settlement, conversion, exchange or exercise thereof.

“ERISA” means the Employee Retirement Income Security Act of 1974, and the rules and regulations thereunder, each as amended or modified from time to time.

“ERISA Affiliate” means any Person who together with the Borrower is treated as a single employer within the meaning of Section 414(b), (c), (m) or (o) of the Code or Section 4001(b) of ERISA.

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

“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, the treatment of a Plan or Multiemployer Plan, amendment as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Plan or Multiemployer 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 or Multiemployer 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 or Multiemployer Plan that, if determined adversely, could reasonably be expected to have a Material Adverse Effect.

“Erroneous Payment” has the meaning assigned thereto in Section 10.11(a).

~~“Eurodollar Reserve Percentage” means, for any day, the percentage (expressed as a decimal and rounded upwards, if necessary, to the next higher 1/100th of 1%) which is in effect for such day as prescribed by the Board of Governors of the Federal Reserve System (or any successor) for determining the maximum reserve requirement (including, without limitation, any basic, supplemental or emergency reserves) in respect of eurocurrency liabilities or any similar category of liabilities for a member bank of the Federal Reserve System in New York City.~~

“Event of Default” means any of the events specified in Section 9.1; provided that any requirement for passage of time, giving of notice, or any other condition, has been satisfied.

“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, aircraft, 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, aircraft, 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, (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, (g) any Equity Interests of Limestone Branch Distillery, LLC, a Kentucky limited liability company, Dos Primos Tequila Company, LLC, a Delaware limited liability company, Agricola, LG, S. De R.L. DE C.V., a Mexican entity, DGL Destiladores, S. De R.L. DE C.V., a Mexican entity, and Distill1, LLC, a Tennessee limited liability company, but only so long as, in the case of each issuer of such Equity Interests, the Borrower, whether directly or indirectly through one or more Subsidiaries, does not own 100% of the Equity Interests of such issuer (other than an issuer that is or becomes a Foreign Subsidiary, in which case clause (f) above shall govern the extent to which such issuer's Equity Interests are Excluded Assets), (h) any property encumbered by an Acquired Luxco Lien, but, for purposes of this clause (h) only, only until such time as such Acquired Luxco Lien is terminated, (i) Equity Interests in any Person that is not a wholly-owned Subsidiary of a Loan Party, to the extent a Lien thereon is prohibited by or requires consent under the organizational documents or any shareholders or similar agreement of or relating to such Person (other than of a Loan Party) as in effect on the Amendment No. 2 Effective Date or existing at the time of acquisition of such Equity Interests in such Person after the Amendment No. 2 Effective Date, and to the extent not created in contemplation of the creation or acquisition of such Person, and such consent has not been obtained, and (j) any assets of a Loan Party where the Administrative Agent and the Borrower determine that the cost or burden of obtaining or perfecting a Lien in such assets is excessive in relation to the value afforded thereby. Notwithstanding the foregoing, (x) Excluded Assets shall not include the proceeds, products, substitutions or replacements of any Excluded Assets (except to the extent that such proceeds, products, substitutions or replacements shall themselves constitute Excluded Assets) and (y) in the event that any limitation, restriction or exclusion under clauses (a), (b), (f), (g), (h), (i) and (j) above cease to exist (or any required consent shall have been obtained), then such Excluded Assets shall immediately and automatically be deemed at all times thereafter to constitute Collateral without any further action.

“Excluded Subsidiary” means (a) any Immaterial Subsidiary, (b) any Foreign Subsidiary, (c) Dos Primos Tequila Company, LLC, a Delaware limited liability company (but only so long as such Subsidiary is not a wholly-owned Subsidiary of the Borrower), (d) any non-wholly owned Subsidiary that is prohibited by Applicable Law or by any contractual obligation (including any requirement that consent be obtained from a third party minority owner of such Subsidiary’s Equity Interests or other similar third party) existing on the Amendment No. 2 Effective Date or existing at the time of acquisition of such Subsidiary after the Amendment No. 2 Effective Date (and not created in contemplation of such acquisition), in each case from Guaranteeing the Obligations, but only so long as such prohibition exists, and (e) any other Subsidiary with respect to which the Administrative Agent and the Borrower mutually agree that the cost or burden of providing a Guarantee would be excessive in relation to the benefit to be afforded thereby; provided, that in no event shall such definition include any Subsidiary that incurs, Guarantees or otherwise provides collateral to support any Senior Note Indebtedness, Incremental Equivalent Debt or Permitted Convertible Indebtedness.

“Excluded Swap Obligation” means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the liability of such Guarantor for or the Guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any liability or Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the liability for or the Guarantee of such Guarantor or the grant of such security interest becomes effective with respect to such Swap Obligation (such determination being made after giving effect to any applicable keepwell, support or other agreement for the benefit of such Guarantor, including Section 11.21). If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal for the reasons identified in the immediately preceding sentence of this definition.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, United States federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 4.12(b)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 4.11, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient’s failure to comply with Section 4.11(g) and (d) any United States federal withholding Taxes imposed under FATCA.

“Existing Supply Agreements” means, collectively, that certain (a) Grain Supply Agreement, dated January 1, 2015, between MGPI of Indiana, LLC and Consolidated Grain and Barge, as amended pursuant to an Amendment to Grain Supply Agreement dated April 13, 2017, (b) Grain Supply Agreement, dated December 22, 2014, between MGPI Processing and Bunge Milling, Inc., as amended pursuant to an Amendment to Grain Supply Agreement dated July 28, 2017, (c) Supply Agreement, dated July 10, 2015, between Ardent Mills, LLC and MGPI Processing, and (d) Distillate Supply Agreement, dated July 1, 2019, between Diageo Americas Supply, Inc. and MGPI of Indiana, LLC.

“Extensions of Credit” means each of the following: (a) a Borrowing and (b) the issuance of a Letter of Credit or extension of the expiry date thereof, or the increase of the amount thereof.

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

“FASB ASC” means the Accounting Standards Codification of the Financial Accounting Standards Board.

“FATCA” means 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) and any current or future regulations or official interpretations thereof.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day, provided that if such rate is not so published for any day which is a Business Day, the Federal Funds Rate for such day shall be the average of the quotation for such day on such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by the Administrative Agent. Notwithstanding the foregoing, if the Federal Funds Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

~~“Federal Reserve Bank of New York’s Website” means the website of the Federal Reserve Bank of New York at <http://www.newyorkfed.org>, or any successor source.~~

“Fee Letter” means the Fee Letter between the Borrower, Wells Fargo and Wells Fargo Securities, LLC dated as of the Amendment No. 2 Effective Date.

“First-Tier Foreign Subsidiary” means any Foreign Subsidiary that is a “controlled foreign corporation” within the meaning of Section 957 of the Code and the Equity Interests of which are owned directly by any Loan Party.

~~“Floor” means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to USD LIBOR a rate of interest equal to 0%.~~

“Foreign Lender” means (a) if the Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if the Borrower is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes.

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

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

“Fronting Exposure” means, at any time there is a Defaulting Lender, (a) with respect to the Issuing Lender, such Defaulting Lender’s Commitment Percentage of the outstanding L/C Obligations other than L/C Obligations as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof and (b) with respect to the Swingline Lender, such Defaulting Lender’s Commitment Percentage of Swingline Loans other than Swingline Loans as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

“Fund” means any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

“GAAP” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“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 or individually as the context may indicate, (a) each Subsidiary on the Closing Date (other than Excluded Subsidiaries) and (b) each other Subsidiary that becomes a party to the Guaranty Agreement.

“Guaranty Agreement” means, collectively, that certain Guaranty Agreement of even dated herewith, 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.

“Hedge Agreement” means (a) any and all 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. Notwithstanding the foregoing, no Permitted Bond Hedge Transaction or Permitted Warrant Transaction shall be considered a Hedge Agreement.

“Hedge Bank” means any Person that, (a) at the time it (or any of its Affiliates) becomes a Lender on the Closing Date, is a party to a Hedge Agreement or (b) at the time enters into a Hedge Agreement with a Loan Party permitted under Article VIII, is a Lender or the Administrative Agent or an Affiliate of a Lender or the Administrative Agent, in each case in its capacity as a party to such Hedge Agreement.

“Hedge Termination Value” means, in respect of any one or more Hedge Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Hedge Agreements, (a) for any date on or after the date such Hedge Agreements 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 Hedge Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Hedge Agreements (which may include a Lender or any Affiliate of a Lender).

“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 Administrative Agent 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 Administrative Agent; 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 7.3(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 7.9 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 Effective Date” has the meaning assigned thereto in Section 2.7(a).

“Incremental Equivalent Debt” is defined in Section 8.2(k).

“Indebtedness” of any Person means, without duplication (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar 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 Hedge Termination Value under any Hedge Agreement 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. Further, notwithstanding anything in this definition to the contrary, no obligation of the Borrower under any Permitted Warrant Transaction or Permitted Bond Hedge Transaction shall constitute Indebtedness, except to the extent accounted for as a liability in accordance with GAAP. For purposes hereof, the amount of any Permitted Convertible Indebtedness shall be the aggregate stated principal amount thereof without giving effect to any obligation to pay cash or deliver shares with value in excess of such principal amount, and without giving effect to any integration thereof with any Permitted Bond Hedge Transaction pursuant to U.S. Treasury Regulation § 1.1275-6.

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

“Intercreditor Agreement” means the Amended and Restated Collateral Agency and Intercreditor Agreement, dated as of the Closing Date, in form and substance reasonably satisfactory to the

Administrative Agent, among the Administrative Agent, as collateral agent for itself and the purchasers under the Senior Note Purchase Agreement, and acknowledged by the Loan Parties.

“Interest Payment Date” means (a) as to any Base Rate Loan or Daily Simple SOFR Loan, the last Business Day of each calendar quarter and the Maturity Date and (b) as to any Term SOFR Loan, the last day of each Interest Period therefor and, in the case of any Interest Period of more than three (3) months’ duration, each day prior to the last day of such Interest Period that occurs at three-month intervals after the first day of such Interest Period; provided that each such three-month interval payment day shall be the immediately succeeding Business Day if such day is not a Business Day, unless such day is not a Business Day but is a day of the relevant month after which no further Business Day occurs in such month, in which case such day shall be the immediately preceding Business Day and the Maturity Date.

“Interest Period” has the meaning assigned thereto in Section 4.1(b).

“Investment” has the meaning assigned thereto in Section 8.6.

~~“ISDA Definitions” means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.~~

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

“ISP98” means the International Standby Practices (1998 Revision, effective January 1, 1999), International Chamber of Commerce Publication No. 590.

“Issuing Lender” means Wells Fargo, in its capacity as issuer of Letters of Credit hereunder, or any successor thereto.

“Junior Financing” has the meaning specified in Section 8.14.

“L/C Commitment” means the lesser of (a) \$10,000,000 and (b) the Aggregate Commitments.

“L/C Obligations” means at any time, an amount equal to the sum of (a) the aggregate undrawn and unexpired amount of the then outstanding Letters of Credit and (b) the aggregate amount of drawings under Letters of Credit which have not then been reimbursed pursuant to Section 3.5.

“L/C Participants” means the collective reference to all the Lenders.

“Lender” means each Person executing this Agreement as a Lender on the Closing Date and any other Person that shall have become a party to this Agreement as a Lender pursuant to an Assignment and Assumption or pursuant to Section 2.7, other than any Person that ceases to be a party hereto as a Lender pursuant to an Assignment and Assumption. Unless the context otherwise requires, the term “Lenders” includes the Swingline Lender.

“Lending Office” means, with respect to any Lender, the office of such Lender maintaining such Lender’s Extensions of Credit, which office may, to the extent the applicable Lender notifies the Administrative Agent in writing, include an office of any Affiliate of such Lender or any domestic or foreign branch of such Lender or Affiliate.

“Letter of Credit Application” means an application, in the form specified by the Issuing Lender from time to time, requesting the Issuing Lender to issue a Letter of Credit.

“Letters of Credit” means the collective reference to letters of credit issued pursuant to Section 3.1.

~~“LIBOR” means, subject to the implementation of a Benchmark Replacement in accordance with Section 4.8(e),~~

~~(a) — for any interest rate calculation with respect to a LIBOR Rate Loan, the rate of interest per annum determined on the basis of the rate for deposits in Dollars for a period equal to the applicable Interest Period as published by the ICE Benchmark Administration Limited, a United Kingdom company, or a comparable or successor quoting service approved by the Administrative Agent, at approximately 11:00 a.m. (London time) two (2) Business Days prior to the first day of the applicable Interest Period (rounded upward, if necessary, to the nearest 1/100th of 1%). If, for any reason, the rate is not so published, then “LIBOR” shall be determined by the Administrative Agent to be the arithmetic average of the rate per annum at which deposits in Dollars would be offered by first class banks in the London interbank market to the Administrative Agent at approximately 11:00 a.m. (London time) two (2) Business Days prior to the first day of the applicable Interest Period for a period equal to such Interest Period; and~~

~~(b) — for any interest rate calculation with respect to a Base Rate Loan, the rate of interest per annum determined on the basis of the rate for deposits in Dollars for an Interest Period equal to one month (commencing on the date of determination of such interest rate) as published by the ICE Benchmark Administration Limited, a United Kingdom company, or a comparable or successor quoting service approved by the Administrative Agent, at approximately 11:00 a.m. (London time) on such date of determination, or, if such date is not a Business Day, then the immediately preceding Business Day (rounded upward, if necessary, to the nearest 1/100th of 1%). If, for any reason, the rate is not so published, then “LIBOR” for such Base Rate Loan shall be determined by the Administrative Agent to be the arithmetic average of the rate per annum at which deposits in Dollars would be offered by first class banks in the London interbank market to the Administrative Agent at approximately 11:00 a.m. (London time) on such date of determination for a period equal to one month commencing on such date of determination.~~

~~Each calculation by the Administrative Agent of LIBOR shall be conclusive and binding for all purposes, absent manifest error. Notwithstanding the foregoing, (x) in no event shall LIBOR (including, without limitation, any Benchmark Replacement with respect thereto) be less than 0% and (y) unless otherwise specified in any amendment to this Agreement entered into in accordance with Section 4.8(e), in the event that a Benchmark Replacement with respect to LIBOR is implemented then all references herein to LIBOR shall be deemed references to such Benchmark Replacement.~~

~~“LIBOR Rate” means a rate per annum (rounded upwards, if necessary, to the next higher 1/100th of 1%) determined by the Administrative Agent pursuant to the following formula:~~

$$\text{LIBOR Rate} = \frac{\text{LIBOR}}{1.00 - \text{Eurodollar Reserve Percentage}}$$

~~“LIBOR Rate Loan” means any Loan bearing interest at a rate based upon the LIBOR Rate as provided in Section 4.1(a).~~

~~“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 or finance 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 Documents” means, collectively, this Agreement, the Notes, the Letter of Credit Applications, the Guaranty Agreement, the Intercreditor Agreement, the Security Documents, the Fee Letter and each other document, instrument, certificate and agreement executed and delivered by any Loan Party in favor of or provided to the Collateral Agent, the Administrative Agent or any Secured Party~~

in connection with this Agreement or otherwise referred to herein or contemplated hereby (excluding any Secured Hedge Agreement and any Secured Cash Management Agreement).

“Loan Parties” means, collectively, the Borrower and the Guarantors.

“Loans” means the collective reference to the Revolving Credit Loans and the Swingline Loans, and “Loan” means any of such Loans.

~~“London Banking Day” means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank Eurodollar market.~~

“Luxco Companies” means (a) Luxco Group Holdings, Inc., a Delaware corporation; (b) LRD Holdings LLC, a Delaware limited liability company; (c) LDL Holdings DE, LLC, a Delaware limited liability company; and (d) KY Limestone Holdings LLC, a Delaware limited liability company.

“Luxco Merger” means the Borrower’s acquisition of the equity interests of the Luxco Companies in accordance with the Agreement and Plan of Merger to be entered into among (a) the Borrower; (b) the Luxco Companies; (c) Donn Lux, as Sellers’ Representative, (d) a Delaware corporation to be formed by one or more of the Luxco Sellers; and (e) upon signing a joinder agreement, the Luxco Sellers.

“Luxco Merger Date” means the date on which the Luxco Merger is consummated.

“Luxco Sellers” means Luxco 2017 Irrevocable Trust dated June 19, 2017, Ann S. Lux 2005 Irrevocable Trust FBO Donn S. Lux dated September 16, 2017 Andrew Broddon Lux Luxco Irrevocable Trust dated July 30, 2012, Philip Donn Lux Luxco Irrevocable Trust dated July 30, 2012, Caroline L. Kaplan Revocable Trust dated December 16, 2009, Ann S. Lux 2005 Irrevocable Trust FBO Caroline Lux Kaplan dated September 16, 2005, Ann S. Lux 2005 Irrevocable Trust FBO Catherine N. Lux dated September 16, 2005, CNL 2013 Irrevocable Trust dated April 2, 2013, Ann S. Lux 2005 Irrevocable Trust FBO Paul S. Lux dated September 16, 2005, and Lux Children Irrevocable Trust dated May 24, 2012.

“Maintenance Capital Expenditures” means capital expenditures (as defined by GAAP, subject to the provisions of Section 1.3) made in connection with the replacement, substitution, restoration or repair of existing assets. For the avoidance of doubt, Maintenance Capital Expenditures shall not include (a) capital expenditures made in connection with an acquisition of new assets that seeks to expand existing operational capacities as opposed to any such acquisition that seeks to replace or substitute existing assets to maintain existing operational capacities, (b) 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 (c) 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.

“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 Loan Parties taken as a whole, (b) the ability of the Borrower or any Guarantor to perform any of its obligations under the Loan Documents, (c) the rights and remedies of the Administrative Agent (including its capacity as Collateral Agent) or any Lender 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 8.2(i) or 8.2(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, and (b) each Existing Supply Agreement.

“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 \$10,000,000.

“Maturity Date” means the earliest to occur of (a) May 14, 2026, (b) the date of termination of all Commitments by the Borrower pursuant to Section 2.5, or (c) the date of termination of all Commitments pursuant to Section 9.2(a).

“MGPI Processing” means MGPI Processing, Inc., a Kansas corporation.

“Minimum Collateral Amount” means, at any time, (a) with respect to Cash Collateral consisting of cash or deposit account balances, an amount equal to 105% of the Fronting Exposure of the Issuing Lender with respect to Letters of Credit issued and outstanding at such time and (b) otherwise, an amount determined by the Administrative Agent and the Issuing Lender in their sole discretion.

“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.

“Non-Consenting Lender” means any Lender that does not approve any consent, waiver, amendment, modification or termination that (a) requires the approval of all Lenders or all affected Lenders in accordance with the terms of Section 11.2 and (b) has been approved by the Required Lenders.

“Non-Defaulting Lender” means, at any time, each Lender that is not a Defaulting Lender at such time.

“Note” means a promissory note made by the Borrower in favor of a Lender evidencing Loans made by such Lender, substantially in the form of Exhibit A.

“Notice of Account Designation” has the meaning assigned thereto in Section 2.3(b).

“Notice of Borrowing” has the meaning assigned thereto in Section 2.3(a).

“Notice of Conversion/Continuation” has the meaning assigned thereto in Section 4.2.

“Notice of Prepayment” has the meaning assigned thereto in Section 2.4(c).

“Obligations” means, in each case, whether now in existence or hereafter arising: (a) the principal of and interest on (including interest accruing after the filing of any bankruptcy or similar petition) the Loans, (b) the L/C Obligations and (c) all other fees and commissions (including attorneys’ fees), charges, indebtedness, loans, liabilities, financial accommodations, obligations, covenants and duties owing by the Loan Parties and each of their respective Subsidiaries to the Lenders, the Issuing Lender, the Administrative Agent or the Collateral Agent, in each case under any Loan Document, with respect to any Loan or Letter of Credit of every kind, nature and description, direct or indirect, absolute or contingent, due or to become due, contractual or tortious, liquidated or unliquidated, and whether or not evidenced by any note and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding. For the avoidance of doubt, any obligation under any Permitted Bond Hedge Transaction or any Permitted Warrant Transaction shall not constitute Obligations.

“OFAC” means the U.S. Department of the Treasury’s Office of Foreign Assets Control.

“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.

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

“Other Taxes” means all present or future stamp, court, documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 4.12).

“Participant” has the meaning assigned thereto in Section 11.9(d).

“Participant Register” has the meaning assigned thereto in Section 11.9(d).

“PATRIOT Act” means the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)).

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

“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) 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;

(c) the lines of business of the Person to be so acquired are permitted pursuant to Section 8.4 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;

(d) all of the requirements set forth in Section 7.9 are (or will be) satisfied within the time periods set forth therein;

(e) the Borrower shall be in compliance with Section 8.1 on a Pro Forma Basis after giving effect to such Acquisition and the incurrence of any Indebtedness in connection therewith (as of the closing date of the Acquisition); and

(f) 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 Administrative Agent (i) a certificate from an authorized officer of the Borrower, in form and substance reasonably satisfactory to the Administrative Agent, certifying that all of the requirements set forth in clauses (a) through (e) have been satisfied or will be satisfied on or prior to the consummation of such Acquisition (and, with respect to clause (d), will be satisfied within the time periods required under Section 7.9), (ii) copies of Permitted Acquisition Documents, which shall be in form and substance reasonably satisfactory to the Administrative Agent, and (iii) if requested by the Administrative Agent, 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 Administrative Agent.

“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 Bond Hedge Transaction” means any bond hedge, call or capped call option (or substantively equivalent derivative transaction) relating to the Borrower's common stock (or other securities or property following a merger event, reclassification or other change of the common stock of the Borrower) purchased by the Borrower in connection with the issuance of any Permitted Convertible Indebtedness and settled in common stock of the Borrower (or such other securities or property), cash or a combination thereof (such amount of cash determined by reference to the price of the Borrower's common stock or such other securities or property), and cash in lieu of fractional shares of common stock of the Borrower; provided that the purchase of any such Permitted Bond Hedge Transaction is made with, and the purchase price thereof less the proceeds received from the Borrower from the sale of any substantially concurrently executed Permitted Warrant Transaction, does not exceed, the net proceeds received by the Borrower in connection with the issuance of any Permitted Convertible Indebtedness; provided, further that the other terms, conditions and covenants of each such transaction shall be such as are customary for transactions of such type (as determined by the Borrower in good faith).

“Permitted Convertible Indebtedness” means (a) unsecured Indebtedness of any of the Loan Parties that (i) as of the date of issuance thereof contains customary conversion or exchange rights and customary offer to repurchase rights for transactions of such type (in each case, as determined by the Borrower in good faith) and (ii) is convertible into, or exchangeable for, shares of common stock of the Borrower (or other securities or property following a merger event, reclassification or other change of the common stock of the Borrower), cash or a combination thereof (such amount of cash determined by reference to the price of the Borrower's common stock or such other securities or property), and cash in lieu of fractional shares of common stock of the Borrower and (b) any guarantee by any Loan Party of Indebtedness described in clause (a); provided that that such Indebtedness is permitted to be incurred under Section 8.2(o).

“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 Administrative Agent, for the benefit of the Secured Parties, 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 any member of the Consolidated Group; provided that the term “Permitted Encumbrances” shall not include (x) any Lien securing Indebtedness or (y) any leasing or subleasing of real property that is not approved in advance in writing by the Administrative Agent or otherwise permitted under this Agreement.

“Permitted Foreign Subsidiary Investments” means Investments in any Foreign Subsidiary that is not a Loan Party, provided that (a) no Event of Default exists at the time of such Investment or would result therefrom, and (b) the aggregate amount of such Investments in Foreign Subsidiaries does not exceed \$50,000,000 at any time outstanding.

“Permitted Investors” means any of (a) Karen Seaberg, (b) Lori L.S. Mingus and (c) Donn S. Lux, or any Family Trust of such Persons.

“Permitted IRB Financings” means financings incurred by a Loan Party or any of its Subsidiaries 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; provided that all Permitted IRB Financings (excluding any Permitted IRB Financing if the related bonds or similar debt instruments are held solely by a Loan Party) shall not exceed an aggregate principal amount of \$15,000,000 outstanding at any time.

“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, premium thereon and reasonable out-of-pocket costs and expenses incurred in connection with such modification, refinancing, refunding, renewal, restructuring, replacement or extension, (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 any modification, refinancing, refunding, renewal, restructuring, replacement or extension of Permitted Convertible Indebtedness or Indebtedness permitted pursuant to Section 8.2(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 Lenders than the terms and conditions with respect to the collateral for the Indebtedness being modified, refinanced, refunded, renewed, replaced 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 shall not be guaranteed by or otherwise recourse to any Person other than the Person(s) to whom the refinanced Indebtedness is recourse or by whom it is guaranteed, and (g) if such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is subordinated in right of payment to the Obligations (or is secured by Liens subordinated to the Liens securing the Collateral), such modification, refinancing, refunding, renewal, replacement or extension is subordinated in right of payment (or the Liens securing such Indebtedness shall be subordinated to the Liens securing the Collateral) to the Obligations on terms (i) at least as favorable (taken as a whole) (as reasonably determined by the Borrower) to the Lenders 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 Administrative Agent. For the avoidance of doubt, for purposes of determining whether Permitted Convertible Indebtedness meets the foregoing requirements, (i) neither any settlement upon conversion of such Permitted Convertible Indebtedness (whether in cash, stock or other property) nor any required redemption or repurchase upon a “fundamental change” (customarily defined for such Permitted Convertible Indebtedness) or upon the passage of time or other regularly-scheduled event (with such passage of time or other regularly-scheduled event being customary in the market for similar convertible indebtedness) shall disqualify such Permitted Convertible Indebtedness from constituting Permitted Refinancing Indebtedness.

“Permitted Liens” means the Liens permitted pursuant to Section 8.3.

“Permitted Warrant Transaction” means any call option, warrant or right to purchase (or substantively equivalent derivative transaction) relating to the Borrower’s common stock (or other securities or property following a merger event, reclassification or other change of the common stock of the Borrower) sold by the Borrower substantially concurrently with any purchase by the Borrower of a Permitted Bond Hedge Transaction and settled in common stock of the Borrower (or such other securities or property), cash or a combination thereof (such amount of cash determined by reference to the price of the Borrower’s common stock or such other securities or property), and cash in lieu of fractional shares of common stock of the Borrower; provided that the terms, conditions and covenants of each such transaction shall be such as are customary for transactions of such type (as determined by the Borrower in good faith).

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

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

“Platform” has the meaning assigned thereto in Section 7.3.

“Pledge Agreement” means the Amended and Restated Pledge Agreement, dated as of the date hereof, executed by the Borrower and certain of its Subsidiaries in favor of the Collateral Agent.

