

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

FORM 8-K

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

Date of Report (Date of earliest event reported): **November 7, 2022**

ALTO INGREDIENTS, INC.

(Exact Name of Registrant as Specified in Charter)

Delaware

(State or Other Jurisdiction
of Incorporation