“Prime Rate” means, at any time, the rate of interest per annum publicly announced from time to time by the Administrative Agent as its prime rate. Each change in the Prime Rate shall be effective as of the opening of business on the day such change in such prime rate occurs. The parties hereto acknowledge that the rate announced publicly by the Administrative Agent as its prime rate is an index or base rate and shall not necessarily be its lowest or best rate charged to its customers or other banks.

“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 Administrative Agent: (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 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.

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

“Public Lenders” has the meaning assigned thereto in Section 7.3.

“Qualified Equity Interests” means any Equity Interests that are not Disqualified Equity Interests.

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

~~“Reference Time” with respect to any setting of the then-current Benchmark means (1) if such Benchmark is USD LIBOR, 11:00 a.m. (London time) on the day that is two (2) London Banking Days preceding the date of such setting, and (2) if such Benchmark is not USD LIBOR, the time determined by the Administrative Agent in its reasonable discretion.~~

“Register” has the meaning assigned thereto in Section 11.9(c).

“Reimbursement Obligation” means the obligation of the Borrower to reimburse the Issuing Lender pursuant to Section 3.5 for amounts drawn under Letters of Credit.

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

“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.

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

“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.

“Required Lenders” means, as of any date of determination, Lenders having Revolving Credit Exposure and unused Commitments representing more than 50% of the sum of the aggregate Revolving Credit Exposure and unused Commitments at such time; provided that (a) the Revolving Credit Exposure of, and the portion of the unused Commitments held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders, (b) at any time there are two or more Lenders (excluding Defaulting Lenders) that are not Affiliates of each other, Required Lenders shall require the consent or approval of at least two Lenders that are not Affiliates of each other, and (c) if there is only one Lender that is a Non-Defaulting Lender, Required Lenders shall mean such Non-Defaulting Lender.

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

“Responsible Officer” means, as to any Person, the chief executive officer, president, chief financial officer, controller or treasurer (including any director of treasury or individual holding a similar title) of such Person or any other officer or representative of such Person reasonably acceptable to the Administrative Agent. Any document delivered hereunder or under any other Loan Document that is signed by a Responsible Officer of a Person shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Person and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Person.

“Restricted Payment” means (a) any dividend or other distribution, direct or indirect, on account of any Equity Interests of the Borrower or its Subsidiaries 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 the Borrower or its Subsidiaries 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 Interests of the Borrower or its Subsidiaries now or hereafter outstanding; provided that the payment of principal, interest or other amounts on (and including the settlement of any conversions or redemptions of) any Permitted Convertible Indebtedness shall not constitute a “Restricted Payment”.

“Revolving Credit Borrowing” means a borrowing consisting of simultaneous Revolving Credit Loans of the same Type and, in the case of ~~LIBOR Rate~~SOFR Loans, having the same Interest Period made by each of the Lenders pursuant to Section 2.1.

“Revolving Credit Exposure” means, as to any Lender at any time, the aggregate principal amount at such time of its outstanding Loans and such Lender’s participation in L/C Obligations and Swingline Loans at such time.

“Revolving Credit Facility” means the revolving credit facility established pursuant to Article II (including any increase in such revolving credit facility established pursuant to Section 2.7 or pursuant to Amendment No. 2).

“Revolving Credit Increase” has the meaning specified in Section 2.7(a).

“Revolving Credit Loan” has the meaning specified in Section 2.1.

“Revolving Credit Outstandings” means the sum of (a) with respect to Revolving Credit Loans and Swingline Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Revolving Credit Loans and Swingline Loans, as the case may be, occurring on such date; plus (b) with respect to any L/C Obligations on any date, the aggregate outstanding amount thereof on such date after giving effect to any Extensions of Credit occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements of outstanding unpaid drawings under any Letters of Credit or any reductions in the maximum amount available for drawing under Letters of Credit taking effect on such date.

“Sanctioned Country” means at any time, a country, region or territory which is itself (or whose government is) the subject or target of any Sanctions (including, as of the Closing Date, Cuba, Iran, North Korea, Syria and Crimea).

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC (including OFAC’s Specially Designated Nationals and Blocked Persons List and OFAC’s Consolidated Non-SDN List), the U.S. Department of State, the United Nations Security Council, the European Union, any European member state, Her Majesty’s Treasury, or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country, (c) any Person owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any such Person or Persons described in clauses (a) and (b), including a Person that is deemed by OFAC to be a Sanctions target based on the ownership of such legal entity by Sanctioned Person(s) or (d) any Person otherwise a target of Sanctions, including vessels and aircraft, that are designated under any Sanctions program.

“Sanctions” means any and all economic or financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes and restrictions and anti-terrorism laws, including but not limited to those imposed, administered or enforced from time to time by the U.S. government (including those administered by OFAC or the U.S. Department of State), the United Nations Security Council, the European Union, any European member state, Her Majesty’s Treasury, or other relevant sanctions authority in any jurisdiction in which (a) the Borrower or any of its Subsidiaries or Affiliates is located or conducts business, (b) any of the proceeds of the Extensions of Credit will be used, or (c) from which repayment of the Extensions of Credit will be derived.

“Secured Cash Management Agreement” means any Cash Management Agreement between or among any Loan Party and any Cash Management Bank.

“Secured Hedge Agreement” means any Hedge Agreement between or among any Loan Party and any Hedge Bank. For the avoidance of doubt, no Permitted Bond Hedge Transaction shall constitute a Secured Hedge Agreement.

“Secured Obligations” means, collectively, (a) the Obligations and (b) all existing or future payment and other obligations owing by any Loan Party under (i) any Secured Hedge Agreement and (ii) any Secured Cash Management Agreement; provided that the “Secured Obligations” of a Guarantor shall exclude any Excluded Swap Obligations with respect to such Guarantor.

“Secured Parties” means, collectively, the Administrative Agent, the Lenders, the Issuing Lender, the Hedge Banks, the Cash Management Banks, each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 10.5, any other holder from time to time of any Secured Obligations and, in each case, their respective successors and permitted assigns.

“Security Agreement” means the Amended and Restated Security Agreement, dated as of the date hereof, executed by the Borrower and its Subsidiaries in favor of 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 Secured 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 outstanding 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 outstanding 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 outstanding 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 outstanding 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 Administrative Agent if they are adverse to the Borrower or more restrictive than the terms and conditions applicable to the Loans or any Senior Note Indebtedness outstanding 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, as amended by that certain First Amendment to Note Purchase and Private Shelf Agreement, dated on or about the Closing Date, among the Borrower and the Noteholders referred to therein.

“Simple SOFR Adjustment” a percentage equal to 0.10% per annum.

“Simple SOFR Determination Day” has the meaning specified in the definition of “Adjusted Daily Simple SOFR”.

“Simple SOFR Rate Day” has the meaning specified in the definition of “Adjusted Daily Simple SOFR”.

“SOFR” means, ~~with respect to any Business Day,~~ a rate ~~per annum~~ equal to the secured overnight financing rate ~~for such Business Day published as administered~~ by the SOFR Administrator ~~on the SOFR Administrator’s Website on the immediately succeeding Business Day.~~

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

“SOFR Administrator’s Website” means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“SOFR Loan” means any Daily Simple SOFR Loan or Term SOFR Loan.

“Specified Payoff Indebtedness” means, collectively, the outstanding Indebtedness of the Borrower under that certain Credit Agreement dated as of August 23, 2017 by and between the Borrower and Wells Fargo Bank, National Association, as amended.

“Subsidiary” means as to any Person, any corporation, partnership, limited liability company or other entity of which more than fifty percent (50%) of the outstanding Equity Interests having ordinary voting power to elect a majority of the board of directors (or equivalent governing body) or other managers of such corporation, partnership, limited liability company or other entity is at the time owned by (directly or indirectly) or the management is otherwise controlled by (directly or indirectly) such Person (irrespective of whether, at the time, Equity Interests of any other class or classes of such corporation, partnership, limited liability company or other entity shall have or might have voting power by reason of the happening of any contingency). Unless otherwise qualified, references to “Subsidiary” or “Subsidiaries” herein shall refer to those of the Borrower.

“Swap Obligation” means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act. Notwithstanding the foregoing, no Permitted Bond Hedge Transaction or Permitted Warrant Transaction shall be considered a Swap Obligation.

“Swingline Borrowing” means a borrowing of a Swingline Loan pursuant to Section 2.2.

“Swingline Commitment” means the lesser of (a) \$15,000,000 and (b) the Aggregate Commitments.

“Swingline Lender” means Wells Fargo, in its capacity as swingline lender hereunder, or any successor thereto.

“Swingline Loan” means any swingline loan made by the Swingline Lender to the Borrower pursuant to Section 2.2, and all such swingline loans collectively as the context requires.

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

“Term SOFR” means, for ~~the applicable Corresponding Tenor as of the applicable Reference Time, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.~~

~~“Term SOFR Notice” means a notification by the Administrative Agent to the Lenders and the Borrower of the occurrence of a Term SOFR Transition Event.~~

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

~~“Term SOFR Transition Event Adjustment” means the determination by the Administrative Agent that (a) Term SOFR has been recommended for use by the Relevant Governmental Body, (b) the administration of Term SOFR is administratively feasible for the Administrative Agent and (c) a Benchmark Transition Event or an Early Opt-in Election, as applicable, has previously occurred resulting in the replacement of the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 4.8(c) with a Benchmark Replacement the Unadjusted Benchmark Replacement component of which is not a percentage equal to 0.10% per annum.~~

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

“Term SOFR Loan” means any Loan bearing interest at a rate based on Adjusted Term SOFR, as provided in Section 4.1(a).

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

“Treasury Management Agreement” means any treasury management services, cash management agreement, autoborrow, sweep or similar agreement entered into between the Borrower and the Swingline Lender.

“Type” means, with respect to a Revolving Credit Loan, its character as a Base Rate Loan or ~~LIBOR-Rate~~SOFR Loan.

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

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

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

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

“United States” means the United States of America.

~~“USD LIBOR” means the London interbank offered rate for Dollars~~“U.S. Government Securities Business Day” means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities; provided that for purposes of notice requirements in Sections 2.3(a), 2.4(c) and 4.2, in each case, such day is also a Business Day.

“U.S. Person” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“U.S. Tax Compliance Certificate” has the meaning assigned thereto in Section 4.11(g).

“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.

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

“Withholding Agent” means the Borrower and the Administrative Agent.

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

SECTION 1.2 Other Definitions and Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document: (a) the definitions of terms herein shall apply equally to the singular and plural forms of the terms defined, (b) whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms, (c) the words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”, (d) the word “will” shall be construed to have the same meaning and effect as the word “shall”, (e) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (f) 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, (g) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (h) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights, (i) the term “documents” includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form and (j) 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 Terms; Accounting for Derivatives; Changes in GAAP.

(a) All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with GAAP, applied on a consistent basis, as in effect from time to time and in a manner consistent with that used in preparing the audited financial statements required by Section 5.1(g).

(b) 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 Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); 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 Administrative Agent and the Lenders 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; provided, further that (A) for purposes of the definitions of “Indebtedness” and “Consolidated Funded Indebtedness”, all obligations of any Person that are or would have been treated

as operating leases for purposes of GAAP prior to the effectiveness of FASB ASC 842 shall continue to be accounted for as operating leases for purposes of all financial definitions and calculations for purposes of this Agreement (whether or not such operating lease obligations were in effect on such date) notwithstanding the fact that such obligations are required in accordance with FASB ASC 842 (on a prospective or retroactive basis or otherwise) to be treated as Capital Lease Obligations in the financial statements and (B) all financial statements delivered to the Administrative Agent hereunder shall contain a schedule showing the modifications necessary to reconcile the adjustments made pursuant to clause (A) above with such financial statements.

(c) In making any computation or determining any amount pursuant to Section 8.1 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. Any Permitted Convertible Indebtedness shall at all times prior to the repurchase, conversion or payment thereof be valued at the full stated principal amount thereof and shall not include any reduction or appreciation in value of the shares and/or cash deliverable upon conversion thereof.

SECTION 1.4 UCC Terms. Terms defined in the UCC in effect on the Closing Date and not otherwise defined herein shall, unless the context otherwise indicates, have the meanings provided by those definitions. Subject to the foregoing, the term “UCC” refers, as of any date of determination, to the UCC then in effect.

SECTION 1.5 Rounding. Any financial ratios required to be maintained 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 or percentage is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

SECTION 1.6 References to Agreement and Laws. Unless otherwise expressly provided herein, (a) any definition or reference to formation documents, governing documents, agreements (including the Loan Documents) and other contractual documents or instruments shall be deemed to include all subsequent amendments, restatements, extensions, joinders, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are not prohibited by any Loan Document; and (b) any definition or reference to any Applicable Law, including, without limitation, Anti-Corruption Laws, Anti-Money Laundering Laws, the Bankruptcy Code, the Code, the Commodity Exchange Act, ERISA, the Exchange Act, the PATRIOT Act, the Securities Act of 1933, the UCC, the Investment Company Act of 1940, the Interstate Commerce Act, the Trading with the Enemy Act of the United States or any of the foreign assets control regulations of the United States Treasury Department, shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Applicable Law.

SECTION 1.7 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

SECTION 1.8 Letter of Credit Amounts. Unless otherwise specified, all references herein to the amount of a Letter of Credit at any time shall be deemed to mean the maximum face amount of such Letter of Credit after giving effect to all increases thereof contemplated by such Letter of Credit or the Letter of Credit Application therefor (at the time specified therefor in such applicable Letter of Credit or Letter of Credit Application and as such amount may be reduced by (a) any permanent reduction of such Letter of Credit or (b) any amount which is drawn, reimbursed and no longer available under such Letter of Credit).

SECTION 1.9 Adjustments for Material Acquisitions and Material Dispositions. 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 Administrative Agent.

SECTION 1.10 Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

SECTION 1.11 Rates. ~~The interest rate on LIBOR Rate Loans and Base Rate Loans (when determined by reference to clause (c) of the definition of Base Rate) may be determined by reference to LIBOR, which is derived from the London interbank offered rate. The London interbank offered rate is intended to represent the rate at which contributing banks may obtain short-term borrowings from each other in the London interbank market. On March 5, 2021, ICE Benchmark Administration ("IBA"), the administrator of the London interbank offered rate, and the Financial Conduct Authority (the "FCA"), the regulatory supervisor of IBA, announced in public statements (the "Announcements") that the final publication or representativeness date for the London interbank offered rate for Dollars for: (a) 1-week and 2-month tenor settings will be December 31, 2021 and (b) overnight, 1-month, 3-month, 6-month and 12-month tenor settings will be June 30, 2023. No successor administrator for IBA was identified in such Announcements. As a result, it is possible that commencing immediately after such dates, the London interbank offered rate for such tenors may no longer be available or may no longer be deemed a representative reference rate upon which to determine the interest rate on LIBOR Rate Loans or Base Rate Loans (when determined by reference to clause (c) of the definition of Base Rate). There is no assurance that the dates set forth in the Announcements will not change or that IBA or the FCA will not take further action that could impact the availability, composition or characteristics of any London interbank offered rate. Public and private sector industry initiatives have been and continue, as of the date hereof, to be underway to implement new or alternative reference rates to be used in place of the London interbank offered rate. In the event that the London interbank offered rate or any other then-current Benchmark is no longer available or in certain other circumstances set forth in Section 4.8(e), such Section 4.8(e) provides a mechanism for determining an alternative rate of interest. The Administrative Agent will notify the Borrower, pursuant to Section 4.8(c), of any change to the reference rate upon which the interest rate on LIBOR Rate Loans and Base Rate Loans (when determined by reference to clause (c) of the definition of Base Rate) is based. However, the Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, (i) the continuation of, administration of, submission of, calculation of or any other matter related to the London interbank offered rate or other Adjusted Daily Simple SOFR, SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, or any component definition thereof or rates referred to in the definition of "LIBOR" thereof, or with respect to any alternative, comparable or successor rate thereto, or replacement rate thereof thereto (including any then-current Benchmark or any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement reference rate (including any Benchmark Replacement), as it may or may not be adjusted pursuant to Section 4.8(c), will be similar to, or produce the same value or economic equivalence of, LIBOR or any other Benchmark, or have the same volume or liquidity as did the London interbank offered rate, Adjusted Daily Simple SOFR, SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR, or any other Benchmark prior to its discontinuance or unavailability, or (ii) the effect, implementation or composition of any Benchmark Replacement Conforming Changes Conforming Changes. The Administrative Agent and its Affiliates or other related entities may engage in transactions that affect the calculation of Adjusted Daily Simple SOFR, SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR, or Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto and such transactions may be adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain Adjusted Daily Simple SOFR, SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, or any other Benchmark, any component definition thereof or rates referred to in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract~~

[or otherwise and whether at law or in equity\), for any error or calculation of any such rate \(or component thereof\) provided by any such information source or service.](#)

ARTICLE II REVOLVING CREDIT FACILITY

SECTION 2.1 Revolving Credit Loans. Subject to the terms and conditions of this Agreement and the other Loan Documents, and in reliance upon the representations and warranties set forth in this Agreement and the other Loan Documents, each Lender severally agrees to make loans (each such loan, a “Revolving Credit Loan”) to the Borrower from time to time from the Closing Date through, but not including, the Maturity Date as requested by the Borrower in accordance with the terms of Section 2.3; provided that, after giving effect to any Revolving Credit Borrowing, (a) the Revolving Credit Outstandings shall not exceed the Aggregate Commitments and (b) the Revolving Credit Exposure of any Lender shall not exceed such Lender’s Commitment. Each Revolving Credit Loan by a Lender shall be in a principal amount equal to such Lender’s Commitment Percentage of the aggregate principal amount of Revolving Credit Loans requested on such occasion. Subject to the terms and conditions hereof, the Borrower may borrow, repay and re-borrow Revolving Credit Loans hereunder until the Maturity Date.

SECTION 2.2 Swingline Loans.

(a) Availability. Subject to the terms and conditions of this Agreement and the other Loan Documents, and in reliance upon the representations and warranties set forth in this Agreement and the other Loan Documents, the Swingline Lender agrees to make Swingline Loans to the Borrower from time to time from the Closing Date through, but not including, the Maturity Date; provided that, after giving effect to any Swingline Borrowing, (i) the Revolving Credit Outstandings shall not exceed the Aggregate Commitments and (ii) the aggregate principal amount of all outstanding Swingline Loans shall not exceed the Swingline Commitment.

(b) Refunding.

(i) Swingline Loans shall be refunded by the Lenders on demand by the Swingline Lender. Such refundings shall be made by the Lenders in accordance with their respective Commitment Percentages and shall thereafter be reflected as Revolving Credit Loans of the Lenders on the books and records of the Administrative Agent. Each Lender shall fund its respective Commitment Percentage of a Revolving Credit Borrowing as required to repay Swingline Loans outstanding to the Swingline Lender upon demand by the Swingline Lender but in no event later than 1:00 p.m. on the next succeeding Business Day after such demand is made. No Lender’s obligation to fund its respective Commitment Percentage of a Swingline Borrowing shall be affected by any other Lender’s failure to fund its Commitment Percentage of a Swingline Borrowing, nor shall any Lender’s Commitment Percentage be increased as a result of any such failure of any other Lender to fund its Commitment Percentage of a Swingline Borrowing.

(ii) The Borrower shall pay to the Swingline Lender on demand, and in any event on the Maturity Date, the amount of any outstanding Swingline Loans to the extent amounts received from the Lenders are not sufficient to repay in full the outstanding Swingline Loans requested or required to be refunded. In addition, the Borrower hereby authorizes the Administrative Agent to charge any account maintained by the Borrower with the Swingline Lender (up to the amount available therein) in order to immediately pay the Swingline Lender the amount of such Swingline Loans to the extent amounts received from the Lenders are not sufficient to repay in full the outstanding Swingline Loans requested or required to be refunded. If any portion of any such amount paid to the Swingline Lender shall be recovered by or on behalf of the Borrower from the Swingline Lender in bankruptcy or otherwise, the loss of the amount so recovered shall be ratably shared among all the Lenders in accordance with their respective Commitment Percentages (unless the amounts so recovered by or on behalf of the Borrower pertain to a Swingline Loan extended after the occurrence and during the continuance of an Event of Default of which the Administrative Agent has received notice in the manner required pursuant to Section 10.3 and which such Event of Default has not been waived by the Required Lenders or the Lenders, as applicable).

(iii) Each Lender acknowledges and agrees that its obligation to refund Swingline Borrowings in accordance with the terms of this Section is absolute and unconditional and shall not be affected by any circumstance whatsoever, including, without limitation, non-satisfaction of the conditions set forth in Article V. Further, each Lender agrees and acknowledges that if prior to the refunding of any outstanding Swingline Borrowings pursuant to this Section, one of the events described in Section 9.1(g), (h) or (i) shall have occurred, each Lender will, on the date the applicable Revolving Credit Borrowing would have been made, purchase an undivided participating interest in the Swingline Borrowing to be refunded in an amount equal to its Commitment Percentage of the aggregate amount of such Swingline Borrowing. Each Lender will immediately transfer to the Swingline Lender, in immediately available funds, the amount of its participation and upon receipt thereof the Swingline Lender will deliver to such Lender a certificate evidencing such participation dated the date of receipt of such funds and for such amount. Whenever, at any time after the Swingline Lender has received from any Lender such Lender's participating interest in a Swingline Borrowing, the Swingline Lender receives any payment on account thereof, the Swingline Lender will distribute to such Lender its participating interest in such amount (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's participating interest was outstanding and funded).

(c) Defaulting Lenders. Notwithstanding anything to the contrary contained in this Agreement, this Section 2.2 shall be subject to the terms and conditions of Section 4.13 and Section 4.14.

SECTION 2.3 Procedure for Borrowings of Revolving Credit Loans and Swingline Loans.

(a) Requests for Borrowing. The Borrower shall give the Administrative Agent irrevocable prior written notice substantially in the form of Exhibit B (a "Notice of Borrowing") not later than 11:00 a.m. (i) on the requested date of any Borrowing of Base Rate Loans or Swingline Loans ~~and~~, (ii) at least five (5) U.S. Government Securities Business Days before each Borrowing of Daily Simple SOFR Loans and (iii) at least three (3) U.S. Government Securities Business Days before the requested date of any Borrowing of ~~LIBOR-Rate~~Term SOFR Loans, of its intention to borrow, specifying (A) the date of such Borrowing, which shall be a Business Day, (B) the amount of such Borrowing, which shall be, (x) with respect to a Borrowing of Base Rate Loans in an aggregate principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof, (y) with respect to a Borrowing of ~~LIBOR-Rate~~SOFR Loans in an aggregate principal amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof and (z) with respect to a Borrowing of Swingline Loans in an aggregate principal amount of \$25,000 or a whole multiple of \$10,000 in excess thereof, (C) whether such Loan is to be a Revolving Credit Loan or Swingline Loan, (D) the Type of Loans to be borrowed (provided that all Swingline Loans shall be Base Rate Loans), and (E) in the case of a Borrowing of ~~LIBOR-Rate~~Term SOFR Loans, the duration of the Interest Period applicable thereto. If the Borrower requests a Borrowing of a Term SOFR Loan in any such Notice of Borrowing, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. A Notice of Borrowing received after 11:00 a.m. shall be deemed received on the next Business Day or U.S. Government Securities Business Day. The Administrative Agent shall promptly notify the Lenders of each Notice of Borrowing. Notwithstanding the foregoing, Swingline Borrowings may be made and repaid pursuant to terms otherwise set forth in any applicable Treasury Management Agreement without giving effect to any minimum amounts, notice, time or funding requirements set forth herein.

(b) Disbursement of Revolving Credit and Swingline Loans. Not later than 1:00 p.m. on the proposed date of any Borrowing, (i) each Lender will make available to the Administrative Agent, for the account of the Borrower, at the office of the Administrative Agent in funds immediately available to the Administrative Agent, such Lender's Commitment Percentage of the Revolving Credit Borrowing to be made on such date and (ii) the Swingline Lender will make available to the Administrative Agent, for the account of the Borrower, at the office of the Administrative Agent in funds immediately available to the Administrative Agent, the Swingline Loans to be made on such date. The Borrower hereby irrevocably authorizes the Administrative Agent to disburse the proceeds of each Borrowing requested pursuant to this Section in immediately available funds by crediting or wiring such proceeds to the deposit account of the Borrower identified in the most recent notice substantially in the form attached as Exhibit C (a "Notice of Account Designation") delivered by the Borrower to the Administrative Agent

or as may be otherwise agreed upon by the Borrower and the Administrative Agent from time to time. Subject to [Section 4.7](#), the Administrative Agent shall not be obligated to disburse the portion of the proceeds of any Revolving Credit Borrowing requested pursuant to this Section to the extent that any Lender has not made available to the Administrative Agent its Commitment Percentage of such Revolving Credit Borrowing. Revolving Credit Loans to be made for the purpose of refunding Swingline Loans shall be made by the Lenders as provided in [Section 2.2\(b\)](#).

SECTION 2.4 Repayment and Prepayment of Revolving Credit and Swingline Loans.

(a) Repayment on Maturity Date. The Borrower hereby agrees to repay the outstanding principal amount of (i) all Revolving Credit Loans in full on the Maturity Date, and (ii) all Swingline Loans in accordance with [Section 2.2\(b\)](#) (but, in any event, no later than the Maturity Date), together, in each case, with all accrued but unpaid interest thereon.

(b) Mandatory Prepayments.

(i) Excess Revolving Credit Outstandings. If at any time the Revolving Credit Outstandings exceed the Aggregate Commitments, the Borrower shall, immediately upon notice from the Administrative Agent prepay Loans and Cash Collateralize Letters of Credit in an aggregate amount equal to such excess.

(ii) Application of Prepayments. Amounts prepaid and/or used for Cash Collateral pursuant to subsection (i) above shall be applied first, to the principal amount of outstanding Swingline Loans, second to the principal amount of outstanding Revolving Credit Loans and third, with respect to any Letters of Credit then outstanding, to a payment of Cash Collateral into a Cash Collateral account opened by the Administrative Agent, for the benefit of the Secured Parties (such Cash Collateral to be applied in accordance with [Section 9.2\(b\)](#)).

(c) Optional Prepayments. The Borrower may at any time and from time to time prepay Borrowings, in whole or in part, with prior written notice to the Administrative Agent substantially in the form attached as [Exhibit D](#) (a "Notice of Prepayment") given not later than 11:00 a.m. (i) on the same Business Day, in the case of any Borrowing of Base Rate Loans or Swingline Loans (other than Swingline Loans repaid pursuant to the terms of any Treasury Management Agreement as to which no notice needs to be given hereunder) ~~and~~, (ii) at least five (5) U.S. Government Securities Business Days before, in the case of any Borrowing of Daily Simple SOFR Loans, and (iii) at least three (3) U.S. Government Securities Business Days before, in the case of any Borrowing of ~~LIBOR-Rate~~Term SOFR Loans, specifying the date and amount of prepayment and whether the prepayment is of (x) a Revolving Credit Borrowing or a Swingline Borrowing, (y) in the case of a Revolving Credit Borrowing, a Borrowing of ~~LIBOR-Rate~~Daily Simple SOFR Loans, Term SOFR Loans or Base Rate Loans or (z) a combination of any of the foregoing, and, if of a combination of any of the foregoing, the amount allocable to each. Upon receipt of such notice, the Administrative Agent shall promptly notify each Lender. If any such notice is given, the amount specified in such notice shall be due and payable on the date set forth in such notice. Partial prepayments shall be in an aggregate amount of \$500,000 or a whole multiple of \$100,000 in excess thereof with respect to a Revolving Credit Borrowing of Base Rate Loans, \$1,000,000 or a whole multiple of \$500,000 in excess thereof with respect to a Revolving Credit Borrowing of ~~LIBOR-Rate~~SOFR Loans and \$25,000 or a whole multiple of \$10,000 in excess thereof with respect to a Swingline Borrowing (except, in the case of a Swingline Borrowing, as otherwise set forth in any applicable Treasury Management Agreement). A Notice of Prepayment received after 11:00 a.m. shall be deemed received on the next Business Day ~~or U.S. Government Securities Business Day, as applicable.~~

(d) Limitation on Prepayment of ~~LIBOR-Rate~~SOFR Loans. ~~If the~~The Borrower ~~prepays (whether such prepayment is mandatory or voluntary) may not prepay~~ any ~~LIBOR-Rate~~Term SOFR Loan on any day other than on the last day of the Interest Period applicable thereto, ~~or any Daily Simple SOFR Loan on any day other than an Interest Payment Date therefor, unless~~ such prepayment ~~must be~~is accompanied by any amount required to be paid pursuant to [Section 4.9](#) hereof.

(e) Hedge Agreements. No repayment or prepayment pursuant to this Section shall affect any of the Borrower's obligations under any Hedge Agreement.

SECTION 2.5 Permanent Reduction of the Commitments.

(a) Voluntary Reduction. The Borrower shall have the right at any time and from time to time, upon at least five (5) Business Days prior written notice to the Administrative Agent, to permanently reduce in whole or part, without premium or penalty, the Aggregate Commitments; provided that any such partial reduction shall be in an aggregate principal amount not less than \$5,000,000 or any whole multiple of \$1,000,000 in excess thereof. Any reduction of the Aggregate Commitments shall be applied to the Commitment of each Lender according to its Commitment Percentage.

(b) Corresponding Payment. Each permanent reduction pursuant to Section 2.5(a) shall be accompanied by a payment of principal sufficient to reduce the aggregate outstanding Revolving Credit Loans, Swingline Loans and L/C Obligations, as applicable, after such reduction to the Aggregate Commitment as so reduced, and if the aggregate amount of all outstanding Letters of Credit exceeds the Aggregate Commitment as so reduced, the Borrower shall be required to deposit Cash Collateral in a Cash Collateral account opened by the Administrative Agent in an amount equal to such excess. Such Cash Collateral shall be applied in accordance with Section 9.2(b). Any reduction of the Aggregate Commitment to zero shall be accompanied by payment of all outstanding Revolving Credit Loans and Swingline Loans (and furnishing of Cash Collateral satisfactory to the Administrative Agent for all L/C Obligations) and shall result in the termination of the Aggregate Commitments.

SECTION 2.6 Termination of Revolving Credit Facility. The Revolving Credit Facility and the Aggregate Commitments shall terminate on the Maturity Date.

SECTION 2.7 Increases in Commitments.

(a) At any time, the Borrower may by written notice to the Administrative Agent request one or more increases in the Commitments (a "Revolving Credit Increase"); provided that (i) the aggregate principal amount for all such Revolving Credit Increases after the Amendment No. 2 Effective Date shall not exceed \$100,000,000, (ii) the aggregate principal amount for each Revolving Credit Increase shall not be less than \$20,000,000 or, if less, the remaining amount permitted pursuant to the foregoing clause (i), and (iii) the Borrower shall be permitted to request no more than three (3) Revolving Credit Increases during the term of this Agreement. Each such notice shall specify the date (each, an "Increase Effective Date") on which the Borrower proposes that any Revolving Credit Increase shall be effective, which shall be a date not less than ten (10) Business Days (or such shorter period agreed to by the Administrative Agent) after the date on which such notice is delivered to Administrative Agent. The Borrower may invite any Lender, any Affiliate of any Lender and/or any other Person reasonably satisfactory to the Administrative Agent (to be added as a Lender pursuant to a joinder agreement in form and substance reasonably satisfactory to the Borrower and the Administrative Agent), to provide a Revolving Credit Increase. Any proposed Lender offered or approached to provide all or a portion of any Revolving Credit Increase may elect or decline, in its sole discretion, to provide such Revolving Credit Increase.

(b) Each Revolving Credit Increase shall become effective on the applicable Increase Effective Date; provided that:

(i) no Default or Event of Default shall exist on such Increase Effective Date before or after giving effect to such Revolving Credit Increase;

(ii) the Administrative Agent and the Lenders shall have received from the Borrower a Compliance Certificate demonstrating, in form and substance reasonably satisfactory to the Administrative Agent, that the Borrower is in compliance with the financial covenants set forth in Section 8.1 based on the financial statements most recently delivered pursuant to Section 7.3(a) or 7.3(b), as applicable, both before and after giving effect (on a pro forma basis) to (A) such

Revolving Credit Increase (with any Revolving Credit Increase being deemed to be fully funded) and (B) any transaction permitted hereunder consummated in connection therewith; and

(iii) each of the representations and warranties contained in Article VI shall be true and correct in all material respects, except to the extent any such representation and warranty is qualified by materiality or reference to Material Adverse Effect, in which case, such representation and warranty shall be true, correct and complete in all respects, on such Increase Effective Date with the same effect as if made on and as of such date (except for any such representation and warranty that by its terms is made only as of an earlier date, which representation and warranty shall remain true and correct as of such earlier date).

(c) On the applicable Increase Effective Date, the outstanding Revolving Credit Loans and Commitment Percentages of Swingline Loans and L/C Obligations will be reallocated by the Administrative Agent among the Lenders (including any new Lenders) in accordance with their revised Commitment Percentages and the Lenders (including any new Lenders) agree to make all payments and adjustments necessary to effect such reallocation and the Borrower shall pay any and all costs required pursuant to Section 4.9 in connection with such reallocation as if such reallocation were a repayment.

(d) Each Revolving Credit Increase shall be on the same terms and conditions, including maturity, Applicable Margin and commitment fees, applicable to the Revolving Credit Facility; provided that any upfront fees payable by the Borrower to the Lenders under any Revolving Credit Increase may differ from those payable under the then existing Commitments.

(e) Each Revolving Credit Increase shall be effected pursuant to an amendment to this Agreement executed and delivered by the Borrower, the Administrative Agent and the applicable increasing Lenders (which may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the opinion of the Administrative Agent, to effect the provisions of this Section 2.7).

(f) The Borrower shall deliver or cause to be delivered any customary legal opinions or other documents (including, without limitation, a resolution duly adopted by the board of directors (or equivalent governing body) of the Borrower authorizing such Revolving Credit Increase) reasonably requested by Administrative Agent in connection with any such transaction.

ARTICLE III LETTER OF CREDIT FACILITY

SECTION 3.1 L/C Commitment.

(a) Availability. Subject to the terms and conditions of this Agreement and the other Loan Documents and in reliance upon the representations and warranties set forth in this Agreement and the other Loan Documents and on the agreements of the Lenders set forth in Section 3.4(a), the Issuing Lender agrees to issue standby letters of credit (or, if the Issuing Lender so agrees in its sole discretion, documentary or other letters of credit subject to terms and conditions acceptable to the Issuing Lender) (the "Letters of Credit") for the account of the Borrower or any other Loan Party on any Business Day from the Closing Date through but not including the fifth (5th) Business Day prior to the Maturity Date in such form as may be approved from time to time by the Issuing Lender; provided that the Issuing Lender shall have no obligation to issue any Letter of Credit if, after giving effect to such issuance, (a) the L/C Obligations would exceed the L/C Commitment or (b) the Revolving Credit Outstandings would exceed the Aggregate Commitments. Each Letter of Credit shall (i) be denominated in Dollars in a minimum amount of \$100,000 (or such lesser amount as agreed to by the Issuing Lender), (ii) be a standby letter of credit issued to support obligations of the Borrower or any other Loan Party, contingent or otherwise, (iii) expire on a date no more than twelve (12) months after the date of issuance or last renewal of such Letter of Credit, which date shall be no later than the fifth (5th) Business Day prior to the Maturity Date and (iv) be subject to ISP98 as set forth in the Letter of Credit Application or as determined by the Issuing Lender and, to the extent not inconsistent therewith, the laws of the State of New York. The Issuing Lender shall not at any time be obligated to issue any Letter of Credit hereunder if (A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its

terms purport to enjoin or restrain the Issuing Lender from issuing such Letter of Credit, or any Applicable Law applicable to the Issuing Lender or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Issuing Lender shall prohibit, or request that the Issuing Lender refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the Issuing Lender with respect to letters of credit generally or such Letter of Credit in particular any restriction or reserve or capital requirement (for which the Issuing Lender is not otherwise compensated) not in effect on the Closing Date, or any unreimbursed loss, cost or expense that was not applicable, in effect or known to the Issuing Lender as of the Closing Date and that the Issuing Lender in good faith deems material to it, (B) the conditions set forth in Section 5.2 are not satisfied, (C) the issuance of such Letter of Credit would violate one or more policies of the Issuing Lender applicable to letters of credit generally or (D) the beneficiary of such Letter of Credit is a Sanctioned Person. References herein to “issue” and derivations thereof with respect to Letters of Credit shall also include extensions or modifications of any outstanding Letters of Credit, unless the context otherwise requires.

(b) Defaulting Lenders. Notwithstanding anything to the contrary contained in this Agreement, Article III shall be subject to the terms and conditions of Section 4.13 and Section 4.14.

SECTION 3.2 Procedure for Issuance of Letters of Credit. The Borrower may from time to time request that the Issuing Lender issue a Letter of Credit by delivering to the Issuing Lender at the Administrative Agent’s Office a Letter of Credit Application therefor, completed to the satisfaction of the Issuing Lender, and such other certificates, documents and other papers and information as the Issuing Lender may reasonably request. Upon receipt of any Letter of Credit Application, the Issuing Lender shall process such Letter of Credit Application and the certificates, documents and other papers and information delivered to it in connection therewith in accordance with its customary procedures and shall, subject to Section 3.1 and Article V, promptly issue the Letter of Credit requested thereby (but in no event shall the Issuing Lender be required to issue any Letter of Credit earlier than three (3) Business Days after its receipt of the Letter of Credit Application therefor and all such other certificates, documents and other papers and information relating thereto) by issuing the original of such Letter of Credit to the beneficiary thereof or as otherwise may be agreed by the Issuing Lender and the Borrower. The Issuing Lender shall promptly furnish to the Borrower a copy of such Letter of Credit and promptly notify each Lender of the issuance and upon request by any Lender, furnish to such Lender a copy of such Letter of Credit and the amount of such Lender’s participation therein.

SECTION 3.3 Commissions and Other Charges.

(a) Letter of Credit Commissions. Subject to Section 4.14(a)(iii)(B), the Borrower shall pay to the Administrative Agent, for the account of the Issuing Lender and the L/C Participants, a letter of credit commission with respect to each Letter of Credit in the amount equal to the daily amount available to be drawn under such Letter of Credit times the Applicable Margin with respect to ~~LIBOR Rate~~SOFR Loans (determined on a per annum basis). Such commission shall be payable quarterly in arrears on the last Business Day of each calendar quarter, on the Maturity Date and thereafter on demand of the Administrative Agent. The Administrative Agent shall, promptly following its receipt thereof, distribute to the Issuing Lender and the L/C Participants all commissions received pursuant to this Section 3.3 in accordance with their respective Commitment Percentages.

(b) Issuance Fee. In addition to the foregoing commission, the Borrower shall pay to the Administrative Agent, for the account of the Issuing Lender, an issuance fee with respect to each Letter of Credit as set forth in the Fee Letter. Such issuance fee shall be payable quarterly in arrears on the last Business Day of each calendar quarter commencing with the first such date to occur after the issuance of such Letter of Credit, on the Maturity Date and thereafter on demand of the Administrative Agent.

(c) Other Costs. In addition to the foregoing fees and commissions, the Borrower shall pay or reimburse the Issuing Lender for such normal and customary costs and expenses as are incurred or charged by the Issuing Lender in issuing, effecting payment under, amending or otherwise administering any Letter of Credit.

SECTION 3.4 L/C Participations.

(a) The Issuing Lender irrevocably agrees to grant and hereby grants to each L/C Participant, and, to induce the Issuing Lender to issue Letters of Credit hereunder, each L/C Participant irrevocably agrees to accept and purchase and hereby accepts and purchases from the Issuing Lender, on the terms and conditions hereinafter stated, for such L/C Participant's own account and risk an undivided interest equal to such L/C Participant's Commitment Percentage in the Issuing Lender's obligations and rights under and in respect of each Letter of Credit issued hereunder and the amount of each draft paid by the Issuing Lender thereunder. Each L/C Participant unconditionally and irrevocably agrees with the Issuing Lender that, if a draft is paid under any Letter of Credit for which the Issuing Lender is not reimbursed in full by the Borrower through a Revolving Credit Loan or otherwise in accordance with the terms of this Agreement, such L/C Participant shall pay to the Issuing Lender upon demand at the Issuing Lender's address for notices specified herein an amount equal to such L/C Participant's Commitment Percentage of the amount of such draft, or any part thereof, which is not so reimbursed.

(b) Upon becoming aware of any amount required to be paid by any L/C Participant to the Issuing Lender pursuant to Section 3.4(a) in respect of any unreimbursed portion of any payment made by the Issuing Lender under any Letter of Credit, the Issuing Lender shall notify each L/C Participant of the amount and due date of such required payment and such L/C Participant shall pay to the Issuing Lender the amount specified on the applicable due date. If any such amount is paid to the Issuing Lender after the date such payment is due, such L/C Participant shall pay to the Issuing Lender on demand, in addition to such amount, the product of (i) such amount, times (ii) the daily average Federal Funds Rate as determined by the Administrative Agent during the period from and including the date such payment is due to the date on which such payment is immediately available to the Issuing Lender, times (iii) a fraction the numerator of which is the number of days that elapse during such period and the denominator of which is 360. A certificate of the Issuing Lender with respect to any amounts owing under this Section shall be conclusive in the absence of manifest error. With respect to payment to the Issuing Lender of the unreimbursed amounts described in this Section, if the L/C Participants receive notice that any such payment is due (A) prior to 1:00 p.m. on any Business Day, such payment shall be due that Business Day, and (B) after 1:00 p.m. on any Business Day, such payment shall be due on the following Business Day.

(c) Whenever, at any time after the Issuing Lender has made payment under any Letter of Credit and has received from any L/C Participant its Commitment Percentage of such payment in accordance with this Section, the Issuing Lender receives any payment related to such Letter of Credit (whether directly from the Borrower or otherwise), or any payment of interest on account thereof, the Issuing Lender will distribute to such L/C Participant its pro rata share thereof; provided that in the event that any such payment received by the Issuing Lender shall be required to be returned by the Issuing Lender, such L/C Participant shall return to the Issuing Lender the portion thereof previously distributed by the Issuing Lender to it.

(d) Each L/C Participant's obligation to make the Revolving Credit Loans referred to in Section 3.4(b) and to purchase participating interests pursuant to Section 3.4(a) shall be absolute and unconditional and shall not be affected by any circumstance, including (i) any setoff, counterclaim, recoupment, defense or other right that such Lender or the Borrower may have against the Issuing Lender, the Borrower or any other Person for any reason whatsoever, (ii) the occurrence or continuance of a Default or an Event of Default or the failure to satisfy any of the other conditions specified in Article V, (iii) any adverse change in the condition (financial or otherwise) of the Borrower, (iv) any breach of this Agreement or any other Loan Document by the Borrower or any other Lender or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

SECTION 3.5 Reimbursement Obligation of the Borrower. In the event of any drawing under any Letter of Credit, the Borrower agrees to reimburse (either with the proceeds of a Revolving Credit Loan as provided for in this Section or with funds from other sources), in same day funds, the Issuing Lender on each date on which the Issuing Lender notifies the Borrower of the date and amount of a draft paid under any Letter of Credit for the amount of (a) such draft so paid and (b) any amounts referred to in Section 3.3(c) incurred by the Issuing Lender in connection with such payment. Unless the Borrower shall immediately notify the Issuing Lender that the Borrower intends to reimburse the Issuing Lender for such drawing from other sources or funds, the Borrower shall be deemed to have timely given a Notice of Borrowing to the Administrative Agent requesting that the Lenders make a Revolving Credit Borrowing

of Base Rate Loans on such date in the amount of (a) such draft so paid and (b) any amounts referred to in Section 3.3(c) incurred by the Issuing Lender in connection with such payment, and the Lenders shall make a Revolving Credit Borrowing of Base Rate Loans in such amount, the proceeds of which shall be applied to reimburse the Issuing Lender for the amount of the related drawing and costs and expenses. Each Lender acknowledges and agrees that its obligation to fund a Revolving Credit Loan in accordance with this Section to reimburse the Issuing Lender for any draft paid under a Letter of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including, without limitation, non-satisfaction of the conditions set forth in Section 2.3(a) or Article V. If the Borrower has elected to pay the amount of such drawing with funds from other sources and shall fail to reimburse the Issuing Lender as provided above or if the amount of such drawing is not fully funded through a Revolving Credit Loan as provided above, the unreimbursed amount of such drawing shall bear interest at the rate which would be payable on any outstanding Base Rate Loans which were then overdue from the date such amounts become payable (whether at stated maturity, by acceleration or otherwise) until payment in full.

SECTION 3.6 Obligations Absolute. The Borrower's obligations under this Article III (including, without limitation, the Reimbursement Obligation) shall be absolute and unconditional under any and all circumstances and irrespective of any set off, counterclaim or defense to payment which the Borrower may have or have had against the Issuing Lender or any beneficiary of a Letter of Credit or any other Person; provided, however, that notwithstanding any such reimbursement, the Borrower may have a claim against the Issuing Lender, and the Issuing Lender may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrower which the Borrower proves were caused by the Issuing Lender's willful misconduct or gross negligence as determined by a court of competent jurisdiction by final non-appealable judgment. The Borrower also agrees that the Issuing Lender and the L/C Participants shall not be responsible for, and the Borrower's Reimbursement Obligation under Section 3.5 shall not be affected by, among other things, the validity or genuineness of documents or of any endorsements thereon, even though such documents shall in fact prove to be invalid, fraudulent or forged, or any dispute between or among the Borrower and any beneficiary of any Letter of Credit or any other party to which such Letter of Credit may be transferred or any claims whatsoever of the Borrower against any beneficiary of such Letter of Credit or any such transferee. The Issuing Lender shall not be liable for any error, omission, interruption or delay in transmission, dispatch or delivery of any message or advice, however transmitted, in connection with any Letter of Credit, except for errors or omissions caused by the Issuing Lender's gross negligence or willful misconduct, as determined by a court of competent jurisdiction by final non-appealable judgment. The Borrower agrees that any action taken or omitted by the Issuing Lender under or in connection with any Letter of Credit or the related drafts or documents, if done in the absence of gross negligence or willful misconduct shall be binding on the Borrower and shall not result in any liability of the Issuing Lender or any L/C Participant to the Borrower. The responsibility of the Issuing Lender to the Borrower in connection with any draft presented for payment under any Letter of Credit shall, in addition to any payment obligation expressly provided for in such Letter of Credit, be limited to determining that the documents (including each draft) delivered under such Letter of Credit in connection with such presentment are in conformity with such Letter of Credit.

SECTION 3.7 Effect of Letter of Credit Application. To the extent that any provision of any Letter of Credit Application related to any Letter of Credit is inconsistent with the provisions of this Article III, the provisions of this Article III shall apply.

ARTICLE IV GENERAL LOAN PROVISIONS

SECTION 4.1 Interest.

(a) Interest Rate Options. Subject to the provisions of this Section, at the election of the Borrower, (i) Revolving Credit Loans shall bear interest at (A) the Base Rate plus the Applicable Margin ~~or~~, (B) ~~the LIBOR Rate~~ Adjusted Daily Simple SOFR plus the Applicable Margin, or (C) Adjusted Term SOFR plus the Applicable Margin and (ii) any Swingline Loan shall bear interest at the Base Rate plus the Applicable Margin. The Borrower shall select the ~~Type~~ rate of interest and Interest Period, if any, applicable to any Borrowing at the time a Notice of Borrowing is given or at the time a

Notice of Conversion/Continuation is given pursuant to Section 4.2. If the Borrower has not duly specified an interest rate as provided herein, ~~in the case of a Revolving Credit Loan,~~ such Borrowing shall be deemed a Base Rate Loan.

(b) Interest Periods. In connection with ~~each~~any Borrowing of ~~LIBOR-Rate~~Term SOFR Loans, the Borrower, by giving notice at the times described in Section 2.3, shall elect an interest period (each, an “Interest Period”) to be applicable to such Term SOFR Loan, which Interest Period shall be ~~a~~the period ~~of~~commencing on the date such Term SOFR Loan is disbursed or converted to or continued as a Term SOFR Loan and ending on the date one (1), three (3) or six (6) months thereafter, in each case as selected by the Borrower in its Notice of Borrowing or Notice of Conversion/Continuation and subject to availability; provided that:

(i) the Interest Period shall commence on the date of advance of or conversion to any ~~Borrowing of LIBOR-Rate Loans~~Term SOFR Loan and, in the case of immediately successive Interest Periods, each successive Interest Period shall commence on the date on which the immediately preceding Interest Period expires;

(ii) if any Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day; provided that if any Interest Period ~~with respect to a Borrowing of LIBOR-Rate Loans~~ would otherwise expire on a day that is not a Business Day but is a day of the month after which no further Business Day occurs in such month, such Interest Period shall expire on the immediately preceding Business Day;

(iii) any Interest Period ~~with respect to a Borrowing of LIBOR-Rate Loans~~ that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the relevant calendar month at the end of such Interest Period;

(iv) no Interest Period shall extend beyond the Maturity Date; ~~and~~

(v) there shall be no more than five (5) Interest Periods in effect at any time ; and

(vi) no tenor that has been removed from this definition of “Interest Period” pursuant to Section 4.8(c)(iv) shall be available for specification in any Notice of Borrowing or Notice of Conversion/Continuation.

(c) Default Rate. Subject to Section 9.3, (i) immediately upon the occurrence and during the continuance of an Event of Default under Section 9.1(a), (g), (h) or (i), or (ii) at the election of the Required Lenders (or the Administrative Agent at the direction of the Required Lenders), upon the occurrence and during the continuance of any other Event of Default, (A) the Borrower shall no longer have the option to request ~~LIBOR-Rate~~SOFR Loans, Swingline Loans or Letters of Credit, (B) all outstanding ~~LIBOR-Rate~~Daily Simple SOFR Loans shall bear interest at a rate per annum of two percent (2%) in excess of the rate (including the Applicable Margin) then applicable to ~~LIBOR-Rate~~Daily Simple SOFR Loans until the ~~end of the~~ applicable Interest ~~Period~~Payment Date, and thereafter at a rate ~~equal to~~per annum two percent (2%) in excess of the rate (including the Applicable Margin) then applicable to Base Rate Loans, (C) all outstanding Term SOFR Loans shall bear interest at a rate per annum of two percent (2%) in excess of the rate (including the Applicable Margin) then applicable to Term SOFR Loans until the end of the applicable Interest Period, and thereafter at a rate per annum of two percent (2%) in excess of the rate (including the Applicable Margin) then applicable to Base Rate Loans. (D) all outstanding Swingline Loans shall thereafter bear interest at a rate per annum equal to two (2%) in excess of the rate (including the Applicable Margin) then applicable to such Loans, ~~(E)~~ all outstanding Base Rate Loans and other Obligations arising hereunder or under any other Loan Document shall bear interest at a rate per annum equal to two percent (2%) in excess of the rate (including the Applicable Margin) then applicable to Base Rate Loans or such other Obligations arising hereunder or under any other Loan Document and ~~(E)~~ all accrued and unpaid interest shall be due and payable on demand of the Administrative Agent. Interest shall continue to accrue on the Obligations

after the filing by or against the Borrower of any petition seeking any relief in bankruptcy or under any Debtor Relief Law.

(d) Interest Payment and Computation. Interest on each ~~Base Rate~~ Loan shall be due and payable in arrears on ~~the last Business Day of each calendar quarter (commencing March 31, 2020) and interest on each LIBOR Rate Loan shall be due and payable on the last day of each Interest Period~~ Payment Date applicable thereto, ~~and if such Interest Period extends over three~~; provided that (i) in the event of any repayment or prepayment of any Term SOFR Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (3)ii) months, at in the event of any conversion of any Term SOFR Loan prior to the end of each three (3) month interval during such ~~the Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.~~ All computations of interest for Base Rate Loans when the Base Rate is determined by the Prime Rate shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest provided hereunder shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365/366-day year).

(e) Maximum Rate. In no contingency or event whatsoever shall the aggregate of all amounts deemed interest under this Agreement charged or collected pursuant to the terms of this Agreement exceed the highest rate permissible under any Applicable Law which a court of competent jurisdiction shall, in a final determination, deem applicable hereto. In the event that such a court determines that the Lenders have charged or received interest hereunder in excess of the highest applicable rate, the rate in effect hereunder shall automatically be reduced to the maximum rate permitted by Applicable Law and the Lenders shall at the Administrative Agent's option (i) promptly refund to the Borrower any interest received by the Lenders in excess of the maximum lawful rate or (ii) apply such excess to the principal balance of the Obligations on a pro rata basis. It is the intent hereof that the Borrower not pay or contract to pay, and that neither the Administrative Agent nor any Lender receive or contract to receive, directly or indirectly in any manner whatsoever, interest in excess of that which may be paid by the Borrower under Applicable Law.

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

SECTION 4.2 Notice and Manner of Conversion or Continuation of Loans. Provided that no Default has occurred and is then continuing, the Borrower shall have the option to (a) convert at any time all or any portion of any outstanding Borrowing of Base Rate Loans in a principal amount equal to \$1,000,000 or any whole multiple of \$500,000 in excess thereof (or such lesser amount as shall represent all of the Base Rate Loans then outstanding) into one or more Borrowings of ~~LIBOR Rate~~SOFR Loans and (b) with respect to any (x) Daily Simple SOFR Loan, on an Interest Payment Date or (y) Term SOFR Loan, upon the expiration of any Interest Period therefor, in each case, (i) convert all or any part of any outstanding Borrowing of LIBOR RateSOFR Loans in a principal amount equal to \$500,000 or a whole multiple of \$100,000 in excess thereof (or such lesser amount as shall represent all of the Daily Simple SOFR Loans or Term SOFR Loans, as applicable, then outstanding) into one or more Borrowings of Base Rate Loans ~~or, Term SOFR Loans or Daily Simple SOFR Loans,~~ (ii) continue any outstanding Borrowing of ~~LIBOR Rate~~Daily Simple SOFR Loans as a Borrowing of ~~LIBOR Rate~~Daily Simple SOFR Loans, or (iii) continue any outstanding Borrowing of Term SOFR Loans as a Borrowing of Term SOFR Loans. Whenever the Borrower desires to convert or continue Borrowings as provided above, the Borrower shall give the Administrative Agent prior written notice in the form attached as Exhibit E (a "Notice of Conversion/Continuation") not later than 11:00 a.m. (x) in the case of a Borrowing continuing as or converting to a Daily Simple SOFR Loan, five (5) U.S. Government Securities Business Days before the day on which a proposed conversion or continuation of such Loan is to be effective, (y) in the case of a Borrowing continuing as or converting to a Term SOFR Loan, three (3) U.S. Government Securities Business Days before the day on which a proposed conversion or continuation of such Borrowing is to be

effective or (z) in the case of a Borrowing converting to a Base Rate Loan, on the Business Day of such conversion, in each case specifying, (A) the Borrowing to be converted or continued, and, in the case of any Borrowing of ~~LIBOR-Rate~~Term SOFR Loans to be converted or continued, the last day of the Interest Period therefor, (B) the effective date of such conversion or continuation (which shall be a Business Day), (C) the principal amount of such Loans to be converted or continued, and (D) in the case of any Term SOFR Loan, the Interest Period to be applicable to such converted or continued Borrowing of ~~LIBOR-Rate~~Term SOFR Loans. If the Borrower fails to deliver a timely Notice of Conversion/Continuation prior to (x) with respect to a Daily Simple SOFR Loan, the applicable Interest Payment Date therefor, such Daily Simple SOFR Loan shall be automatically converted to a Base Rate Loan as of such Interest Payment Date or (y) with respect to a Term SOFR Loan, prior to the end of the applicable Interest Period therefor, then the applicable Interest Payment Date therefor, such Term SOFR Loan shall be automatically converted to a Base Rate Loan as of the last day of such Interest Period. If the Borrower requests a conversion to, or continuation of, a Term SOFR Loan, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. Notwithstanding anything to the contrary herein, a Swingline Loan may not be converted to a SOFR Loan. The Administrative Agent shall promptly notify the affected Lenders of such Notice of Conversion/Continuation.

SECTION 4.3 Fees.

(a) Commitment Fee. Commencing on the Closing Date, subject to Section 4.14(a)(iii)(A), the Borrower shall pay to the Administrative Agent, for the account of the Lenders, a non-refundable commitment fee (the "Commitment Fee") at a rate per annum equal to the applicable amount for Commitment Fees set forth in the definition of Applicable Margin on the daily unused portion of the Aggregate Commitments; provided that the amount of outstanding Swingline Loans shall not be considered usage of the Aggregate Commitments for the purpose of calculating the Commitment Fee. The Commitment Fee shall be payable in arrears on the last Business Day of each calendar quarter during the term of this Agreement commencing March 31, 2020 and ending on the date upon which all Obligations (other than contingent indemnification or similar obligations not then due) shall have been indefeasibly and irrevocably paid and satisfied in full, all Letters of Credit have expired, been terminated or been Cash Collateralized and the Aggregate Commitments have been terminated. Such commitment fee shall be distributed by the Administrative Agent to the Lenders (other than any Defaulting Lender) pro rata in accordance with each Lender's Commitment Percentage.

(b) Other Fees. The Borrower shall pay to the Administrative Agent for its own account fees in the amounts and at the times specified in the Fee Letter. The Borrower shall pay to the Lenders such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified.

SECTION 4.4 Manner of Payment.

(a) Sharing of Payments. Each payment by the Borrower on account of the principal of or interest on the Loans or of any fee, commission or other amounts (including the Reimbursement Obligation) payable to the Lenders under this Agreement shall be made not later than 1:00 p.m. on the date specified for payment under this Agreement to the Administrative Agent at the Administrative Agent's Office for the account of the Lenders entitled to such payment in Dollars, in immediately available funds and shall be made without any set off, counterclaim or deduction whatsoever. Any payment received after such time but before 2:00 p.m. on such day shall be deemed a payment on such date for the purposes of Section 9.1, but for all other purposes shall be deemed to have been made on the next succeeding Business Day. Any payment received after 2:00 p.m. shall be deemed to have been made on the next succeeding Business Day for all purposes. Upon receipt by the Administrative Agent of each such payment, the Administrative Agent shall distribute to each such Lender at its address for notices set forth herein its Commitment Percentage (or other applicable share as provided herein) of such payment and shall wire advice of the amount of such credit to each Lender. Each payment to the Administrative Agent on account of the principal of or interest on the Swingline Loans or of any fee, commission or other amounts payable to the Swingline Lender shall be made in like manner, but for the account of the Swingline Lender. Each payment to the Administrative Agent of the Issuing Lender's fees or L/C Participants' commissions shall be made in like manner, but for the account of the Issuing Lender or the L/C Participants, as the case may be. Each payment to the Administrative Agent of Administrative Agent's fees or expenses shall be made for the account of the Administrative Agent and

any amount payable to any Lender under Sections 4.9, 4.10, 4.11 or 11.3 shall be paid to the Administrative Agent for the account of the applicable Lender. Subject to Section 4.1(b)(ii), if any payment under this Agreement shall be specified to be made upon a day which is not a Business Day, it shall be made on the next succeeding day which is a Business Day and such extension of time shall in such case be included in computing any interest if payable along with such payment.

(b) Defaulting Lenders. Notwithstanding the foregoing clause (a), if there exists a Defaulting Lender each payment by the Borrower to such Defaulting Lender hereunder shall be applied in accordance with Section 4.14(a)(ii).

SECTION 4.5 Evidence of Indebtedness.

(a) Extensions of Credit. The Extensions of Credit made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Extensions of Credit made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Notes and endorse thereon the date, amount and maturity of its Loans and payments with respect thereto.

(b) Participations. In addition to the accounts and records referred to in subsection (a), each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit and Swingline Loans. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

SECTION 4.6 Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or other obligations hereunder resulting in such Lender's receiving payment of a proportion of the aggregate amount of its Loans and accrued interest thereon or other such obligations (other than pursuant to Sections 4.9, 4.10, 4.11 or 11.3) greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them; provided that:

(i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and

(ii) the provisions of this paragraph shall not be construed to apply to (A) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), (B) the application of Cash Collateral provided for in Section 4.13 or (C) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Revolving Credit Loans or participations in Swingline Loans and Letters of Credit to any assignee or participant, other than to the Borrower or any of its Subsidiaries or Affiliates (as to which the provisions of this paragraph shall apply).

The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under Applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

SECTION 4.7 Administrative Agent's Clawback.

(a) Funding by Lenders: Presumption by Administrative Agent. ~~Unless the Administrative Agent shall have received notice from a Lender (i) in the case of Base Rate Loans, not later than 12:00 noon on the date of~~ In connection with any ~~proposed~~ borrowing and ~~(ii) otherwise, prior to the proposed date of any borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such borrowing hereunder,~~ the Administrative Agent may assume that ~~such~~ each Lender has made its respective share of such share borrowing available on such date in accordance with Section 2.3(b) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the daily average Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(b) Payments by the Borrower: Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders, the Issuing Lender or the Swingline Lender hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders, the Issuing Lender or the Swingline Lender, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders, the Issuing Lender or the Swingline Lender, as the case maybe, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender, Issuing Lender or the Swingline Lender, with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, as the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(c) Nature of Obligations of Lenders Regarding Extensions of Credit. The obligations of the Lenders under this Agreement to make the Loans and issue or participate in Letters of Credit and Swingline Loans are several and are not joint or joint and several. The failure of any Lender to make available its Commitment Percentage of any Loan requested by the Borrower shall not relieve it or any other Lender of its obligation, if any, hereunder to make its Commitment Percentage of such Loan available on the borrowing date, but no Lender shall be responsible for the failure of any other Lender to make its Commitment Percentage of such Loan available on the borrowing date.

SECTION 4.8 Changed Circumstances.

(a) Circumstances Affecting ~~LIBOR Rate~~ Benchmark Availability. Subject to clause (c) below, in connection with any request for a ~~LIBOR Rate~~ SOFR Loan ~~or a Base Rate Loan as to which the interest rate is determined with reference to LIBOR~~ or a conversion to or continuation thereof or otherwise, if for any reason (i) the Administrative Agent shall determine (which determination shall be conclusive and binding absent manifest error) that ~~Dollar deposits are not being offered to banks in the~~

London interbank Eurodollar market for the applicable amount and Interest Period of such Loan, (ii) ~~the Administrative Agent shall determine (which determination shall be conclusive and binding absent manifest error) that~~ reasonable and adequate means do not exist for ~~the~~ ascertaining the LIBOR Rate for such Interest Period Adjusted Daily Simple SOFR pursuant to the definition thereof or Adjusted Term SOFR with respect to a proposed LIBOR Rate Term SOFR Loan on or any Base Rate Loan as prior to which the interest rate is determined with reference to LIBOR first day of the applicable Interest Period or (iii) the Required Lenders shall determine (which determination shall be conclusive and binding absent manifest error) that the LIBOR Rate Adjusted Daily Simple SOFR or Adjusted Term SOFR, as applicable, does not adequately and fairly reflect the cost to such Lenders of making or maintaining any such Loans during, with respect to Adjusted Term SOFR, such Interest Period and, in the case of clause (ii), the Required Lenders have provided notice of such determination to the Administrative Agent, then, in each case, the Administrative Agent shall promptly give notice thereof to the Borrower. ~~Thereafter, until~~ Upon notice thereof by the Administrative Agent notified to the Borrower that such circumstances no longer exist, the any obligation of the Lenders to make LIBOR Rate SOFR Loans or Base Rate Loan as to which the interest rate is determined with reference to LIBOR, and the any right of the Borrower to convert any Loan to or continue any Loan as a LIBOR Rate SOFR Loan or a Base Rate Loan as to which the interest rate is determined with reference to LIBOR, shall be suspended, and (i) into the ease extent of LIBOR Rate the affected SOFR Loans; or the Borrower shall either (A) repay in full (or cause to be repaid affected Interest Periods) until the Administrative Agent (with respect to clause (ii), at the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, (A) the Borrower may revoke any pending request for a borrowing of, conversion to or continuation of SOFR Loans (to the extent of the affected SOFR Loans or the affected Interest Periods) or, failing that, the Borrower will be deemed to have converted any such request into a request for a borrowing of or conversion to Base Rate Loans in full) the then outstanding principal amount of each such LIBOR Rate Loan together with accrued interest thereon (subject to Section 4.1(d)), on the last day of the then current Interest Period applicable to such LIBOR Rate Loan; or specified therein and (B) convert the then any outstanding principal amount of each such LIBOR Rate Loan to a Base Rate Loan as to which the interest rate is not determined by reference to LIBOR as of the last day of such Interest Period; or (ii) in the case of Base Rate Loans as to which the interest rate is determined by reference to LIBOR, the Borrower shall immediately convert the then outstanding principal amount of each such Loan to a Base Rate Loan as to which the interest rate is not determined by reference affected SOFR Loans will be deemed to have been converted into Base Rate Loans (I) with respect to any Daily Simple SOFR Loans, immediately and (II) with respect to any Term SOFR Loans, at the end of the applicable Interest Period. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to LIBOR Section 4.9.

(b) Laws Affecting LIBOR Rate SOFR Availability. If, after the date hereof, the introduction of, or any change in, any Applicable Law or any change in the interpretation or administration ~~of any Applicable Law thereof~~ by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or ~~if~~ compliance by any of the Lenders (or any of their respective Lending Offices) with any request or directive (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency, shall make it unlawful or impossible for any of the Lenders (or any of their respective Lending Offices) to honor its obligations hereunder to make or maintain any LIBOR Rate SOFR Loan, or any Base Rate Loan as to which the interest rate is determined by reference to LIBOR to determine or charge interest based upon SOFR, Adjusted Daily Simple SOFR, Daily Simple SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, such Lender shall promptly give notice thereof to the Administrative Agent and the Administrative Agent shall promptly give notice to the Borrower and the other Lenders (an "Illegality Notice"). Thereafter, until each affected Lender notifies the Administrative Agent and the Administrative Agent notifies the Borrower that ~~such~~ the circumstances giving rise to such determination no longer exist, (i) ~~the obligations any obligation~~ of the Lenders to make LIBOR Rate Daily Simple SOFR Loans or Base Rate Term SOFR Loans, as to which the interest rate is determined by reference to LIBOR applicable, and the any right of the Borrower to convert any Loan to a LIBOR Rate Daily Simple SOFR Loan or continue any Loan as a LIBOR Rate Loan or a Base Rate Loan as to which the interest rate is determined by reference to LIBOR shall be suspended and thereafter the Borrower may select only a Term SOFR Loan, as applicable, shall be suspended and (ii) if necessary to avoid such illegality, the Administrative Agent shall compute the Base Rate without reference to clause (c) of the definition of "Base Rate". Upon receipt of an Illegality Notice, the

Borrower shall, if necessary to avoid such illegality, upon demand from any Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all affected SOFR Loans to Base Rate Loans (in each case, if necessary to avoid such illegality, the Administrative Agent shall compute the Base Rate without reference to clause (c) of the definition of "Base Rate") (A) with respect to any Daily Simple SOFR Loans as to which, on the interest rate is not determined by reference to LIBOR hereunder, (ii) all Base Rate Loans shall cease to be determined by reference to LIBOR, Interest Payment Date therefor and (iii) B) if with respect to any of the Term SOFR Loans, on the last day of the Interest Period therefor, if all affected Lenders may not lawfully continue to maintain a LIBOR Rate Loan to the end of the then current Interest Period applicable thereto, the applicable Loan shall immediately be converted to a Base Rate Loan as to which the interest rate is not determined by reference to LIBOR for the remainder of such Interest Periods such SOFR Loans to such day, or immediately, if any Lender may not lawfully continue to maintain such SOFR Loans to such day. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 4.9.

(c) Benchmark Replacement Setting.

(i) Benchmark Replacement. ~~(A) Notwithstanding anything to the contrary herein or in any other Loan Document (and any Hedge Agreement shall be deemed not to be a "Loan Document" for purposes of this Section 4.8(c)) if, upon the occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred prior to the Reference Time in with respect to any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (a)(1) or (a)(2) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (a)(3) of the definition of "a Benchmark Replacement" for Any such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in amendment with respect of any to a Benchmark setting Transition Event will become effective at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided Administrative Agent has posted such proposed amendment to the all affected Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and the Borrower so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement amendment from Lenders comprising the Required Lenders.~~

~~(B) Notwithstanding anything to the contrary herein or in any other Loan Document, if a Term SOFR Transition Event and its related Benchmark Replacement Date have occurred pursuant to this Section 4.8(c)(i) will occur prior to the Reference Time in respect of any setting of the then-current Benchmark, then the applicable Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document; provided that this clause (B) shall not be effective unless the Administrative Agent has delivered to the Lenders and the Borrower a Term SOFR Notice. For the avoidance of doubt, the Administrative Agent shall not be required to deliver a Term SOFR Notice after a Term SOFR Transition Event and may elect or not elect to do so in its sole discretion Transition Start Date.~~

(ii) Benchmark Replacement Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Administrative Agent will have the right to make ~~Benchmark Replacement~~ Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such ~~Benchmark Replacement~~ Conforming Changes will become

effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(iii) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (A) ~~the implementation of any occurrence of a Benchmark Transition Event, a Term SOFR Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date, and~~ (B) ~~the implementation of any Benchmark Replacement, (C) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement Conforming Changes, (D).~~ The Administrative Agent will promptly notify the Borrower of the removal or reinstatement of any tenor of a Benchmark pursuant to Section 4.8(c)(iv) below and (E) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 4.8(c), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 4.8(c).

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

(v) Benchmark Unavailability Period. Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period with respect to a given Benchmark, (A) the Borrower may revoke any pending request for a borrowing of, conversion to or continuation of ~~LIBOR Rate~~ any affected SOFR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a borrowing of or conversion to Base Rate Loans and (B) any outstanding affected SOFR Loans will be deemed to have been converted to Base Rate Loans (I) with respect to any Daily Simple SOFR Loans, immediately and (II) with respect to any Term SOFR Loans, at the end of the applicable Interest Period. During any Benchmark Unavailability Period with respect to any Benchmark or at any time that a tenor for ~~the any~~ then-current Benchmark is not an Available Tenor, the component of ~~the~~ Base Rate based upon the then-current Benchmark that is the subject of such Benchmark Unavailability Period or such tenor for such Benchmark, as applicable, will not be used in any determination of ~~the~~ Base Rate.

~~(vi) London Interbank Offered Rate Benchmark Transition Event. On March 5, 2021, the IBA, the administrator of the London interbank offered rate, and the FCA, the regulatory supervisor of the IBA, made the Announcements that the final publication or representativeness date for (I) 1-week and 2-month London interbank offered rate tenor settings will be December 31, 2021 and (II) overnight, 1-month, 3-month, 6-month and 12-month London interbank offered rate tenor settings will be June 30, 2023. No successor administrator for the~~

~~IBA was identified in such Announcements. The parties hereto agree and acknowledge that the Announcements resulted in the occurrence of a Benchmark Transition Event with respect to the London interbank offered rate pursuant to the terms of this Agreement and that any obligation of the Administrative Agent to notify any parties of such Benchmark Transition Event pursuant to clause (iii) of this Section 4.8(c) shall be deemed satisfied.~~

SECTION 4.9 Indemnity. The Borrower hereby indemnifies each of the Lenders against any loss, cost or expense (including any loss, cost or expense arising from the liquidation or reemployment of funds ~~obtained by it to maintain a LIBOR Rate Loan~~ or from any fees payable ~~to terminate the deposits from which such funds were obtained~~) which may arise ~~or~~ be attributable to ~~each Lender's obtaining, liquidating or employing deposits or other funds acquired or result due to effect, fund or maintain any Loan (a) or~~ as a consequence of (a) any failure by the Borrower to make any payment when due of any amount due hereunder in connection with a ~~LIBOR Rate~~SOFR Loan, (b) ~~due to~~ any failure of the Borrower to borrow ~~or~~ continue a SOFR Loan or convert to a SOFR Loan on a date specified therefor in a Notice of Borrowing or Notice of Conversion/Continuation ~~or~~, (c) ~~due to any failure of the Borrower to prepay any SOFR Loan on a date specified therein in any Notice of Prepayment,~~ (d) any payment, prepayment or conversion of any ~~LIBOR Rate~~SOFR Loan on a date other than (i) with respect to any Daily Simple SOFR Loan, the applicable Interest Payment Date therefor or (ii) with respect to any Term SOFR Loan, the last day of the Interest Period therefor. ~~The amount of such loss or expense shall be determined (in each case, including as a result of an Event of Default) or (e) the assignment of any SOFR Loan other than (i) with respect to any Daily Simple SOFR Loan, in the applicable Lender's sole discretion, based upon Interest Payment Date therefor or (ii) with respect to any Term SOFR Loan, the assumption that such Lender funded its Commitment Percentage of the LIBOR Rate Loans in the London interbank market and using any reasonable attribution or averaging methods which such Lender deems appropriate and practical last day of the Interest Period therefor, in each case, as a result of a request by the Borrower pursuant to Section 4.12(b).~~ A certificate of such Lender setting forth the basis for determining such amount or amounts necessary to compensate such Lender shall be forwarded to the Borrower through the Administrative Agent and shall be conclusively presumed to be correct save for manifest error. ~~The Borrower shall be entitled to request that a Lender submit such a certificate prior to the Borrower paying any such amount to compensate such Lender.~~ All of the obligations of the Credit Parties under this Section 4.9 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

SECTION 4.10 Increased Costs.

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

(i) impose, modify or deem applicable any reserve (including pursuant to regulations issued from time to time by the FRB for determining the maximum reserve requirement (including any emergency, special, supplemental or other marginal reserve requirement) with respect to eurocurrency funding (currently referred to as "Eurocurrency liabilities" in Regulation D of the FRB, as amended, and in effect from time to time)), special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or advances, loans or other credit extended or participated in by, any Lender ~~(except any reserve requirement reflected in the LIBOR Rate)~~ or the Issuing Lender;

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

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

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

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

(c) Certificates for Reimbursement. A certificate of a Lender, the Issuing Lender or such other Recipient setting forth the amount or amounts necessary to compensate such Lender, the Issuing Lender, such other Recipient or any of their respective holding companies, as the case may be, as specified in paragraph (a) or (b) of this Section and delivered to the Borrower, shall be conclusive absent manifest error. The Borrower shall pay such Lender, the Issuing Lender or such other Recipient, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof. The Borrower shall be entitled to request that a Recipient submit such a certificate prior to the Borrower paying any such amount to compensate such Recipient.

(d) Delay in Requests. Failure or delay on the part of any Lender, the Issuing Lender or such other Recipient to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's, the Issuing Lender's or such other Recipient's right to demand such compensation; provided that the Borrower shall not be required to compensate any Lender, the Issuing Lender or any other Recipient pursuant to this Section for any increased costs incurred or reductions suffered more than six months prior to the date that such Lender, the Issuing Lender or such other Recipient, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions, and of such Lender's, the Issuing Lender's or such other Recipient's intention to claim compensation therefor (except that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the six-month period referred to above shall be extended to include the period of retroactive effect thereof).

SECTION 4.11 Taxes.

(a) Issuing Lender. For purposes of this Section 4.11, the term "Lender" includes the Issuing Lender.

(b) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If any Applicable Law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to

make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that, after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section), the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(c) Payment of Other Taxes by the Borrower. The Borrower shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(d) Indemnification by the Borrower. The Borrower shall indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Recipient (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Recipient, shall be conclusive absent manifest error. The Borrower shall be entitled to request that a Recipient submit such a certificate prior to the Borrower paying any such amount to compensate such Recipient.

(e) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 11.9(d) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to such Lender from any other source against any amount due to the Administrative Agent under this paragraph (e).

(f) Evidence of Payments. As soon as practicable after any payment of Taxes by the Borrower to a Governmental Authority pursuant to this Section 4.11, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(g) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section

4.11(g)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing:

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

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

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

(2) executed copies of IRS Form W-8ECI;

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

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

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in United States federal withholding Tax, duly completed, together with such

supplementary documentation as may be prescribed by Applicable Law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

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

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

(h) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 4.11 (including by the payment of additional amounts pursuant to this Section 4.11), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (h) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (h), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (h) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(i) Survival. Each party's obligations under this Section 4.11 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

SECTION 4.12 Mitigation Obligations: Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 4.10, or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 4.11, then such Lender shall, at the request of the Borrower, use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 4.10 or Section 4.11, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to

pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 4.10, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 4.11, and, in each case, such Lender has declined or is unable to designate a different Lending Office in accordance with Section 4.12(a), or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 11.9), all of its interests, rights (other than its existing rights to payments pursuant to Section 4.10 or Section 4.11) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

(i) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 11.9;

(ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and funded participations in Letters of Credit and Swingline Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 4.9) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(iii) in the case of any such assignment resulting from a claim for compensation under Section 4.10 or payments required to be made pursuant to Section 4.11, such assignment will result in a reduction in such compensation or payments thereafter;

(iv) such assignment does not conflict with Applicable Law; and

(v) in the case of any assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

SECTION 4.13 Cash Collateral.

(a) Existence of Defaulting Lender. At any time that there shall exist a Defaulting Lender, within one Business Day following the written request of the Administrative Agent, the Issuing Lender or the Swingline Lender (with a copy to the Administrative Agent), the Borrower shall Cash Collateralize the Fronting Exposure of the Issuing Lender and/or the Swingline Lender, as applicable, with respect to such Defaulting Lender (determined after giving effect to Section 4.14(a)(iv) and any Cash Collateral provided by such Defaulting Lender) in an amount not less than the Minimum Collateral Amount.

(b) Grant of Security Interest. The Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to the Administrative Agent, for the benefit of the Issuing Lender and the Swingline Lender, and agrees to maintain, a first priority security interest in all such Cash Collateral as security for the Defaulting Lender's obligation to fund participations in respect of L/C Obligations and Swingline Loans, to be applied pursuant to subsection (c) below. If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent, the Issuing Lender and the Swingline Lender as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the Borrower will, promptly upon demand by the Administrative Agent, pay or provide to the

Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by the Defaulting Lender).

(c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under this Section 4.13 or Section 4.14 in respect of Letters of Credit and Swingline Loans shall be applied to the satisfaction of the Defaulting Lender's obligation to fund participations in respect of L/C Obligations and Swingline Loans (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(d) Termination of Requirement. Cash Collateral (or the appropriate portion thereof) provided to reduce the Fronting Exposure of the Issuing Lender and/or the Swingline Lender, as applicable, shall no longer be required to be held as Cash Collateral pursuant to this Section 4.13 following (i) the elimination of the applicable Fronting Exposure (including by the termination of Defaulting Lender status of the applicable Lender), or (ii) the determination by the Administrative Agent, the Issuing Lender and the Swingline Lender that there exists excess Cash Collateral; provided that, subject to Section 4.14, the Person providing Cash Collateral, the Issuing Lender and the Swingline Lender may agree that Cash Collateral shall be held to support future anticipated Fronting Exposure or other obligations; and provided further that to the extent that such Cash Collateral was provided by the Borrower, such Cash Collateral shall remain subject to the security interest granted pursuant to the Loan Documents.

SECTION 4.14 Defaulting Lenders.

(a) Defaulting Lender Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by Applicable Law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Required Lenders and Section 11.2.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article IX or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 11.4 shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the Issuing Lender or the Swingline Lender hereunder; *third*, to Cash Collateralize the Fronting Exposure of the Issuing Lender and the Swingline Lender with respect to such Defaulting Lender in accordance with Section 4.13; *fourth*, as the Borrower may request (so long as no Default exists), to the funding of any Loan or funded participation in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to (A) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans and funded participations under this Agreement and (B) Cash Collateralize the Issuing Lender's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit and Swingline Loans issued under this Agreement, in accordance with Section 4.13; *sixth*, to the payment of any amounts owing to the Lenders, the Issuing Lender or the Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the Issuing Lender or the Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such

Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (1) such payment is a payment of the principal amount of any Loans or funded participations in Letters of Credit or Swingline Loans in respect of which such Defaulting Lender has not fully funded its appropriate share, and (2) such Loans were made or the related Letters of Credit or Swingline Loans were issued at a time when the conditions set forth in Section 5.2 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and funded participations in Letters of Credit or Swingline Loans owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or funded participations in Letters of Credit or Swingline Loans owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Obligations and Swingline Loans are held by the Lenders pro rata in accordance with their respective Commitment Percentages without giving effect to Section 4.14(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 4.14(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) No Defaulting Lender shall be entitled to receive any Commitment Fee for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Each Defaulting Lender shall be entitled to receive letter of credit commissions pursuant to Section 3.3 for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Commitment Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 4.13.

(C) With respect to any Commitment Fee or letter of credit commission not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, the Borrower shall (1) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in L/C Obligations or Swingline Loans that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (2) pay to each Issuing Lender and Swingline Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such Issuing Lender's or Swingline Lender's Fronting Exposure to such Defaulting Lender, and (3) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Participations to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in L/C Obligations and Swingline Loans shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Commitment Percentages (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that (x) the conditions set forth in Section 5.2 are satisfied at the time of such reallocation (and, unless the Borrower shall have otherwise notified the Administrative Agent at such time, the Borrower shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (y) such reallocation does not cause the aggregate Revolving Credit Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Commitment. Subject to Section 11.22, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral, Repayment of Swingline Loans. If the reallocation described in clause (iv) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under law, (x) first, repay Swingline Loans in an amount equal to the Swingline Lenders' Fronting Exposure and (y) second, Cash Collateralize

the Issuing Lender's Fronting Exposure in accordance with the procedures set forth in Section 4.13.

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent, the Issuing Lender and the Swingline Lender agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), such Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Revolving Credit Loans and funded and unfunded participations in Letters of Credit and Swingline Loans to be held pro rata by the Lenders in accordance with their Commitment Percentages (without giving effect to Section 4.14(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

ARTICLE V CONDITIONS OF EXTENSIONS OF CREDIT

SECTION 5.1 Conditions to Initial Extensions of Credit. The obligation of each Lender to make its initial Loan and the obligation of the Issuing Lender to issue its initial Letter of Credit is subject to the satisfaction or waiver of each of the following conditions:

(a) Approval of Counsel. All legal matters incidental to the extension of credit by any Lender or the Issuing Lender shall be reasonably satisfactory to the Administrative Agent and its counsel.

(b) Documentation. The Administrative Agent shall have received, in form and substance reasonably satisfactory to the Administrative Agent, each Lender and the Issuing Lender, each of the following, duly executed and acknowledged where appropriate by all parties thereto:

(i) this Agreement, the Guaranty Agreement, the Security Agreement, the Pledge Agreement, the Intercreditor Agreement and each other Loan Document;

(ii) a Note executed by the Borrower in favor of each Lender requesting a Note;

(iii) opinions of counsel to the Borrower and the Guarantors;

(iv) specimen signatures certified by the Secretary, Manager or other appropriate officer, as applicable, of each Loan Party;

(v) Organization Documents and consents or resolutions of the board of directors (or other appropriate governing body) of each Loan Party, together with such other documents and certificates as the Administrative Agent or its counsel may reasonably request relating to the organization, existence and good standing of each Loan Party, the authorization of the transactions contemplated hereby and any other legal matters relating to the Loan Parties, the Loan Documents or the transactions contemplated hereby;

(vi) Uniform Commercial Code search results and other lien search results reasonably satisfactory to the Administrative Agent;

(vii) security agreements duly executed by the applicable Loan Parties for all federally registered copyrights, copyright applications, patents, patent applications, trademarks and trademark applications included in the Collateral, in each case in proper form for filing with the U.S. Patent and Trademark Office or U.S. Copyright Office, as applicable; and

(viii) such other documents as the Administrative Agent or the Lenders may require.

(c) Pledged Collateral. The Collateral Agent shall have received (A) original stock certificates or other certificates evidencing the certificated Equity Interests pledged pursuant to the Security Documents, together with an undated stock power for each such certificate duly executed in blank by the registered owner thereof and (B) each original promissory note pledged pursuant to the Security Documents together with an undated allonge for each such promissory note duly executed in blank by the holder thereof.

(d) Notice of Borrowing/Notice of Account Designation. The Administrative Agent shall have received a Notice of Borrowing from the Borrower in accordance with Section 2.3(a), and a Notice of Account Designation specifying the account or accounts to which the proceeds of any Loans made on or after the Closing Date are to be disbursed.

(e) Financial Condition. Since December 31, 2018, no event or circumstance has occurred, as determined by any Lender, that could reasonably be expected to have a Material Adverse Effect, and no Lender shall have learned of any material adverse fact or information regarding the Borrower or any of its Subsidiaries, as represented to the date hereof, or of any material decline, as determined by any Lender, in the market value of any Collateral required hereunder or a substantial or material portion of the assets of the Borrower or any of its Subsidiaries.

(f) Insurance. The Borrower shall have delivered to the Administrative Agent evidence of insurance coverage on the Consolidated Group's property, in form, substance, amounts, covering risks and issued by companies satisfactory to the Administrative Agent, and where required by the Administrative Agent, with lender's loss payable and additional insured endorsements in favor of the Collateral Agent, for the benefit of the Secured Parties.

(g) Financial Information. The Administrative Agent and the Lenders shall have completed a satisfactory review of (i) the financial statements of the Consolidated Group for the fiscal year ended 2018, including balance sheets, income and cash flow statements audited by public accountants acceptable to the Administrative Agent and prepared in conformity with GAAP; (ii) the financial statements of the Consolidated Group for the fiscal quarters ended March 31, 2019, June 30, 2019 and September 30, 2019, including management-prepared balance sheets, income and cash flow statements prepared in conformity with GAAP; and (iii) such other financial information as the Administrative Agent or any Lender may request.

(h) Amendment to Senior Note Purchase Agreement. The Administrative Agent shall have received, in form and substance reasonably satisfactory to the Administrative Agent, a concurrent amendment of the Senior Note Purchase Agreement in order to permit the Revolving Credit Facility hereunder (including any Revolving Credit Increase) and provide for revisions to the covenants thereunder in a manner consistent with this Agreement (such amendment being the First Amendment to Note Purchase and Private Shelf Agreement referred to in the definition of Senior Note Purchase Agreement in Section 1.1).

(i) PATRIOT Act.

(i) The Administrative Agent and the Lenders shall have received, prior to the Closing Date, all documentation and other information requested by the Administrative Agent or any Lender or required by regulatory authorities in order for the Administrative Agent and the Lenders to comply with requirements of any Anti-Money Laundering Laws, including the PATRIOT Act and any applicable "know your customer" rules and regulations.

(ii) The Borrower shall have delivered to the Administrative Agent, and directly to any Lender requesting the same, a Beneficial Ownership Certification in relation to it (or a certification that the Borrower qualifies for an express exclusion from the "legal entity customer" definition under the Beneficial Ownership Regulations), in each case prior to the Closing Date.

(j) Specified Payoff Indebtedness. The Administrative Agent shall have received evidence satisfactory to it that, concurrently with the closing, the Specified Payoff Indebtedness will be paid in full, the related credit facilities thereunder are terminated and any Liens securing the same are released.

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

Without limiting the generality of the provisions of the last paragraph of Section 10.3, for purposes of determining compliance with the conditions specified in this Section 5.1, the Administrative Agent and each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

SECTION 5.2 Conditions to All Extensions of Credit. The obligations of the Lenders to make or participate in any Extensions of Credit (including the initial Extension of Credit) and/or the Issuing Lender to issue or extend any Letter of Credit are subject to the satisfaction of the following conditions precedent on the relevant borrowing, issuance or extension date:

(a) Representations and Warranties. The representations and warranties contained in this Agreement and the other Loan Documents shall be true and correct in all material respects (except to the extent already subject to a materiality standard in which case such representation or warranty shall be true and correct in all respects) on and as of such borrowing, issuance or extension date with the same effect as if made on and as of such date, except that (i) 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 (except to the extent already subject to a materiality standard in which case such representation or warranty shall be true and correct in all respects) as of such earlier date and (ii) for purposes of this Section 5.2(a), the representations and warranties contained in Section 6.5 shall be deemed to refer to the most recent statements furnished pursuant to Sections 7.3(a) and (b), respectively.

(b) No Existing Default. No Default or Event of Default shall have occurred and be continuing (i) on the borrowing date with respect to such Loan or after giving effect to the Loans to be made on such date or (ii) on the issuance or extension date with respect to such Letter of Credit or after giving effect to the issuance or extension of such Letter of Credit on such date.

(c) Notices. The Administrative Agent and, if applicable, the Issuing Lender shall have received a Notice of Borrowing or Letter of Credit Application, as the case may be, in accordance with the requirements hereof.

(d) New Swingline Loans/Letters of Credit. So long as any Lender is a Defaulting Lender, (i) the Swingline Lender shall not be required to fund any Swingline Loans unless it is satisfied that it will have no Fronting Exposure after giving effect to such Swingline Loan and (ii) the Issuing Lender shall not be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

The delivery by the Borrower of any Notice of Borrowing or Letter of Credit Application shall be deemed to be a representation and warranty by the Borrower that the conditions specified in Sections 5.2(a) and (b) have been satisfied on and as of the date the applicable Loan is made or Letter of Credit is issued, as the case may be.

ARTICLE VI REPRESENTATIONS AND WARRANTIES

To induce the Administrative Agent and Lenders to enter into this Agreement and to induce the Lenders to make Extensions of Credit, the Loan Parties hereby represent and warrant to the Administrative Agent and the Lenders both before and after giving effect to the transactions contemplated hereunder, which representations and warranties shall be deemed made on the Closing Date and as otherwise set forth in Section 5.2, that:

SECTION 6.1 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. No Loan Party nor any Subsidiary thereof is an Affected Financial Institution.

SECTION 6.2 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 6.3 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 (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 filings necessary to perfect Liens created under the Loan Documents, (b) will not violate any Applicable Law or the Organization Documents of the Borrower or such Loan Party or any order of any Governmental Authority applicable to the Borrower or such Loan Party, (c) will not violate or result in a default under any indenture, instrument or other material agreement binding on the Borrower or such Loan Party (including any Material Contract) or any of its assets or give rise to a right thereunder to require any payment to be made by the Borrower or such Loan Party and (d) will not result in the creation or imposition of any Lien on any asset of the Borrower or such Loan Party, except Permitted Liens.

SECTION 6.4 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 the Borrower or any of its Subsidiaries 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 6.5 Correctness of Financial Statements; Absence of Material Adverse Change. The financial statements described in Section 5.1(g), true copies of which have been delivered by the Borrower to the Administrative Agent prior to the Closing Date and all financial and other information supplied to the Administrative Agent after the Closing Date pursuant to Section 7.3, (a) are complete and correct and presents fairly the financial condition of the Consolidated Group, (b) discloses all liabilities of the Consolidated Group that are required to be reflected or reserved against under generally accepted accounting principles, whether liquidated or unliquidated, fixed or contingent, and (c) has been prepared in accordance with GAAP consistently applied except as noted therein. Since December 31, 2020, 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.

SECTION 6.6 Taxes. The Borrower, the Subsidiaries of the Borrower and each other Person for whose taxes any of the foregoing 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 such Person has set aside on its books adequate reserves in accordance with GAAP. The charges, accruals and reserves on the books of the Consolidated Group 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 its income tax payable with respect to any year, which could reasonably be expected to result in an assessment or unfavorable adjustment in excess of \$10,000,000.

SECTION 6.7 No Subordination. There is no agreement, indenture, contract or instrument to which the Borrower or any of its Subsidiaries is a party or by which such Person may be bound that requires the subordination in right of payment of any of such member's obligations subject to this Agreement or any other Loan Document to any other obligation of any such member.

SECTION 6.8 Permits, Franchises. The Borrower and each of its Subsidiaries, respectively, possesses all material permits, consents, approvals, franchises and licenses required, as may be applicable to such Person, and rights to all trademarks, trade names, service marks, patents, and fictitious names, if any, and other rights with respect to the foregoing which are 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 such trademark, trade names, service marks, patents or other proprietary right of any Person where such conflict could reasonably be expected to have a Material Adverse Effect.

SECTION 6.9 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, (a) the Borrower and each ERISA Affiliate is in compliance in all material respects with all applicable provisions of ERISA; (b) neither the Borrower nor any ERISA Affiliate has violated any provision of any Plan or Multiemployer Plan maintained or contributed to by the Borrower or any ERISA Affiliate; (c) no ERISA Event has occurred and is continuing with respect to any Plan initiated by the Borrower or any ERISA Affiliate; (d) the Borrower and each ERISA Affiliate has met its obligations under the Pension Funding Rules with respect to each Plan; (e) each Plan or Multiemployer Plan will be able to fulfill its benefit obligations as they come due in accordance with the Plan or Multiemployer Plan documents and under generally accepted accounting principles; and (f) there is no pending or, to the best knowledge of the Borrower or any ERISA Affiliate, any ERISA Litigation. As of the Closing Date, the Borrower is not nor will be using "plan assets" (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments.

SECTION 6.10 Compliance with Laws and Agreements. The Borrower and each of its Subsidiaries 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 or Event of Default has occurred and is continuing.

SECTION 6.11 Environmental Matters. Except as set forth on Schedule 6.11, the Borrower and each of its Subsidiaries is in compliance in all material respects with all applicable Environmental Laws. None of the operations of the Borrower or any of its Subsidiaries 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 6.11, neither the Borrower nor any of its Subsidiaries has (a) become subject to any material Environmental Liability, (b) received notice of any claim with respect to any material Environmental Liability or (c) knows of any basis for any material Environmental Liability.

SECTION 6.12 Collateral.

(a) All of the Collateral is owned by the grantor of the security interest therein in favor of the Collateral Agent, for the benefit of the Secured Parties, free of any material title defects or any Liens, except for Permitted Liens.

(b) The Liens and security interests granted to the Collateral Agent for the benefit of the Secured Parties are valid first priority Liens and security interests in the Collateral (subject only to Permitted Liens), which Liens and security interests will, upon the filing of the UCC-1 financing statements, 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 6.12 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 6.13 Employee Relations. As of the Closing Date, no Loan Party nor any Subsidiary thereof is party to any collective bargaining agreement, nor has any labor union been recognized as the representative of its employees except as set forth on Schedule 6.13. The Borrower does not know of any pending, threatened or contemplated strikes, work stoppage or other collective labor disputes involving its employees or those of its Subsidiaries.

SECTION 6.14 Disclosure. No report, financial statement, certificate or document delivered by the Borrower, any Subsidiary or any Guarantor in connection with this Agreement or any other Loan Document nor any statement, representation, or warranty provided to the Administrative Agent or any 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. As of the Closing Date, all of the information included in the Beneficial Ownership Certification is true and correct.

SECTION 6.15 Properties. The Borrower and each of its Subsidiaries has good and marketable title to all its real and personal properties, subject to no transfer restrictions or Liens of any kind, except for Permitted Liens and transfer restrictions permitted under Section 8.9.

SECTION 6.16 Insurance. The properties of the Borrower and each of its Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of the Borrower, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where such Person operates.

SECTION 6.17 Use of Proceeds. The proceeds of the Loans made on the Closing Date will be used only for (a) the repayment of the Specified Payoff Indebtedness and (b) the payment of fees and expenses related to the negotiation, execution and delivery of the Loan Documents and the consummation of the transactions contemplated thereby. The proceeds of Loans made after the Closing Date and Letters of Credit will be used only for working capital needs, capital expenditures and for other general corporate purposes of the Loan Parties, including Permitted Acquisitions. No part of the proceeds of any Loan or Letter 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. Following the application of the proceeds of each Extension of Credit, not more than twenty-five percent (25%) of the value of the assets (either of the Borrower only or of the Borrower and its Subsidiaries on a consolidated basis) subject to the provisions of Section 8.3 or Section 8.5 or subject to any restriction contained in any agreement or instrument between the Borrower and any Lender or any Affiliate of any Lender relating to Indebtedness will be "margin stock".

SECTION 6.18 Subsidiaries. As of the Closing Date, Schedule 6.18 sets forth an accurate and complete list of the Borrower and its Subsidiaries, showing the full legal name of such Person, its jurisdiction of organization, the location of its chief executive office, and the holders of the Equity Interests of such Person and the percentage of such Equity Interests held.

SECTION 6.19 Investment Company Act, Etc. No member of the Consolidated Group 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 6.20 Solvency. Immediately after the consummation of the transactions contemplated hereby to occur on the Closing Date and immediately following the making of each Loan made on the Closing Date and after giving effect to the application of the proceeds of such Loans, (a) the fair value of the assets of each Loan Party, at a fair valuation, will exceed its debts and liabilities, subordinated, contingent or otherwise; (b) the present fair saleable value of the property of each Loan Party will be greater than the amount that will be required to pay the probable liability of its debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (c) each Loan Party will be able to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (d) no Loan Party will have unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted following the Closing Date.

SECTION 6.21 Burdensome Provisions. No Subsidiary is party to any agreement or instrument or otherwise subject to any restriction or encumbrance that violates the provisions of Section 8.9 (including any agreement or instrument existing on the Closing Date that, if entered into after the Closing Date, would have violated the provisions of Section 8.9).

SECTION 6.22 Material Contracts. Schedule 6.22 sets forth a complete and accurate list of all Material Contracts of each Loan Party and each Subsidiary thereof in effect as of the Closing Date. Other than as set forth in Schedule 6.22, as of the Closing Date, each such Material Contract is, and after giving effect to the consummation of the transactions contemplated by the Loan Documents will be, in full force and effect in accordance with the terms thereof. To the extent requested by the Administrative Agent, each Loan Party and each Subsidiary thereof has delivered to the Administrative Agent a true and complete copy of each Material Contract required to be listed on Schedule 6.22 or any other Schedule hereto. As of the Closing Date, no Loan Party nor any Subsidiary thereof (nor, to its knowledge, any other party thereto) is in breach of or in default under any Material Contract in any material respect.

SECTION 6.23 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 reasonably necessary to conduct its business, without conflict with the rights of any other Person where such conflict could reasonably be expected to have a Material Adverse Effect, and Schedule 3 to the Security Agreement 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, where such infringement could reasonably be expected to have a Material Adverse Effect. 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 6.24 Anti-Corruption Laws; Anti-Money Laundering Laws and Sanctions.

(a) None of (i) the Borrower, any Subsidiary or, to the knowledge of the Borrower or such Subsidiary, any of their respective directors, officers, employees or Affiliates, or (ii) to the knowledge of the Borrower, any agent or representative of the Borrower or any Subsidiary that will act in any capacity in connection with or benefit from the Loans, (A) is a Sanctioned Person or currently the subject or target of any Sanctions, (B) has its assets located in a Sanctioned Country, (C) is under administrative, civil or criminal investigation for an alleged violation of, or received notice from or made a voluntary disclosure to any governmental entity regarding a possible violation of, Anti-Corruption Laws, Anti-Money Laundering Laws or Sanctions by a governmental authority that enforces

Sanctions or any Anti-Corruption Laws or Anti-Money Laundering Laws, or (D) directly or indirectly derives revenues from investments in, or transactions with, Sanctioned Persons.

(b) Each of the Borrower and its Subsidiaries has implemented and maintains in effect policies and procedures designed to ensure compliance by the Borrower and its Subsidiaries and their respective directors, officers, employees, agents and Affiliates with all Anti-Corruption Laws, Anti-Money Laundering Laws and applicable Sanctions.

(c) Each of the Borrower and its Subsidiaries, and to the knowledge of the Borrower, director, officer, employee, agent and Affiliate of Borrower and each such Subsidiary, is in compliance with all Anti-Corruption Laws, Anti-Money Laundering Laws in all respects and applicable Sanctions.

(d) No proceeds of any Extension of Credit have been used, directly or indirectly, by the Borrower, any of its Subsidiaries or any of its or their respective directors, officers, employees and agents in violation of Section 8.11.

ARTICLE VII AFFIRMATIVE COVENANTS

Until all of the Obligations (other than contingent indemnification or similar obligations not then due) have been paid and satisfied in full in cash, all Letters of Credit have expired, been terminated or been Cash Collateralized in accordance with the terms hereof and the Aggregate Commitments have expired or been terminated, the Borrower will, and will cause each of its Subsidiaries to:

SECTION 7.1 Punctual Payments. Punctually pay all principal, interest, fees or other liabilities due under any of the Loan Documents at the times and place and in the manner specified therein, and immediately upon demand by the Administrative Agent, the amount by which the outstanding principal balance of any credit subject hereto at any time exceeds any limitation on borrowings applicable thereto.

SECTION 7.2 Accounting Records. Maintain adequate books and records in accordance with GAAP consistently applied, and permit any representative of the Administrative Agent or any 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 7.3 Financial Statements. Provide to the Administrative Agent all of the following, in form and detail reasonably satisfactory to the Administrative Agent:

(a) not later than 120 days after and as of the end of each fiscal year of the Consolidated Group (commencing with the fiscal year ended December 31, 2019), the Consolidated Group's 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 Administrative Agent (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 Consolidated Group on a consolidated basis in accordance with GAAP consistently applied;

(b) not later than forty-five (45) days after and as of the end of each fiscal quarter of the Consolidated Group (except the last fiscal quarter of each fiscal year), the Consolidated Group'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, such consolidated financial statements to be certified by a Responsible Officer of the Borrower as presenting fairly in all material respects the financial condition and results of operations of the Consolidated Group 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 Consolidated Group required hereby, a duly completed Compliance Certificate signed by a Responsible Officer of the Borrower demonstrating compliance with Section 8.1, together with such supporting information as is reasonably required by the Administrative Agent;

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

(e) promptly upon the request thereof, other information and documentation required under applicable “know your customer” rules and regulations, the PATRIOT Act or any applicable Anti-Money Laundering Laws, in each case as from time to time reasonably requested by the Administrative Agent or any Lender; and

(f) promptly, from time to time such other information as the Administrative Agent or any Lender may reasonably request.

The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Arrangers will make available to the Lenders and the Issuing Lender materials and/or information provided by or on behalf of the Borrower hereunder (collectively, “Borrower Materials”) by posting the Borrower Materials on Debt Domain, Intralinks, Syndtrak or a substantially similar electronic transmission system (the “Platform”) and (b) certain of the Lenders may be “public-side” Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Borrower or its securities) (each, a “Public Lender”). The Borrower hereby agrees that so long as the Borrower is the issuer of any outstanding debt or equity securities that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked “PUBLIC” which, at a minimum, shall mean that the word “PUBLIC” shall appear prominently on the first page thereof; (x) by marking Borrower Materials “PUBLIC,” the Borrower shall be deemed to have authorized the Administrative Agent, the Arrangers, the Issuing Lender and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 11.10); (y) all Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Investor;” and (z) the Administrative Agent and the Arrangers, shall be entitled to treat any Borrower Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Investor.”

SECTION 7.4 Compliance. Preserve and maintain all material licenses, permits, government approvals, rights, privileges and franchises necessary for the conduct of its business; and comply 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) the provisions of all Material Contracts, 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, except where, the case of clauses (a), (b) and (c) above, such failure to comply could not reasonably be expected to have a Material Adverse Effect.

SECTION 7.5 Insurance. Maintain and keep in force insurance of the types and in amounts and with deductibles customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Borrower or the applicable Subsidiary operates, with all such insurance carried with financially sound and reputable insurance companies not Affiliates of the Borrower, and deliver to the Administrative Agent from time to time at the Administrative Agent’s request schedules setting forth all insurance then in effect. Such insurance shall (a) provide for not less than 30 days’ prior notice to the Administrative Agent 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 (in the case of property policies) and additional insured

(in the case of liability policies) endorsements satisfactory to the Administrative Agent, and (c) otherwise comply with the provisions of the Security Documents.

SECTION 7.6 Facilities. 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, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

SECTION 7.7 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 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.

SECTION 7.8 Notice to the Administrative Agent. Promptly (but in no event more than five (5) Business Days (or such longer period as the Administrative Agent may agree in its sole discretion) after the occurrence of each such event or matter) give written notice to the Administrative Agent in reasonable detail of: (a) the occurrence of any Default or Event of 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 or Multiemployer 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 any member of the Consolidated Group is required to maintain, any uninsured or partially uninsured loss through liability or property damage, or through fire, theft or any other cause affecting any such member's property in excess of an aggregate of \$5,000,000; (e) the occurrence and nature of any notices, complaints, orders or other claim received by the Borrower or any of its Subsidiaries relating to the violation by the Borrower or any of its Subsidiaries of any applicable Environmental Laws, any Release by the Borrower or any of its Subsidiaries 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 any material Environmental Liability; (f) any action, litigation, 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 or any of its Subsidiaries or any of their respective assets; (g) any material change in accounting policies or practices by any member of the Consolidated Group; and (h) any development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

SECTION 7.9 Additional Subsidiaries.

(a) Additional Domestic Subsidiaries. Promptly notify the Administrative Agent of the creation or acquisition of any Subsidiary that is a Domestic Subsidiary (other than an Excluded Subsidiary) or if any Subsidiary is required to become a Guarantor pursuant to the financial tests set forth in the definition of "Immaterial Subsidiary" (including as a result of the aggregation tests set forth in such definition) and, within thirty (30) days after such creation, acquisition or qualification, as such time period may be extended by the Administrative Agent in its sole discretion, cause such Domestic Subsidiary to (i) become a Guarantor by delivering to the Administrative Agent a duly executed supplement to the Guaranty Agreement or such other document as the Administrative Agent shall deem appropriate for such purpose, (ii) grant a security interest in all Collateral (other than Excluded Assets) owned by such Domestic Subsidiary by delivering to the Collateral Agent a duly executed supplement to each applicable Security Document or such other document as the Collateral Agent shall deem appropriate for such purpose and comply with the terms of each applicable Security Document (provided that no actions shall be required in any non-U.S. jurisdiction in order to perfect the Collateral Agent's security interests in any intellectual property), (iii) deliver to the Administrative Agent such opinions, documents and certificates referred to in Section 5.1 as may be reasonably requested by the Administrative Agent, (iv) if such Equity Interests are certificated, deliver to the Collateral Agent such original certificated Equity Interests or other certificates and stock or other transfer powers evidencing the Equity Interests of such Person, (v) deliver to the Administrative Agent such updated Schedules to

the Loan Documents as requested by the Administrative Agent with respect to such Domestic Subsidiary, and (vi) deliver to the Administrative Agent such other documents as may be reasonably requested by the Administrative Agent, all in form, content and scope reasonably satisfactory to the Administrative Agent.

(b) Additional Foreign Subsidiaries. Notify the Administrative Agent promptly after any Person becomes a First-Tier Foreign Subsidiary, and promptly thereafter (and, in any event, within forty five (45) days after such notification, as such time period may be extended by the Administrative Agent in its sole discretion), cause (i) the applicable Loan Party to deliver to the Collateral Agent Security Documents pledging sixty-five percent (65%) of the total outstanding voting Equity Interests (and one hundred percent (100%) of the non-voting Equity Interests) of any such new First-Tier Foreign Subsidiary and a consent thereto executed by such new First-Tier Foreign Subsidiary (including, without limitation, if applicable and unless otherwise agreed by the Administrative Agent, original certificated Equity Interests (or the equivalent thereof pursuant to the Applicable Laws and practices of any relevant foreign jurisdiction) evidencing the Equity Interests of such new First-Tier Foreign Subsidiary, together with an appropriate undated stock or other transfer power for each certificate duly executed in blank by the registered owner thereof), (ii) such Person to deliver to the Administrative Agent such opinions, documents and certificates referred to in Section 5.1 as may be reasonably requested by the Administrative Agent, (iii) such Person to deliver to the Administrative Agent such updated Schedules to the Loan Documents as requested by the Administrative Agent with regard to such Person and (iv) such Person to deliver to the Administrative Agent such other documents as may be reasonably requested by the Administrative Agent, all in form, content and scope reasonably satisfactory to the Administrative Agent.

SECTION 7.10 Information Regarding Collateral. Furnish to the Administrative Agent and the Collateral Agent prompt written notice of any change (a) in any Loan Party's legal name or in any trade name used to identify it in the conduct of its business or in the ownership of its properties, (b) in the location of any Loan Party's chief executive office, its principal place of business, any office in which it maintains books or records relating to Collateral owned by it or any office or facility at which Collateral owned by it is located (including the establishment of any such new office or facility), (c) in any Loan Party's legal identity or legal organizational structure or (d) in any Loan Party's Federal Taxpayer Identification Number. The Borrower agrees not to effect or permit any change referred to in the preceding sentence unless all filings have been made under the Uniform Commercial Code or otherwise that are required in order for the Collateral Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral. The Borrower also agrees promptly to notify the Administrative Agent and the Collateral Agent if any material portion of the Collateral is damaged or destroyed.

SECTION 7.11 Further Assurances.

(a) 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 (i) the recordation or filing of any mortgages, fixture filings or similar security documents in any real property records and (ii) any actions in any non-U.S. jurisdiction to perfect the Collateral Agent's security interests in any intellectual property), which may be required under any Applicable Law, or which the Administrative Agent or the Collateral Agent 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, all at the expense of the Loan Parties.

(b) If any material assets (excluding (i) any real property and (ii) any Excluded Assets) are acquired by the Borrower or any Subsidiary after the Closing Date (other than assets constituting Collateral under the Security Documents that have become subject to the Liens granted under such Security Documents upon acquisition thereof), promptly notify the Administrative Agent thereof, and, if requested by the Administrative Agent or the Collateral Agent, cause such assets to be subjected to a Lien securing the Secured Obligations (and the Senior Note Indebtedness) and take, and cause its Subsidiaries to take, such actions as shall be necessary or reasonably requested by the Administrative

Agent or the Collateral Agent to grant and perfect such Liens, including actions described in paragraph (a) of this Section, all at the expense of the Loan Parties.

(c) From time to time take such actions and execute and deliver such documents and instruments as the Administrative Agent shall require to ensure that the Collateral Agent, on behalf of the Secured Parties, shall have received currently effective Loan Documents pledging and granting security interests or other Liens acceptable to the Administrative Agent, as security for the Secured Obligations, on substantially all of the assets of the Borrower and each of its Subsidiaries, 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 any real property and any Excluded Assets, subject to no prior Lien or other encumbrance or restriction on transfer except as expressly permitted hereunder; provided that, except to the extent requested by the Administrative Agent or the Collateral Agent, no Loan Party shall be required to record the Collateral Agent's lien on the certificate of title with respect to any motor vehicles, trailers, mobile homes, manufactured homes, boats or rolling stock that constitute Collateral. All of the foregoing shall be evidenced by and subject to the terms of such security agreements, financing statements and other documents as the Administrative Agent or the Collateral Agent shall reasonably require, all in form and substance satisfactory to the Administrative Agent and the Collateral Agent. Without limitation of the foregoing, the Borrower will, and will cause each Subsidiary to, at the expense of the Borrower, make, execute, endorse, acknowledge, file and/or deliver to the Collateral Agent from time to time such vouchers, invoices, schedules, assignments, conveyances, financing statements, transfer endorsements, powers of attorney, certificates, reports and other assurances or instruments and take such further steps relating to the collateral covered by any of the Security Documents as the Administrative Agent or the Collateral Agent may reasonably require from time to time. The Borrower shall reimburse the Administrative Agent immediately upon demand for all reasonable costs and expenses incurred by the Administrative Agent in connection with any of the foregoing security, including without limitation, filing and recording fees and taxes.

SECTION 7.12 Deposit Accounts and Collections.

(a) Maintain its primary depository and operating accounts with one or more Lenders; and

(b) 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 (i) deposit accounts maintained with the Administrative Agent or, (ii) except with respect to deposit accounts with aggregate balances not exceeding \$1,000,000 at any time for all such deposit accounts, deposit accounts subject to a deposit account control agreement in form and substance satisfactory to the Administrative Agent, in each case in accordance with procedures and arrangements reasonably acceptable to the Administrative Agent and subject only to such changes as may be approved in advance by the Administrative Agent.

(c) Notwithstanding anything to the contrary in Sections 7.12(a) or (b) above, nothing in this Section 7.12 shall obligate any Foreign Subsidiary to maintain any deposit accounts or other accounts with the Administrative Agent or any Lender or to cause any collections, payments or other assets of such Foreign Subsidiary to be paid into any account described in Section 7.12(b) or to be subject to any control agreement in favor of the Administrative Agent of any other Person. Similarly, no amounts deposited in or credited to any deposit account or other account of any Foreign Subsidiary shall count against the \$1,000,000 basket described in Section 7.12(b).

SECTION 7.13 Visits and Inspections. Permit representatives of the Administrative Agent or any Lender, from time to time upon prior reasonable notice and at such times during normal business hours, at the expense of the Borrower, to visit and inspect its properties; inspect, audit and make extracts from its books, records and files, including, but not limited to, management letters prepared by independent accountants; and discuss with its principal officers, and its independent accountants, its business, assets, liabilities, financial condition, results of operations and business prospects; provided that excluding any such visits and inspections during the continuation of an Event of Default, the Administrative Agent shall not exercise such rights more often than one (1) time during any calendar year at the Borrower's expense; provided further that upon the occurrence and during the continuance of an

Event of Default, the Administrative Agent or any Lender may do any of the foregoing at the expense of the Borrower at any time without advance notice.

SECTION 7.14 Compliance with Anti-Corruption Laws; Beneficial Ownership Regulation; Anti-Money Laundering Laws and Sanctions. The Borrower will (a) maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with all Anti-Corruption Laws, Anti-Money Laundering Laws and applicable Sanctions, (b) notify the Administrative Agent and each Lender that previously received a Beneficial Ownership Certification (or a certification that the Borrower qualifies for an express exclusion to the “legal entity customer” definition under the Beneficial Ownership Regulation) of any change in the information provided in the Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified therein (or, if applicable, the Borrower ceasing to fall within an express exclusion to the definition of “legal entity customer” under the Beneficial Ownership Regulation) and (c) promptly upon the reasonable request of the Administrative Agent or any Lender, provide the Administrative Agent or directly to such Lender, as the case may be, any information or documentation requested by it for purposes of complying with the Beneficial Ownership Regulation.

ARTICLE VIII NEGATIVE COVENANTS

Until all of the Obligations (other than contingent indemnification or similar obligations not then due) have been paid and satisfied in full in cash, all Letters of Credit have expired, been terminated or been Cash Collateralized in accordance with the terms hereof and the Aggregate Commitments have expired or been terminated, the Borrower will not, and will not permit any of its Subsidiaries to:

SECTION 8.1 Financial Covenants.

(a) Consolidated Leverage Ratio. Permit the Consolidated Leverage Ratio as of the last day of any fiscal quarter to be greater than (x) 4.50 to 1.00 for each fiscal quarter ending on and after June 30, 2021 through March 31, 2022 and (y) 4.00 to 1.00 for each fiscal quarter ending on and after June 30, 2022; provided that (i) if the aggregate consideration paid in connection with any Permitted Acquisition, when taken together with the aggregate consideration for any previous Permitted Acquisitions since the Amendment No. 2 Effective Date (or, in the case of the second Elevated Ratio Period (as defined below) hereunder, since the end of the first Elevated Ratio Period), is in excess of \$25,000,000, then the Borrower shall have the right to elect to increase the maximum permitted Consolidated Leverage Ratio required to be maintained by this Section 8.1(a) for any fiscal quarter ending on or after September 30, 2022 to 4.50 to 1.00 during the fiscal quarter in which such acquisition is consummated (the “Trigger Quarter”) and each of the following three fiscal quarters following the Trigger Quarter (such period, the “Elevated Ratio Period”) so long as (A) there is at least one fiscal quarter end after the end of each Elevated Ratio Period at which the Consolidated Leverage Ratio is less than or equal to 4.00 to 1.00, (B) there shall be no more than one Elevated Ratio Period in effect at any given time, and (C) there shall be no more than two Elevated Ratio Periods after the Amendment No. 2 Effective Date. Such election shall be made by the delivery of a written notice by the Borrower to the Administrative Agent making reference to this Section 8.1(a) and notifying the Administrative Agent of the Borrower’s exercise of this right on or prior to the date of the actual or required delivery of a Compliance Certificate for the Trigger Quarter.

(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 8.2 Indebtedness. Create, incur, assume or permit to exist any Indebtedness, except:

- (a) the Obligations;
- (b) any Indebtedness existing on the date hereof and set forth on Schedule 8.2, 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) Indebtedness and obligations owing under (i) Hedge Agreements entered into in order to manage existing or anticipated interest rate, exchange rate or commodity price risks and not for speculative purposes and (ii) Secured Cash Management Agreements entered into in the ordinary course of business;
- (f) Indebtedness of a Loan Party owing to another Loan Party or, to the extent permitted by Section 8.6 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 \$160,000,000, 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 3.25 to 1.00; provided that the maximum Consolidated Leverage Ratio limitation set forth in this clause (1) shall not apply to incurrences of Incremental Equivalent Debt that are used to term out or otherwise refinance then existing Indebtedness (and, in the case of any refinanced Indebtedness that consists of revolving credit

Indebtedness, to permanently reduce the available amount of such Indebtedness by the amount so refinanced);

(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 Borrower shall be in compliance with Section 8.1 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 Administrative Agent 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 Administrative Agent 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 Administrative Agent 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 Administrative Agent and the holders of the Senior Note Indebtedness or a representative thereof that is reasonably acceptable to the Administrative Agent 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, 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 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;

(m) Indebtedness incurred by a Loan Party to acquire a new or replacement aircraft for its own use or another Loan Party's use, so long as the aggregate outstanding principal amount of such Indebtedness does not at any time exceed \$10,000,000;

(n) Indebtedness of a Person existing at the time such Person became a Subsidiary or assets were acquired from such Person in connection with an Investment permitted pursuant to Section 8.6; provided that (i) such Indebtedness was not incurred in connection with, or in contemplation of, such Person becoming a Subsidiary or the acquisition of such assets, (ii) neither the Borrower nor any Subsidiary thereof (other than such Person or any other Person that such Person merges with or that acquires the assets of such Person) shall have any liability or other obligation with respect to such Indebtedness, and (iii) the Borrower shall be in compliance with Section 8.1 after giving effect thereto on a Pro Forma Basis as of the most recently ended four consecutive fiscal quarter period, and any Permitted Refinancing thereof;

(o) unsecured Indebtedness of a Loan Party and any Permitted Refinancing in respect thereof; provided, that in the case of each incurrence of such Indebtedness:

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

(ii) after giving effect to the issuance of such Indebtedness and the use of proceeds thereof on a Pro Forma Basis as of the most recently ended four consecutive fiscal quarter period, the Borrower shall be in compliance with the financial covenants set forth in Section 8.1;

(iii) such Indebtedness does not mature, or require any scheduled principal amortization, mandatory prepayment or redemption, put right or sinking fund obligation prior to

the date that is 91 days after the later of (A) the then latest scheduled maturity date of the Loans and Commitments at the time such Indebtedness is incurred and (B) the date that is five years after the Amendment No. 2 Effective Date; provided that (x) any Indebtedness consisting of a customary bridge facility shall be deemed to satisfy this requirement so long as such Indebtedness automatically converts into long-term debt which satisfies this clause (iii), (y) customary prepayment, redemption, repurchase or defeasance obligations in connection with a change of control, asset sale or the exercise of remedies after an event of default (in each case as determined by the Borrower in good faith) shall not disqualify such Indebtedness from satisfying the requirements of this clause (iii), and (z) for purposes of determining whether Permitted Convertible Indebtedness meets the foregoing requirements, neither any settlement upon conversion of such Permitted Convertible Indebtedness (whether in cash, stock or other property) nor any required redemption or repurchase thereof upon a “fundamental change” (as customarily defined for such Permitted Convertible Indebtedness) shall disqualify such Permitted Convertible Indebtedness from satisfying such requirements notwithstanding a possible occurrence prior to the then latest scheduled maturity date of the Loans and Commitments;

(iv) the terms of such Indebtedness reflect market terms (taken as a whole) at the time of issuance and (other than pricing, fees, rate floors, premiums and optional prepayment or redemption provisions), taken as a whole, are not materially more restrictive (as determined by Borrower in good faith) on the Borrower and its Subsidiaries than the terms and conditions of this Agreement, taken as a whole; and

(v) such Indebtedness shall not be guaranteed by any Person other than a Loan Party hereunder;

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

(q) Acquired Luxco Debt (other than Indebtedness described in clause (a) of the definition thereof); and

(r) Indebtedness of Foreign Subsidiaries (including the Acquired Luxco Debt described in clause (a) of the definition thereof) in an aggregate principal amount not to exceed \$25,000,000 at any time outstanding (including the Dollar equivalent in the case of Indebtedness that is not denominated in Dollars).

SECTION 8.3 Liens. Mortgage, pledge, grant or permit to exist a security interest in, or other 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 8.3 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 and Liens securing Indebtedness permitted under Section 8.2(m)); provided that (i) such Lien secures Indebtedness permitted by Section 8.2(d) or Section 8.2(m) 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 (except that any Lien securing Indebtedness permitted by Section 8.2(m) may, if the aircraft is leased by one Loan Party to another, extend to the lessor's rights under such lease); 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 8.2(i) or 8.2(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 Section 8.2(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;

(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 the greater of (i) \$85,000,000 and (ii) 10% of the consolidated total assets of the Borrower and its Subsidiaries as of the most recently ended fiscal quarter at the time such Liens are incurred for which financial statements have been provided pursuant to Section 7.3(a) or 7.3(b);

(i) Liens on property (i) of a Person that becomes a Subsidiary existing at the time that such Person becomes a Subsidiary in connection with an acquisition permitted hereunder and (ii) of the Borrower or any of its Subsidiaries existing at the time such Property is purchased or otherwise acquired by the Borrower or such Subsidiary pursuant to a transaction permitted hereunder and, in each case any modification, replacement, renewal and extension thereof; provided that, with respect to each of the foregoing clauses (i) and (ii), (A) such Liens are not incurred in connection with, or in anticipation of, such Permitted Acquisition, purchase or other acquisition, (B) such Liens do not encumber any property other than property encumbered at the time of such acquisition or such Person becoming a Subsidiary and the proceeds and products thereof and are not all asset Liens, (C) such Liens do not attach to any other property of the Borrower or any of its Subsidiaries, and (D) such Liens will secure only those obligations which it secures at the time such acquisition or purchase occurs, or any Permitted Refinancings thereof;

(j) Acquired Luxco Liens; and

(k) Liens on assets of Foreign Subsidiaries; provided that (i) such Liens do not extend to, or encumber, assets that constitute Collateral, and (ii) such Liens extending to the assets of any Foreign Subsidiary secure only Indebtedness incurred by such Foreign Subsidiary pursuant to Section 8.2(r).

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, (v) Permitted Encumbrances, (w) any Lien that is existing on the Closing Date and set forth on Schedule 8.3, (x) to the extent constituting a Lien, any lease of any Permitted Real Estate, (y) any lease of or Lien upon any IRB Property, in each case in connection with any Permitted IRB Financings or Permitted Refinancings thereof, and (z) any Acquired Luxco Liens or any Liens permitted under Section 8.3(i) and (k).

SECTION 8.4 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 shall have occurred and be continuing:

(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 Administrative Agent, any Lender or the Issuing 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 8.6 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 8.5 Transfer of Assets. Dispose of any of its assets, business or property, 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 aggregate amount transferred to all such Subsidiaries by all Loan Parties does not exceed \$10,000,000 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 8.3, 8.4, 8.6 and 8.7 and the expenditure or other transfer or use of cash or cash equivalents in transactions not otherwise prohibited by this Agreement;

(g) [reserved];

(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 non-conforming 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;

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

(m) Dispositions of non-core assets acquired in connection with any Permitted Acquisition or Investment permitted under this Agreement (including, as necessary to obtain the approval of any applicable antitrust authority) which, within 180 days of the date of the applicable acquisition or Investment are designated in writing to the Administrative Agent as being held for potential sale and not for the continued operation of the Borrower or any of its Subsidiaries or any of their respective businesses; and

(n) 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 (n) during the term of this Agreement shall not exceed the greater of (i) \$65,000,000 and (ii) 7.5% of the consolidated total assets of the Borrower and its Subsidiaries as of the most recently ended fiscal quarter at the time of each respective Disposition for which financial statements have been provided pursuant to Section 7.3(a) or 7.3(b);

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

SECTION 8.6 Loans, Advances, Investments. 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, evidence of 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 8.6;

(b) Eligible Investments;

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

(d) Guarantees permitted pursuant by Section 8.2, 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) Hedge Agreements 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;

(n) any other Investments so long as (i) no Event of Default has occurred and is continuing or would result therefrom and (ii) the aggregate amount of Investments made under this clause (n) does not exceed the greater of (A) \$85,000,000 and (B) 10% of the consolidated total assets of the Borrower and its Subsidiaries as of the most recently ended fiscal quarter at the time such Investment is made for which financial statements have been provided pursuant to Section 7.3(a) or 7.3(b);

(o) Permitted Foreign Subsidiary Investments; and

(p) to the extent constituting Investments, any Permitted Bond Hedge Transaction and any Permitted Warrant Transaction.

SECTION 8.7 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) (i) Restricted Payments made by any Subsidiary to the Borrower or any other Loan Party (and, if applicable, to other holders of its outstanding Equity Interests on a pro rata basis), (ii) any non-Guarantor Subsidiary that is a Domestic Subsidiary may make Restricted Payments to any other non-Guarantor Subsidiary that is a Domestic Subsidiary (and, if applicable, to other holders of its outstanding Equity Interests on a ratable basis) and (ii) any non-Guarantor Subsidiary that is a Foreign Subsidiary may make Restricted Payments to any other non-Guarantor Subsidiary (and, if applicable, to other holders of its outstanding Equity Interests on a ratable basis);

(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;

(d) so long as (i) no Default or Event of 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 and (ii) the Consolidated Leverage

Ratio shall not exceed 3.50 to 1.00 on a Pro Form Basis after giving effect to such Restricted Payment and any Indebtedness incurred in connection therewith, other Restricted Payments made in cash by the Borrower in respect of its Equity Interests;

(e) the Borrower or any of its Subsidiaries may pay dividends in shares of its own Qualified Equity Interests; and

(f) so long as no Default or Event of Default has occurred and is continuing or would result therefrom, the Borrower may make additional Restricted Payments in an aggregate amount not to exceed \$50,000,000 during the term of this Agreement.

Any required payment with respect to, or required early unwind or settlement of, any Permitted Bond Hedge Transaction or Permitted Warrant Transaction, in each case, in accordance with the terms of the agreement governing such Permitted Bond Hedge Transaction or Permitted Warrant Transaction shall not constitute a Restricted Payment; provided that, to the extent cash is required to be paid under a Permitted Warrant Transaction as a result of the election of "cash settlement" (or substantially equivalent term) as the "settlement method" (or substantially equivalent term) thereunder by Borrower (or its Affiliate) (including in connection with the exercise and/or early unwind or settlement thereof), the payment of such cash shall constitute a Restricted Payment notwithstanding this paragraph.

SECTION 8.8 Transactions with Affiliates. Dispose of any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except:

(a) 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 8.5(d); and

(c) any Restricted Payment permitted by Section 8.7.

SECTION 8.9 Burdensome Agreements. Enter into or cause, suffer or permit to exist any agreement with any Person that (x) limits the ability of any Subsidiary to make Restricted Payments to the Borrower, (y) 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 8.2(i), 8.2(k) or 8.2(o), or (z) 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 with respect to property acquired in the Luxco Merger that are subject to Acquired Luxco Liens, pursuant to restrictions imposed by the Acquired Luxco Debt or, to the extent no more restrictive than the Loan Documents, any document or agreement pertaining to any Indebtedness permitted by Section 8.2(i), 8.2(k), 8.2(o), 8.2(q) or 8.2(r), and (ii) this clause (z) 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 8.5 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 8.6 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 Borrower 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 8.10 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 Administrative Agent, any Lender or the Issuing 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 8.11 Use of Funds: Anti-Corruption. (a) Use any of the proceeds of any Loan or any Letter of Credit except for the purposes stated in Section 6.17 or (b) request or use any Extension of Credit, and shall ensure that its Subsidiaries and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Extension of Credit, directly or indirectly, (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 8.12 Accounting Changes: Fiscal Year. Make any significant change in accounting treatment or reporting practices, except as required by GAAP, or change the fiscal year of any member of the Consolidated Group, except to change the fiscal year of a Subsidiary to conform its fiscal year to that of the Borrower.

SECTION 8.13 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 8.5(l) or (n).

SECTION 8.14 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 8.2(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 Administrative Agent, any Lender or the Issuing 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 8.2(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 IX
DEFAULT AND REMEDIES

SECTION 9.1 Events of Default. Each of the following shall constitute an event of default (each, an “Event of Default”):

(a) The Borrower or any Guarantor shall fail to pay (i) any principal when due (whether at maturity, by reason of acceleration or otherwise), or (ii) any interest, fees or other amounts when due and such failure shall continue for a period of three (3) Business Days.

(b) (i) The Borrower shall fail to observe or perform any covenant or agreement contained in Section 7.3, 7.4(a) (with respect to any Loan Party’s existence), 7.8, 7.9, 7.13, 7.14 or Article VIII (other than Section 8.9(y) and 8.9(z)), or (ii) any event shall occur that constitutes an “Event of Default” set forth in any other Loan Document.

(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 such default shall continue for a period of thirty (30) days from the earlier to occur of (i) the date the Borrower or any Guarantor obtains knowledge of such default and (ii) the date written notice of such default is provided by the Administrative Agent to the Borrower.

(d) Any financial statement or certificate furnished to the Administrative Agent or any Lender in connection with, or any representation or warranty made by or on behalf of the Borrower or any of its Subsidiaries under this Agreement or any other Loan Document shall prove to be incorrect, false or misleading in any material respect (without duplication of any materiality qualifiers contained therein) when furnished or made.

(e) (i) The Borrower or any of its Subsidiaries (whether as primary obligor or as guarantor or other surety) shall fail to pay any principal of or premium or interest on (A) the Senior Note Indebtedness, (B) any Indebtedness (other than the Loans or any Reimbursement Obligation), or (C) obligations in respect of one or more Hedge Agreements of any one or more of the Borrower or any of its Subsidiaries, in each case of clauses (B) and (C), in an aggregate principal amount exceeding \$25,000,000 (clauses (A) through (C) collectively, 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 (ii) 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 (iii) 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 (other than (x) any event, including the passage of time, that permits the holders of any Permitted Convertible Indebtedness to convert or exchange such Indebtedness into common stock of the Borrower (or other securities or property following a merger event, reclassification or other change of the common stock of the Borrower), cash or a combination thereof (including any such conversion or exchange right in the nature of a put or similar option in favor of such holders of Permitted Convertible Indebtedness, the exercise of which requires the Borrower to purchase, redeem or otherwise acquire or to repay such Indebtedness), except for any event resulting from the Borrower’s failure to pay, perform or observe its obligations under such Permitted Convertible Indebtedness, (y) the conversion or exchange of any such Indebtedness into common stock of the Borrower (or other securities or property following a merger event, reclassification or other change of the common stock of the Borrower), cash or a combination thereof, except for any event resulting from the Borrower’s failure to pay, perform or observe its obligations under such Permitted Convertible Indebtedness, or (z) the occurrence of an early termination or cancellation and payment under any Permitted Bond Hedge Transactions or any Permitted Warrant Transaction).

(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 the Borrower or any of its Subsidiaries, 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 thirty (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) The Borrower or any of its Subsidiaries shall (i) commence a voluntary case or other proceeding or file any petition seeking liquidation, reorganization or other relief under any Debtor Relief Law 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 clause (i) of this Section, (iii) apply for or consent to the appointment of a custodian, trustee, receiver, liquidator or other similar official for any 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, or (vi) take any action for the purpose of effecting any of the foregoing.

(h) An involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower or any of its Subsidiaries or any such Person's debts, or any substantial part of any such Person's assets, under any Debtor Relief Law or (ii) the appointment of a custodian, trustee, receiver, liquidator or other similar official for the Borrower or any of its Subsidiaries 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 sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered.

(i) The Borrower or any of its Subsidiaries shall become unable to pay, shall admit in writing its inability to pay, or shall fail to pay, its debts generally as they become due.

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

(k) Any provision of any Loan Document shall for any reason cease to be valid and binding on, or enforceable against, the Borrower or any Guarantor, or the Borrower or any Guarantor shall so state in writing, or seek to terminate its obligations thereunder.

(l) Any Lien purported to be created under any Security Document shall cease to be, or shall be asserted by the Borrower or any 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 sale or other disposition of the applicable Collateral in a transaction permitted under the Loan Documents.

(m) (i) An ERISA Event occurs with respect to a Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of the Borrower or any of its Subsidiaries under Title IV of ERISA in an aggregate amount in excess of \$10,000,000, or (ii) the Borrower or any of its Subsidiaries 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 or Multiemployer Plan in an aggregate amount in excess of \$10,000,000.

(n) Any Loan Party or any Subsidiary thereof shall default in the payment when due, or in the performance or observance, of any obligation or condition of any Material Contract unless, but only as long as, the existence of any such default is being contested by such Loan Party or any such Subsidiary in good faith by appropriate proceedings and adequate reserves in respect thereof have been established on the books of the Borrower or such Loan Party to the extent required by GAAP, *provided* that no Default or Event of Default shall arise or exist under this clause (n) if the counterparty to such Material Contract has not declared such Material Contract to be in default or has waived in writing such default.

SECTION 9.2 Remedies. Upon the occurrence and during the continuance of an Event of Default, with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent shall:

(a) Acceleration: Termination of Commitments. Terminate the Aggregate Commitments and declare the principal of and interest on the Loans and the Reimbursement Obligations at the time outstanding, and all other amounts owed to the Lenders, the Issuing Lender and to the Administrative Agent under this Agreement or any of the other Loan Documents (including, without limitation, all L/C Obligations, whether or not the beneficiaries of the then outstanding Letters of Credit shall have presented or shall be entitled to present the documents required thereunder) and all other Obligations under the Loan Documents, to be forthwith due and payable, whereupon the same shall immediately become due and payable without presentment, demand, protest or other notice of any kind, all of which are expressly waived by the Borrower, anything in this Agreement or the other Loan Documents to the contrary notwithstanding, and terminate any right of the Borrower to request borrowings or Letters of Credit hereunder; provided that upon the occurrence of an Event of Default specified in Section 9.1(g), (h) or (i), the Aggregate Commitments and any right of the Borrower to request borrowings or Letters of Credit hereunder shall be automatically terminated and all Obligations under the Loan Documents shall automatically become due and payable without presentment, demand, protest or other notice of any kind, all of which are expressly waived by the Borrower, anything in this Agreement or in any other Loan Document to the contrary notwithstanding.

(b) Letters of Credit. With respect to all Letters of Credit with respect to which presentment for honor shall not have occurred at the time of an acceleration pursuant to the preceding paragraph, the Borrower shall at such time deposit in a Cash Collateral account opened by the Administrative Agent an amount equal to the aggregate then undrawn and unexpired amount of such Letters of Credit. Amounts held in such Cash Collateral account shall be applied by the Administrative Agent to the payment of drafts drawn under such Letters of Credit, and the unused portion thereof after all such Letters of Credit shall have expired or been fully drawn upon, if any, shall be applied to repay the other Secured Obligations on a pro rata basis. After all such Letters of Credit shall have expired or been fully drawn upon, the Reimbursement Obligation shall have been satisfied and all other Secured Obligations shall have been paid in full, the balance, if any, in such Cash Collateral account shall be returned to the Borrower.

(c) General Remedies. Exercise on behalf of the Secured Parties all of its other rights and remedies under this Agreement, the other Loan Documents and Applicable Law, in order to satisfy all of the Secured Obligations.

SECTION 9.3 Rights and Remedies Cumulative; Non-Waiver; etc.

(a) The enumeration of the rights and remedies of the Administrative Agent, the Issuing Lender and the Lenders set forth in this Agreement is not intended to be exhaustive and the exercise by the Administrative Agent, the Issuing Lender and the Lenders of any right or remedy shall not preclude the exercise of any other rights or remedies, all of which shall be cumulative, and shall be in addition to any other right or remedy given hereunder or under the other Loan Documents or that may now or hereafter exist at law or in equity or by suit or otherwise. No delay or failure to take action on the part of the Administrative Agent, the Issuing Lender or any Lender in exercising any right, power or privilege shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege or shall be construed to be a waiver of any Event of Default. No course of dealing between the Borrower, the Administrative Agent, the Issuing Lender and the Lenders or their respective agents or employees shall be effective to change, modify or discharge any provision of this Agreement or any of the other Loan Documents or to constitute a waiver of any Event of Default.

(b) Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 9.2 for the benefit of the Secured Parties; provided

that the foregoing shall not prohibit (i) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (ii) the Issuing Lender or the Swingline Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as Issuing Lender or Swingline Lender, as the case may be) hereunder and under the other Loan Documents, (iii) any Lender from exercising setoff rights in accordance with Section 11.4 (subject to the terms of Section 4.6), or (iv) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 10.2 and (ii) in addition to the matters set forth in clauses (i), (ii) and (iii) of the preceding proviso and subject to Section 4.6, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

SECTION 9.4 Crediting of Payments and Proceeds. In the event that the Obligations have been accelerated pursuant to Section 9.2 or the Administrative Agent, the Issuing Lender or any Lender has exercised any remedy set forth in this Agreement or any other Loan Document, all payments received on account of the Secured Obligations and all net proceeds from the enforcement of the Secured Obligations shall be applied:

First, to payment of that portion of the Secured Obligations constituting fees, indemnities, expenses and other amounts, including attorney fees, payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Secured Obligations constituting fees (other than Commitment Fees and Letter of Credit fees payable to the Lenders), indemnities and other amounts (other than principal and interest) payable to the Lenders, the Issuing Lender and the Swingline Lender under the Loan Documents, including attorney fees, ratably among the Lenders, the Issuing Lender and the Swingline Lender in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Secured Obligations constituting accrued and unpaid Commitment Fees, Letter of Credit fees payable to the Lenders and interest on the Loans and Reimbursement Obligations, ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Secured Obligations constituting unpaid principal of the Loans, Reimbursement Obligations and payment obligations then owing under Secured Hedge Agreements and Secured Cash Management Agreements and to Cash Collateralize any L/C Obligations then outstanding, ratably among the Lenders, the Issuing Lender, the Hedge Banks and the Cash Management Banks in proportion to the respective amounts described in this clause Fourth payable to them; and

Last, the balance, if any, after all of the Secured Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Applicable Law.

Notwithstanding the foregoing, Secured Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements shall be excluded from the application described above if the Administrative Agent has not received written notice thereof, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be. Each Cash Management Bank or Hedge Bank not a party to this Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Article X for itself and its Affiliates as if a "Lender" party hereto.

SECTION 9.5 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the

Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Lender and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Issuing Lender and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the Issuing Lender and the Administrative Agent under Sections 3.3, 4.3 and 11.3) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the Issuing Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the Issuing Lender, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 3.3, 4.3 and 11.3.

SECTION 9.6 Credit Bidding.

(a) The Administrative Agent, on behalf of the Secured Parties, shall have the right to credit bid and purchase for the benefit of the Secured Parties all or any portion of Collateral at any sale thereof conducted by the Administrative Agent under the provisions of the UCC, including pursuant to Sections 9-610 or 9-620 of the UCC, at any sale thereof conducted under the provisions of the Bankruptcy Code, including Section 363 thereof, or a sale under a plan of reorganization, or at any other sale or foreclosure conducted by the Administrative Agent (whether by judicial action or otherwise) in accordance with Applicable Law. Such credit bid or purchase may be completed through one or more acquisition vehicles formed by the Administrative Agent to make such credit bid or purchase and, in connection therewith, the Administrative Agent is authorized, on behalf of itself and the other Secured Parties, to adopt documents providing for the governance of the acquisition vehicle or vehicles, and assign the applicable Secured Obligations to any such acquisition vehicle in exchange for equity interests and/or debt issued by the applicable acquisition vehicle (which shall be deemed to be held for the ratable account of the applicable Secured Parties on the basis of the Secured Obligations so assigned by each Secured Party); provided that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof, shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in Section 11.2.

(b) Each of the Lenders (on behalf of itself and any of its Affiliates that is a Secured Party) and the Issuing Lender hereby agrees that, except as otherwise provided in any Loan Documents or with the written consent of the Administrative Agent and the Required Lenders, it will not take any enforcement action, accelerate obligations under any Loan Documents, or exercise any right that it might otherwise have under Applicable Law to credit bid at foreclosure sales, UCC sales or other similar dispositions of Collateral.

ARTICLE X THE ADMINISTRATIVE AGENT

SECTION 1.10 Appointment and Authority.

(a) Each of the Lenders (including in its capacity as a potential Hedge Bank or Cash Management Bank) and the Issuing Lender hereby irrevocably designates and appoints Wells Fargo to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto (including entering into, on behalf of the Secured Parties, one or more intercreditor and/or subordination agreements with respect to any Junior Financing permitted hereunder). Without limiting the generality of the foregoing, each Secured Party acknowledges that it has received a copy of the Intercreditor Agreement, consents to and authorizes the Administrative Agent's execution and delivery thereof on behalf of such Secured Party and agrees to be bound by the terms and provisions thereof. Each Secured Party further consents to and authorizes the Administrative Agent's execution and delivery of any amendments thereto or additional intercreditor or subordination agreements from time to time as contemplated by the terms hereof on behalf of such Secured Party and agrees to be bound by the terms and provisions thereof. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the Issuing Lender, and neither the Borrower nor any Subsidiary or Affiliate thereof shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any Applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(b) The Administrative Agent shall also act as the "collateral agent" under the Loan Documents, and each of the Lenders (including in its capacity as a potential Hedge Bank or Cash Management Bank) and the Issuing Lender hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender and the Issuing Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Secured Obligations, together with such powers and discretion as are reasonably incidental thereto (including, without limitation, to enter into additional Loan Documents or supplements to existing Loan Documents on behalf of the Secured Parties). In this connection, the Administrative Agent, as "collateral agent" and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to this Article X for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent, shall be entitled to the benefits of all provisions of this Articles X and XI (including Section 11.3, as though such co-agents, sub-agents and attorneys-in-fact were the "collateral agent" under the Loan Documents) as if set forth in full herein with respect thereto.

SECTION 10.2 Rights as a Lender. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

SECTION 10.3 Exculpatory Provisions.

(a) The Administrative Agent, the Arrangers and their respective Related Parties shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder and thereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent, the Arrangers and their respective Related Parties :

(i) shall not be subject to any agency, trust, fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing;

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or Applicable Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(iii) shall not, except as expressly set forth herein and in the other Loan Documents with respect to notices, reports and other documents required to be furnished by the Administrative Agent to the Lenders, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Subsidiaries or Affiliates that is communicated to ~~or~~ obtained by or otherwise in the possession of the Person serving as the Administrative Agent , an Arranger or any of ~~its Affiliates~~ their respective Related Parties in any capacity.

(b) The Administrative Agent , the Arrangers and their respective Related Parties shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 11.2 and Section 9.2) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final non-appealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default and indicating that such notice is a "Notice of Default" is given to the Administrative Agent by the Borrower, a Lender or the Issuing Lender.

(c) The Administrative Agent , the Arrangers and their respective Related Parties shall not be responsible for or have any duty or obligations to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article V or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

SECTION 10.4 Reliance by the Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the Issuing Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender or the Issuing Lender unless the Administrative Agent shall have received notice to the contrary from such Lender or the Issuing Lender prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

SECTION 10.5 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any

one or more sub agents appointed by the Administrative Agent. The Administrative Agent and any such sub agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub agent and to the Related Parties of the Administrative Agent and any such sub agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided herein as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

SECTION 10.6 Resignation of Administrative Agent.

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders, the Issuing Lender and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the "Resignation Effective Date"), then the retiring Administrative Agent may (but shall not be obligated to), on behalf of the Lenders and the Issuing Lender, appoint a successor Administrative Agent meeting the qualifications set forth above. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) With effect from the Resignation Effective Date, (i) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent or the Collateral Agent on behalf of the Lenders or the Issuing Lender under any of the Loan Documents, the retiring Administrative Agent or the Collateral Agent shall continue to hold such collateral security until such time as a successor Administrative Agent or Collateral Agent is appointed) and (ii) except for any indemnity payments owed to the retiring Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and the Issuing Lender directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Administrative Agent (other than any rights to indemnity payments owed to the retiring Administrative Agent), and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents. The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 11.3 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

(c) Any resignation by Wells Fargo as Administrative Agent pursuant to this Section shall also constitute its resignation as Issuing Lender and Swingline Lender. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Lender and Swingline Lender, (ii) the retiring Issuing Lender and Swingline Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (iii) the successor Issuing Lender shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangement satisfactory to the retiring Issuing Lender to effectively assume the obligations of the retiring Issuing Lender with respect to such Letters of Credit.

SECTION 10.7 Non-Reliance on Administrative Agent and Other Lenders. Each Lender and the Issuing Lender expressly acknowledges that none of the Administrative Agent, the Arrangers or any of their respective Related Parties has made any representations or warranties to it and that no act taken or failure to act by the Administrative Agent, the Arrangers or any of their respective Related Parties, including any consent to, and acceptance of any assignment or review of the affairs of the Borrower and its Subsidiaries or Affiliates shall be deemed to constitute a representation or warranty of the Administrative Agent, the Arrangers or any of their respective Related Parties to any Lender, the Issuing Lender or any other Secured Party as to any matter, including whether the Administrative Agent, the Arrangers or any of their respective Related Parties have disclosed material information in their (or their respective Related Parties') possession. Each Lender and the Issuing Lender expressly acknowledges, represents and warrants to the Administrative Agent and the Arrangers that (a) the Loan Documents set forth the terms of a commercial lending facility, (b) it is engaged in making, acquiring, purchasing or holding commercial loans in the ordinary course and is entering into this Agreement and the other Loan Documents to which it is a party as a Lender for the purpose of making, acquiring, purchasing and/or holding the commercial loans set forth herein as may be applicable to it, and not for the purpose of making, acquiring, purchasing or holding any other type of financial instrument, (c) it is sophisticated with respect to decisions to make, acquire, purchase or hold the commercial loans applicable to it and either it or the Person exercising discretion in making its decisions to make, acquire, purchase or hold such commercial loans is experienced in making, acquiring, purchasing or holding commercial loans, (d) it has, independently and without reliance upon the Administrative Agent ~~or, the Arrangers,~~ any other Lender or any of their respective Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and appraisal of, and investigations into, the business, prospects, operations, property, assets, liabilities, financial and other condition and creditworthiness of the Borrower and its Subsidiaries, all applicable bank or other regulatory Applicable Laws relating to the transactions contemplated by this Agreement and the other Loan Documents and (e) it has made its own independent decision to enter into this Agreement and the other Loan Documents to which it is a party and to extend credit hereunder and thereunder. Each Lender and the Issuing Lender also acknowledges that (i) it will, independently and without reliance upon the Administrative Agent, the Arrangers or any other Lender or any of their respective Related Parties ~~and based on such documents and information as it shall from time to time deem appropriate,~~ (A) continue to make its own credit analysis, appraisals and decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder based on such documents and information as it shall from time to time deem appropriate and its own independent investigations and (B) continue to make such investigations and inquiries as it deems necessary to inform itself as to the Borrower and its Subsidiaries and (ii) it will not assert any claim in contravention of this Section 10.7.

SECTION 10.8 No Other Duties, etc. Anything herein to the contrary notwithstanding, none of the syndication agents, documentation agents, co-agents, bookrunners, lead managers, arrangers, lead arrangers or co-arrangers listed on the cover page or signature pages hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or the Issuing Lender hereunder, but each such Person shall have the benefit of the indemnities and exculpatory provisions hereof.

SECTION 10.9 Collateral and Guaranty Matters.

(a) Each of the Lenders (including in its or on behalf of any of its Affiliates in its capacity as a potential Hedge Bank or Cash Management Bank) irrevocably authorize the Administrative Agent and the Collateral Agent, at its option and in its discretion:

(i) to release any Lien on any Collateral granted to or held by the Administrative Agent or the Collateral Agent, for the ratable benefit of the Secured Parties, under any Loan Document (A) upon the termination of the Aggregate Commitments and payment in full of all Secured Obligations (other than (1) contingent indemnification obligations and (2) obligations and liabilities under Secured Cash Management Agreements or Secured Hedge Agreements as to which arrangements satisfactory to the applicable Cash Management Bank or Hedge Bank shall have been made) and the expiration or termination of all Letters of Credit (other than Letters of Credit as to which other arrangements satisfactory to the Administrative Agent and the Issuing Lender shall have been made), (B) that is Disposed of or to be Disposed of as part of or in

connection with any Disposition permitted hereunder or under any other Loan Document, or (C) if approved, authorized or ratified in writing in accordance with Section 11.2;

(ii) to subordinate any Lien on any Collateral granted to or held by the Administrative Agent or the Collateral Agent under any Loan Document to the holder of any Lien permitted by Section 8.3(d); and

(iii) to release any Guarantor from its obligations under any Loan Documents if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's or Collateral Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty Agreement pursuant to this Section 10.9. In each case as specified in this Section 10.9, the Administrative Agent or the Collateral Agent, as applicable, will, at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Security Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Guaranty Agreement, in each case in accordance with the terms of the Loan Documents and this Section 10.9. In the case of any such sale, transfer or disposal of any property constituting Collateral in a transaction constituting an asset disposition permitted pursuant to this Agreement, the Liens created by any of the Security Documents on such property shall be automatically released without need for further action by any person.

(b) The Administrative Agent and the Collateral Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Collateral Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent or the Collateral Agent be responsible or liable to any Lender or the Issuing Lender for any failure to monitor or maintain any portion of the Collateral.

SECTION 10.10 Secured Hedge Agreements and Secured Cash Management Agreements. No Cash Management Bank or Hedge Bank that obtains the benefits of Section 9.4 or any Collateral by virtue of the provisions hereof or of any Guaranty Agreement or any Security Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. ~~Notwithstanding any other provision of this Article X to the contrary, the~~ Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Secured Cash Management Agreements and Secured Hedge Agreements ~~unless the Administrative Agent has received written notice of such Secured Cash Management Agreements and Secured Hedge Agreements, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be.~~

SECTION 10.11 Erroneous Payments.

(a) Each Lender and the Issuing Lender hereby severally agrees that if (i) the Administrative Agent notifies (which such notice shall be conclusive absent manifest error) such Lender or Issuing Lender that the Administrative Agent has determined in its sole discretion that any funds received by such Lender or Issuing Lender from the Administrative Agent or any of its Affiliates were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Lender or Issuing Lender (whether or not known to such Lender or Issuing Lender) or (ii) it receives any payment from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, (y) that was not preceded or accompanied by a notice of payment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment or (z) that such Lender or Issuing Lender otherwise becomes aware was transmitted, or received, in error or by

mistake (in whole or in part) then , in each case an error in payment has been made (any such amounts specified in clauses (i) or (ii) of this Section 10.11(a), whether received as a payment, prepayment or repayment of principal, interest, fees or otherwise; individually and collectively, an “Erroneous Payment”) and the Lender or Issuing Lender, as the case may be, is deemed to have knowledge of such error at the time of its receipt of such Erroneous Payment and to the extent permitted by applicable law, such Lender or Issuing Lender shall not assert any right or claim to the Erroneous Payment, and hereby waives, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payments received, including without limitation waiver of any defense based on “discharge for value” or any similar doctrine.

(b) Without limiting the immediately preceding clause (a), each Lender and the Issuing Lender agrees that, in the case of clause (a)(ii) above, it shall promptly (and, in all events, within one Business Day of its knowledge (or deemed knowledge) of such error) notify the Administrative Agent in writing of such occurrence and, in the case of either clause (a)(i) or (a)(ii) above upon demand from the Administrative Agent, it shall promptly, but in all events no later than one Business Day thereafter, return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Lender or Issuing Lender to the date such amount is repaid to the Administrative Agent in same day funds at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect.

(c) The Borrower and each other Loan Party hereby agrees that (x) in the event an Erroneous Payment (or portion thereof) is not recovered from any Lender or Issuing Lender that has received such Erroneous Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights of such Lender or Issuing Lender with respect to such amount, (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Loan Party and (z) to the extent that an Erroneous Payment was in any way or at any time credited as payment or satisfaction of any of the Obligations, the Obligations or any part thereof that were so credited, and all rights of the applicable Lender, Issuing Lender, Administrative Agent or other Secured Party, as the case may be, shall be reinstated and continue in full force and effect as if such payment or satisfaction had never been received.

(d) Each party’s obligations under this Section 10.11 shall survive the resignation or replacement of the Administrative Agent or any transfer of right or obligations by, or the replacement of, a Lender, the termination of the Commitments or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

ARTICLE XI MISCELLANEOUS

SECTION 1.11 Notices.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows:

If to the Borrower:

MGP Ingredients, Inc.
100 Commercial Street
P.O. Box 130
Atchison, Kansas 66002
Attention of: Brandon Gall
Telephone No.: (913) 360-5236

Facsimile No.: (913) 360-5736
E-mail: brandon.gall@mgingredients.com

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

Stinson, LLP
1201 Walnut Street, Suite 2900
Kansas City, Missouri 64106
Attention: Mark Ovington
Facsimile No.: (816) 412-8148
E-mail: mark.ovington@stinson.com

If to Wells Fargo as Administrative Agent:

Wells Fargo Bank, National Association
MAC D1109-019
1525 West W.T. Harris Blvd.
Charlotte, NC 28262
Attention of: Syndication Agency Services
Telephone No.: (704) 590-2706
Facsimile No.: (844) 879-5899

With copies to:

Wells Fargo Bank, National Association
1100 Abernathy Road, Suite 1130
MAC G0189-112
Sandy Springs, Georgia 30328
Attention: Ken Washington
Telephone No.: (470) 307-4453
Facsimile No.: (470) 307-4482
E-mail: ken.washington@wellsfargo.com

If to any Lender:

To the address of such Lender set forth on the Register with respect to deliveries of notices and other documentation that may contain material non-public information.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through electronic communications to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b). 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.

(b) Electronic Communications. Notices and other communications to the Lenders and the Issuing Lender hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices to any Lender or the Issuing Lender pursuant to Article II or III if such Lender or the Issuing Lender, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an

e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii) above, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or other communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) Administrative Agent's Office. The Administrative Agent hereby designates its office located at the address set forth above, or any subsequent office which shall have been specified for such purpose by written notice to the Borrower and Lenders, as the Administrative Agent's Office referred to herein, to which payments due are to be made and at which Loans will be disbursed and Letters of Credit requested.

(d) Change of Address, Etc. Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto.

(e) Platform.

(i) Each Loan Party agrees that the Administrative Agent may, but shall not be obligated to, make the Borrower Materials available to the Issuing Lender and the Lenders by posting the Borrower Materials on the Platform.

(ii) The Platform is provided "as is" and "as available." The Agent Parties (as defined below) do not warrant the accuracy or completeness of the Borrower Materials or the adequacy of the Platform, and expressly disclaim liability for errors or omissions in the Borrower Materials. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Borrower Materials or the Platform. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to any Loan Party, any Lender or any other Person or entity for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of any Loan Party's or the Administrative Agent's transmission of communications through the Internet (including, without limitation, the Platform), except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided that in no event shall any Agent Party have any liability to any Loan Party, any Lender, the Issuing Lender or any other Person for indirect, special, incidental, consequential or punitive damages, losses or expenses (as opposed to actual damages, losses or expenses).

(f) Private Side Designation. Each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and Applicable Law, including United States Federal and state securities Applicable Laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States Federal or state securities Applicable Laws.

SECTION 11.2 Amendments, Waivers and Consents. Except as set forth below or as specifically provided in any Loan Document (including Section 4.8(c)), any term, covenant, agreement or condition of this Agreement or any of the other Loan Documents may be amended or waived by the Lenders, and any consent given by the Lenders, if, but only if, such amendment, waiver or consent is in writing signed by the Required Lenders (or by the Administrative Agent with the consent of the Required Lenders) and

delivered to the Administrative Agent and, in the case of an amendment, signed by the Borrower or the applicable Loan Party, as the case may be; provided that no amendment, waiver or consent shall:

- (a) increase or extend the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 9.2) or increase the amount of Loans of any Lender, in any case, without the written consent of such Lender;
- (b) waive, extend or postpone any date fixed by this Agreement or any other Loan Document for any payment (excluding mandatory prepayments) of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document without the written consent of each Lender directly and adversely affected thereby;
- (c) reduce the principal of, or the rate of interest specified herein on, any Loan or Reimbursement Obligation, or (subject to clauses (iv) and (vi) of the second proviso to this Section) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender directly and adversely affected thereby; provided that only the consent of the Required Lenders shall be necessary (i) to waive or reduce any obligation of the Borrower to pay interest at the rate set forth in Section 4.1(c) during the continuance of an Event of Default or (ii) to amend any financial covenant hereunder (or any defined term used therein), or to waive any Default or Event of Default resulting from the breach of any financial or other covenant hereunder, even if the effect of such amendment or waiver would be to reduce the rate of interest on any Loan or L/C Obligation or to reduce any fee payable hereunder;
- (d) change Section 4.6 or Section 9.4 in a manner that would alter the pro rata sharing of payments or order of application required thereby without the written consent of each Lender directly and adversely affected thereby;
- (e) change any provision of this Section or reduce the percentage specified in the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender directly and adversely affected thereby;
- (f) consent to the assignment or transfer by any Loan Party of such Loan Party's rights and obligations under any Loan Document to which it is a party (except as permitted pursuant to Section 8.4), in each case, without the written consent of each Lender;
- (g) release (i) all of the Guarantors or (ii) Guarantors comprising substantially all of the credit support for the Secured Obligations, in any case, from the Guaranty Agreement (other than as authorized in Section 10.9), without the written consent of each Lender;
- (h) release all or substantially all of the Collateral or terminate any Security Document (other than as authorized in Section 10.9 or as otherwise specifically permitted or contemplated in this Agreement or the applicable Security Document) without the written consent of each Lender; or
- (i) other than as set forth in Section 10.9(a)(ii) with respect to Liens permitted under Section 8.3(d) (with respect to each such Section, as in effect on the Amendment No. 2 Effective Date), (i) subordinate any of the Obligations in right of payment or otherwise adversely affect the priority of payment of any of such Obligations or (ii) subordinate any of the Liens securing the Obligations, in each case without the consent of each Lender directly and adversely affected thereby;

provided further, that (i) no amendment, waiver or consent shall, unless in writing and signed by the Issuing Lender in addition to the Lenders required above, affect the rights or duties of the Issuing Lender under this Agreement or any Letter of Credit Application relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Swingline Lender in addition to the Lenders required above, affect the rights or duties of the Swingline Lender under this Agreement; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the

Administrative Agent under this Agreement or any other Loan Document; (iv) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto; (v) the Administrative Agent and the Borrower shall be permitted to amend any provision of the Loan Documents (and such amendment shall become effective without any further action or consent of any other party to any Loan Document) if the Administrative Agent and the Borrower shall have jointly identified an obvious error or any error, ambiguity, defect or inconsistency or omission of a technical or immaterial nature in any such provision; and (vi) the Administrative Agent may, without the consent of any Lender, enter into amendments or modifications to this Agreement or any of the other Loan Documents or to enter into additional Loan Documents in order to implement any Benchmark Replacement or any ~~Benchmark Replacement~~ Conforming Changes or otherwise effectuate the terms of Section 4.8(c) in accordance with the terms of Section 4.8(c). Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Commitment of such Lender may not be increased or extended without the consent of such Lender.

Notwithstanding anything in this Agreement to the contrary, each Lender hereby irrevocably authorizes the Administrative Agent on its behalf, and without further consent, to enter into amendments or modifications to this Agreement (including, without limitation, amendments to this Section 11.2) or any of the other Loan Documents or to enter into additional Loan Documents as the Administrative Agent reasonably deems appropriate in order to effectuate the terms of Section 2.7 (including, without limitation, as applicable, (1) to permit the Revolving Credit Increases to share ratably in the benefits of this Agreement and the other Loan Documents and (2) to include the Revolving Credit Increase and outstanding Revolving Credit Increase in any determination of (i) Required Lenders or (ii) similar required lender terms applicable thereto); provided that no amendment or modification shall result in any increase in the amount of any Lender's Commitment or any increase in any Lender's Commitment Percentage, in each case, without the written consent of such affected Lender.

SECTION 11.3 Expenses; Indemnity.

(a) Costs and Expenses. The Borrower shall pay (i) all reasonable and documented out of pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Administrative Agent), in connection with the syndication of the credit facilities provided herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable and documented out of pocket expenses incurred by the Issuing Lender in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all reasonable and documented out of pocket expenses incurred by the Administrative Agent, any Lender or the Issuing Lender (including the fees, charges and disbursements of any counsel for the Administrative Agent, any Lender or the Issuing Lender), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such out of pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and the Issuing Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, and shall pay or reimburse any such Indemnitee for, any and all losses, claims (including, without limitation, any Environmental Claims), damages, liabilities and related expenses (including the reasonable and documented fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Borrower or any Guarantor), other than such Indemnitee and its Related Parties, arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the Issuing Lender to honor a demand for payment

under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or Release of Hazardous Materials on or from any property owned or operated by the Borrower, any Subsidiary or any other Loan Party, or any Environmental Claim related in any way to the Borrower, any Subsidiary or any other Loan Party, (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower, any Subsidiary or any other Loan Party, and regardless of whether any Indemnitee is a party thereto, or (v) any claim (including, without limitation, any Environmental Claims), investigation, litigation or other proceeding (whether or not the Administrative Agent or any Lender is a party thereto) and the prosecution and defense thereof, arising out of or in any way connected with the Loans, this Agreement, any other Loan Document, or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby, including without limitation, reasonable and documented attorneys' and consultant's fees; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (A) are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (B) result from a claim brought by the Borrower or any Subsidiary against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if the Borrower or such Subsidiary has obtained a final and non-appealable judgment in its favor on such claim as determined by a court of competent jurisdiction. This Section 11.3(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), the Issuing Lender, the Swingline Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the Issuing Lender, the Swingline Lender or such Related Party, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's Commitment Percentage at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender); provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent), the Issuing Lender or the Swingline Lender in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent), Issuing Lender or the Swingline Lender in connection with such capacity. The obligations of the Lenders under this clause (c) are subject to the provisions of Section 4.7.

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by Applicable Law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in clause (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) Payments. All amounts due under this Section shall be payable within ten (10) days after demand therefor.

(f) Survival. Each party's obligations under this Section shall survive the termination of the Loan Documents and payment of the obligations thereunder.

SECTION 11.4 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender, the Issuing Lender, the Swingline Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Administrative Agent, to the fullest extent permitted by Applicable Law, to set off and apply any and all

deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, the Issuing Lender, the Swingline Lender or any such Affiliate to or for the credit or the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement or any other Loan Document to such Lender, the Issuing Lender or the Swingline Lender or any of their respective Affiliates, irrespective of whether or not such Lender, the Issuing Lender, the Swingline Lender or any such Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower may be contingent or unmatured or are owed to a branch or office of such Lender, the Issuing Lender, the Swingline Lender or such Affiliate different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 9.4 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing Lender, the Swingline Lender and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, the Issuing Lender, the Swingline Lender and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the Issuing Lender, the Swingline Lender or their respective Affiliates may have. Each of the Lenders, the Issuing Lender and the Swingline Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application.

SECTION 11.5 Governing Law; Jurisdiction, Etc.

(a) Governing Law. This Agreement and the other Loan Documents and any claim, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement or any other Loan Document (except, as to any other Loan Document, as expressly set forth therein) and the transactions contemplated hereby and thereby shall be governed by, and construed in accordance with, the law of the State of New York.

(b) Submission to Jurisdiction. The Borrower and each other Loan Party irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against the Administrative Agent, any Lender, any Issuing Lender, the Swingline Lender, or any Related Party of the foregoing in any way relating to this Agreement or any other Loan Document or the transactions relating hereto or thereto, in any forum other than the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by Applicable Law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or in any other Loan Document shall affect any right that the Administrative Agent, any Lender, any Issuing Lender or the Swingline Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against the Borrower or any other Loan Party or its properties in the courts of any jurisdiction.

(c) 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 or any other Loan Document in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by Applicable Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Service of Process. Each party hereto irrevocably consents to service of process in the manner provided for notices in Section 11.1. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by Applicable Law.

SECTION 11.6 Waiver of Jury Trial. EACH PARTY 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 ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER 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 AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 11.7 Reversal of Payments. To the extent any Loan Party makes a payment or payments to the Administrative Agent for the ratable benefit of the Secured Parties or the Administrative Agent receives any payment or proceeds of the Collateral which payments or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any Debtor Relief Law, other Applicable Law or equitable cause, then, to the extent of such payment or proceeds repaid, the Obligations or part thereof intended to be satisfied shall be revived and continued in full force and effect as if such payment or proceeds had not been received by the Administrative Agent.

SECTION 11.8 Injunctive Relief. The Borrower recognizes that, in the event the Borrower fails to perform, observe or discharge any of its obligations or liabilities under this Agreement, any remedy of law may prove to be inadequate relief to the Lenders. Therefore, the Borrower agrees that the Lenders, at the Lenders' option, shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving actual damages.

SECTION 11.9 Successors and Assigns; Participations.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of paragraph (b) of this Section, (ii) by way of participation in accordance with the provisions of paragraph (d) of this Section or (iii) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (e) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and/or the Loans at the time owing to it or

contemporaneous assignments to related Approved Funds that equal at least the amount specified in paragraph (b)(i)(B) of this Section in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in paragraph (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than \$5,000,000, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed);

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loan or the Commitment assigned;

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by paragraph (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (x) an Event of Default has occurred and is continuing at the time of such assignment or (y) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required if such assignment is to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund; and

(C) the consents of the Issuing Lender and the Swingline Lender shall be required for any assignment.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500 for each assignment; provided that (A) only one such fee will be payable in connection with simultaneous assignments to two or more related Approved Funds by a Lender and (B) the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made to (A) the Borrower or any of the Borrower's Subsidiaries or Affiliates or (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B).

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person).

(vii) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall

make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or sub-participations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested, but not funded by, the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (A) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, the Issuing Lender, the Swingline Lender and each other Lender hereunder (and interest accrued thereon), and (B) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swingline Loans in accordance with its Commitment Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under Applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to paragraph (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 4.8, 4.9, 4.10, 4.11 and 11.3 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (d) of this Section (other than a purported assignment to a natural Person or the Borrower or any of the Borrower's Affiliates, which shall be null and void).

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices in Charlotte, North Carolina, a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amounts of (and stated interest on) the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender (but only to the extent of entries in the Register that are applicable to such Lender), at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural Person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person, or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent, the Issuing Lender, the Swingline Lender and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 11.3(c) with respect to any payments made by such Lender to its Participant(s).

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification

or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver or modification described in the first proviso to Section 11.2 that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 4.9, 4.10 and 4.11 (subject to the requirements and limitations therein, including the requirements under Section 4.11(g) (it being understood that the documentation required under Section 4.11(g) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Section 4.12 as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under Sections 4.10 or 4.11, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 4.12(b) with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.4 as though it were a Lender; provided that such Participant agrees to be subject to Section 4.6 as though it were a Lender.

Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts of (and stated interest on) each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

SECTION 11.10 Treatment of Certain Information; Confidentiality. Each of the Administrative Agent, the Lenders and the Issuing 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 (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 rating agency, or regulatory or similar authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by Applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies under this Agreement, under any other Loan Document or under any Secured Hedge Agreement or Secured Cash Management Agreement, or any action or proceeding relating to this Agreement, any other Loan Document or any Secured Hedge Agreement or Secured Cash Management Agreement, or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights 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; (g) on a confidential basis to the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Revolving Credit Facility; (h)

with the consent of the Borrower, (i) to Gold Sheets and other similar bank trade publications and bank market data collectors, such information to consist of deal terms and other information customarily found in such publications, (j) 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 Administrative Agent, any Lender, the Issuing Lender or any of their respective Affiliates on a non-confidential basis from a source other than the Borrower or (k) to governmental regulatory authorities in connection with any regulatory examination of the Administrative Agent or any Lender or in accordance with the Administrative Agent's or any Lender's regulatory compliance policy if the Administrative Agent or such Lender deems necessary for the mitigation of claims by those authorities against the Administrative Agent or such Lender or any of its subsidiaries or affiliates. For purposes of this Section, "Information" means all information received from any member of the Consolidated Group relating to such Person or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or the Issuing Lender on a non-confidential basis prior to disclosure by any member of the Consolidated Group; provided that, in the case of information received from any member of the Consolidated Group after the date hereof, such information (other than information delivered pursuant to Section 7.2(c) or (d)) is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

SECTION 11.11 Performance of Duties. Each of the Loan Party's obligations under this Agreement and each of the other Loan Documents shall be performed by such Loan Party at its sole cost and expense.

SECTION 11.12 All Powers Coupled with Interest. All powers of attorney and other authorizations granted to the Lenders, the Administrative Agent and any Persons designated by the Administrative Agent or any Lender pursuant to any provisions of this Agreement or any of the other Loan Documents shall be deemed coupled with an interest and shall be irrevocable so long as any of the Obligations remain unpaid or unsatisfied, any of the Commitments remain in effect or the credit facility established hereunder has not been terminated.

SECTION 11.13 Survival.

(a) All representations and warranties set forth in Article VI and all representations and warranties contained in any certificate or in any of the Loan Documents (including, but not limited to, any such representation or warranty made in or in connection with any amendment thereto) shall constitute representations and warranties made under this Agreement. All representations and warranties made under this Agreement shall be made or deemed to be made at and as of the Closing Date (except those that are expressly made as of a specific date), shall survive the Closing Date and shall not be waived by the execution and delivery of this Agreement, any investigation made by or on behalf of the Lenders or any borrowing hereunder.

(b) Notwithstanding any termination of this Agreement, the indemnities to which the Administrative Agent, the Lenders and the other Indemnitees are entitled under the provisions of this Article XI and any other provision of this Agreement and the other Loan Documents shall continue in full force and effect and shall protect the Administrative Agent, the Lenders and the other Indemnitees against events arising after such termination as well as before.

SECTION 11.14 Titles and Captions. Titles and captions of Articles, Sections and subsections in, and the table of contents of, this Agreement are for convenience only, and neither limit nor amplify the provisions of this Agreement.

SECTION 11.15 Severability of Provisions. Any provision of this Agreement or any other Loan Document which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remainder of such provision or the remaining provisions hereof or thereof or affecting the validity or enforceability of such provision in any other jurisdiction. In the event that any provision is held to be so prohibited or unenforceable in any jurisdiction, the Administrative Agent, the Lenders and the Borrower shall negotiate

in good faith to amend such provision to preserve the original intent thereof in such jurisdiction (subject to the approval of the Required Lenders).

SECTION 11.16 Counterparts; Integration; Effectiveness; Electronic Execution.

(a) Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents, and any separate letter agreements with respect to fees payable to the Administrative Agent, the Issuing Lender, the Swingline Lender and/or the Arrangers constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 5.1, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or in electronic (i.e., “pdf” or “tif”) format shall be effective as delivery of a manually executed counterpart of this Agreement.

(b) Electronic Execution. The words “execute,” “execution,” “signed,” “signature,” “delivery” and words of like import in or related to this Agreement, any other Loan Document or any document, amendment, approval, consent, waiver, modification, information, notice, certificate, report, statement, disclosure, or authorization to be signed or delivered in connection with this Agreement or any other Loan Document or the transactions contemplated hereby shall be deemed to include Electronic Signatures or execution in the form of an Electronic Record, and contract formations on electronic platforms approved by the Administrative Agent, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act. Each party hereto agrees that any Electronic Signature or execution in the form of an Electronic Record shall be valid and binding on itself and each of the other parties hereto to the same extent as a manual, original signature. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by the parties of a manually signed paper which has been converted into electronic form (such as scanned into PDF format), or an electronically signed paper converted into another format, for transmission, delivery and/or retention. Notwithstanding anything contained herein to the contrary, the Administrative Agent is under no obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it; provided that without limiting the foregoing, (a) to the extent the Administrative Agent has agreed to accept such Electronic Signature from any party hereto, the Administrative Agent and the other parties hereto shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of the executing party without further verification and (b) upon the request of the Administrative Agent or any Lender, any Electronic Signature shall be promptly followed by an original manually executed counterpart thereof. Without limiting the generality of the foregoing, each party hereto hereby (i) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among the Administrative Agent, the Lenders and any of the Loan Parties, electronic images of this Agreement or any other Loan Document (in each case, including with respect to any signature pages thereto) shall have the same legal effect, validity and enforceability as any paper original, and (ii) waives any argument, defense or right to contest the validity or enforceability of the Loan Documents based solely on the lack of paper original copies of any Loan Documents, including with respect to any signature pages thereto.

SECTION 11.17 Term of Agreement. This Agreement shall remain in effect from the Closing Date through and including the date upon which all Obligations (other than contingent indemnification or similar obligations not then due) arising hereunder or under any other Loan Document shall have been indefeasibly and irrevocably paid and satisfied in full, all Letters of Credit have expired, been terminated or been Cash Collateralized and the Aggregate Commitments have expired or been terminated. No termination of this Agreement shall affect the rights and obligations of the parties hereto

arising prior to such termination or in respect of any provision of this Agreement which survives such termination.

SECTION 11.18 USA PATRIOT Act; Anti-Money Laundering Laws. The Administrative Agent and each Lender subject to the PATRIOT Act hereby notifies the Borrower that pursuant to the requirements of the PATRIOT Act or any other Anti-Money Laundering Laws, each of them is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender to identify each Loan Party in accordance with the PATRIOT Act or such Anti-Money Laundering Laws.

SECTION 11.19 Independent Effect of Covenants. The Borrower expressly acknowledges and agrees that each covenant contained in Articles VII or VIII shall be given independent effect. Accordingly, the Borrower shall not engage in any transaction or other act otherwise permitted under any covenant contained in Articles VII or VIII, before or after giving effect to such transaction or act, the Borrower shall or would be in breach of any other covenant contained in Articles VII or VIII.

SECTION 11.20 Inconsistencies with Other Documents. In the event there is a conflict or inconsistency between this Agreement and any other Loan Document, the terms of this Agreement shall control; provided that any provision of the Security Documents or the Guaranty Agreement which imposes additional burdens on any member of the Consolidated Group or further restricts the rights of any member of the Consolidated Group or gives the Administrative Agent or Lenders additional rights shall not be deemed to be in conflict or inconsistent with this Agreement and shall be given full force and effect.

SECTION 11.21 Keepwell. The Borrower hereby absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Guarantor as may be needed by such Guarantor from time to time to honor all of its obligations under the Guaranty Agreement and the other Loan Documents to which it is a party in respect of Swap Obligations that would, in absence of the agreement in this Section 11.21, otherwise constitute Excluded Swap Obligations (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering the Borrower's obligations and undertakings under this Section 11.21 voidable under Applicable Law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations and undertakings of the Borrower under this Section 11.21 shall remain in full force and effect until the Secured Obligations (other than indemnity and similar obligations that are not then due and payable) have been indefeasibly paid and performed in full and the Aggregate Commitments have been terminated. The Borrower intends this Section 11.21 to constitute, and this Section 11.21 shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each Guarantor for all purposes of the Commodity Exchange Act.

SECTION 11.22 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and
- (b) the effects of any Bail-in Action on any such liability, including, if applicable
 - (i) a reduction in full or in part or cancellation of any such liability;
 - (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of

ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

SECTION 11.23 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, each Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit or the Commitments;

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement;

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of subsections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement; or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, each Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that none of the Administrative Agent, any Arranger and their respective Affiliates is a fiduciary with respect to the assets of such Lender involved in such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

SECTION 11.24 Acknowledgement Regarding Any Supported OFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Hedge Agreements or any

other agreement or instrument that is a QFC (such support, “QFC Credit Support” and, each such QFC, a “Supported QFC”), the parties acknowledge and agree as follows with respect to the resolution power of the FDIC under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 11.24, the following terms have the following meanings:

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

“Covered Entity” means any of the following:

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

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

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

[Remainder of page intentionally left blank; signature pages follow]

Annex B

Exhibit B (Form of Notice of Borrowing), Exhibit D (Form of Notice of Prepayment) and Exhibit E (Form of Notice of Conversion/Continuation)

See attached.

EXHIBIT B
to
Credit Agreement
dated as of February 14, 2020
by and among
MGP Ingredients, Inc.,
as Borrower,
the lenders from time to time party thereto,
as Lenders,
and
Wells Fargo Bank, National Association,
as Administrative Agent,
Swingline Lender and Issuing Lender

FORM OF NOTICE OF BORROWING

NOTICE OF BORROWING

Dated as of: _____, 20__

Wells Fargo Bank, National Association,
as Administrative Agent
MAC D 1109-019
1525 West W.T. Harris Blvd.
Charlotte, North Carolina 28262
Attention: Syndication Agency Services
Telephone No.: (704) 590-2706
Wells Fargo Bank, National Association
1100 Abernathy Road, Suite 1130
MAC G0189-112
Sandy Springs, Georgia 30328
Attention: Ken Washington
Facsimile No.: (470) 307-4482
E-mail: ken.washington@wellsfargo.com

Ladies and Gentlemen:

This Notice of Borrowing is delivered to you pursuant to Section 2.3 of the Credit Agreement dated as of February 14, 2020 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among MGP Ingredients, Inc., a Kansas corporation (the "Borrower"), the lenders from time to time party thereto, as Lenders, and Wells Fargo Bank, National Association, as Administrative Agent, Swingline Lender and Issuing Lender. Capitalized terms used herein and not defined herein shall have the meanings assigned thereto in the Credit Agreement.

1. The Borrower hereby requests [a Revolving Credit Borrowing] [a Swingline Borrowing] in the principal amount of \$ _____ (complete with an amount in accordance with Section 2.3 of the Credit Agreement).

2. The Borrower hereby requests that such Borrowing be made on the following Business Day: _____. (Complete with a Business Day in accordance with Section 2.3 of the Credit Agreement).

3. **[The Borrower hereby requests that such Borrowing be a Borrowing of [Base Rate Loans] [Daily Simple SOFR Loans][Term SOFR Loans]]¹.**

4. In the case of a Borrowing of Term SOFR Loans, the Borrower hereby requests that such Borrowing be made with the following Interest Period(s):

Portion of Borrowing	Interest Period
\$[_____]	
\$[_____]	

¹ Only applicable for Revolving Credit Borrowings. All Swingline Borrowings are Base Rate Loans.

5. The aggregate principal amount of all Loans and L/C Obligations outstanding as of the date hereof (including the Loan(s) requested herein) does not exceed the maximum amount permitted to be outstanding pursuant to the terms of the Credit Agreement.

6. All of the conditions applicable to the Borrowing requested herein as set forth in the Credit Agreement have been satisfied as of the date hereof and will remain satisfied to the date of such Borrowing.

[Signature Page Follows]

Exhibit B
Form of Notice of Borrowing

IN WITNESS WHEREOF, the undersigned has executed this Notice of Borrowing as of the day and year first written above.

MGP INGREDIENTS, INC.

By: _____

Name:

Title:

Exhibit B
Form of Notice of Borrowing

EXHIBIT D
to
Credit Agreement
dated as of February 14, 2020
by and among
MGP Ingredients, Inc.,
as Borrower,
the lenders from time to time party thereto,
as Lenders,
and
Wells Fargo Bank, National Association,
as Administrative Agent,
Swingline Lender and Issuing Lender

FORM OF NOTICE OF PREPAYMENT

NOTICE OF PREPAYMENT

Dated as of: _____, 20__

Wells Fargo Bank, National Association,
as Administrative Agent
MAC D 1109-019
1525 West W.T. Harris Blvd.
Charlotte, North Carolina 28262
Attention: Syndication Agency Services
Telephone No.: (704) 590-2706
Wells Fargo Bank, National Association
1100 Abernathy Road, Suite 1130
MAC G0189-112
Sandy Springs, Georgia 30328
Attention: Ken Washington
Facsimile No.: (470) 307-4482
E-mail: ken.washington@wellsfargo.com

Ladies and Gentlemen:

This Notice of Prepayment is delivered to you pursuant to Section 2.4(c) of the Credit Agreement dated as of February 14, 2020 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among MGP Ingredients, Inc., a Kansas corporation (the "Borrower"), the lenders from time to time party thereto, as Lenders, and Wells Fargo Bank, National Association, as Administrative Agent, Swingline Lender and Issuing Lender. Capitalized terms used herein and not defined herein shall have the meanings assigned thereto in the Credit Agreement.

1. The Borrower hereby provides notice to the Administrative Agent that the Borrower shall repay: [check each applicable box]
 - a Swingline Borrowing
 - a Revolving Credit Borrowing

2. The Borrowing(s) or portion(s) thereof to be prepaid are as follows:

Borrowing	Type	Interest Period (if applicable)	Principal Amount
[Revolving Credit][Swingline]	[Base Rate][Daily Simple SOFR] [Term SOFR]		\$[_____]

3. The Borrower shall repay the above-referenced Borrowing(s) on the following Business Day: _____. (Complete with a date no earlier than (i) the same Business Day as of the date of this Notice of Prepayment, with respect to any Borrowing of Swingline Loans or Base Rate Loans, (ii) five (5) U.S. Government Securities Business Days subsequent to the date of this Notice of Prepayment with respect to any Borrowing of Daily Simple SOFR Loans and (iii) three (3) U.S. Government Securities Business Days subsequent to date of this Notice of Prepayment with respect to any Borrowing of Term SOFR Loans.)

[Signature page follows.]

IN WITNESS WHEREOF, the undersigned has executed this Notice of Prepayment as of the day and year first written above.
MGP INGREDIENTS, INC.

By: _____
Name:
Title:

Exhibit D
Form of Notice of Prepayment

EXHIBIT E
to
Credit Agreement
dated as of February 14, 2020
by and among
MGP Ingredients, Inc.,
as Borrower,
the lenders from time to time party thereto,
as Lenders,
and
Wells Fargo Bank, National Association,
as Administrative Agent,
Swingline Lender and Issuing Lender

FORM OF NOTICE OF CONVERSION/CONTINUATION

NOTICE OF CONVERSION/CONTINUATION

Dated as of: _____, 20__

Wells Fargo Bank, National Association,
as Administrative Agent
MAC D 1109-019
1525 West W.T. Harris Blvd.
Charlotte, North Carolina 28262
Attention: Syndication Agency Services
Telephone No.: (704) 590-2706
Wells Fargo Bank, National Association
1100 Abernathy Road, Suite 1130
MAC G0189-112
Sandy Springs, Georgia 30328
Attention: Ken Washington
Facsimile No.: (470) 307-4482
E-mail: ken.washington@wellsfargo.com

Ladies and Gentlemen:

This Notice of Conversion/Continuation (this "Notice") is delivered to you pursuant to Section 4.2 of the Credit Agreement dated as of February 14, 2020 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among MGP Ingredients, Inc., a Kansas corporation (the "Borrower"), the lenders from time to time party thereto, as Lenders, and Wells Fargo Bank, National Association, as Administrative Agent, Swingline Lender and Issuing Lender. Capitalized terms used herein and not defined herein shall have the meanings assigned thereto in the Credit Agreement.

1. This Notice is submitted for the purpose of: (Check one and complete applicable information in accordance with the Credit Agreement.)

Converting all or a portion of a Borrowing of Base Rate Loans into [Daily Simple SOFR Loans][Term SOFR Loans]

Outstanding principal balance: \$ _____

Principal amount to be converted: \$ _____

Requested effective date of conversion: _____

[Requested new Interest Period: _____]²

² Only applicable for converting a Borrowing of Base Rate Loans into Term SOFR Loans.

Converting all or a portion of a Borrowing of [Daily Simple SOFR Loans][Term SOFR Loans] into [Base Rate Loans][Daily Simple SOFR Loans][Term SOFR Loans]

Outstanding principal balance: \$ _____

Principal amount to be converted: \$ _____

[Last day of the current Interest Period: _____]³

Requested effective date of conversion: _____

[Requested new Interest Period: _____]⁴

Continuing all or a portion of a Borrowing of Daily Simple SOFR Loans as Daily Simple SOFR Loans

Outstanding principal balance: \$ _____

Principal amount to be continued: \$ _____

Requested effective date of continuation: _____

Continuing all or a portion of a Borrowing of Term SOFR Loans as Term SOFR Loans

Outstanding principal balance: \$ _____

Principal amount to be continued: \$ _____

Last day of the current Interest Period: _____

Requested effective date of continuation: _____

Requested new Interest Period: _____

2. The aggregate principal amount of all Loans and L/C Obligations outstanding as of the date hereof does not exceed the maximum amount permitted to be outstanding pursuant to the terms of the Credit Agreement.

[Signature page follows.]

³ Only applicable for converting a Borrowing of Term SOFR Loans.

⁴ Only applicable for converting a Borrowing of Daily Simple SOFR Loans into Term SOFR Loans.

IN WITNESS WHEREOF, the undersigned has executed this Notice of Conversion/Continuation as of the day and year first written above.

MGP INGREDIENTS, INC.

By: _____

Name:

Title:

Exhibit E
Form of Notice of Conversion/Continuation

CERTIFICATION

I, David J. Colo, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of MGP Ingredients, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonable likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 3, 2022

/s/ David J. Colo

David J. Colo, President and Chief Executive Officer

CERTIFICATION

I, Brandon M. Gall, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of MGP Ingredients, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonable likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 3, 2022

/s/ Brandon M. Gall

Brandon M. Gall, Vice President, Finance and Chief Financial Officer

CERTIFICATION
OF
PERIODIC REPORT

I, David J. Colo, President and Chief Executive Officer of MGP Ingredients, Inc. (the "Company"), certify, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350, that:

(1) the Quarterly Report on Form 10-Q of the Company for the quarter ended September 30, 2022 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: November 3, 2022

/s/ David J. Colo

David J. Colo

President and Chief Executive Officer

[A signed original of this written statement required by Section 906 has been provided to MGP Ingredients, Inc. and will be retained by MGP Ingredients, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.]

CERTIFICATION
OF
PERIODIC REPORT

I, Brandon M. Gall, Vice President and Chief Financial Officer of MGP Ingredients, Inc. (the "Company"), certify, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350, that:

(1) the Quarterly Report on Form 10-Q of the Company for the quarter ended September 30, 2022 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: November 3, 2022

/s/ Brandon M. Gall

Brandon M. Gall

Vice President, Finance and Chief Financial Officer

[A signed original of this written statement required by Section 906 has been provided to MGP Ingredients, Inc. and will be retained by MGP Ingredients, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.]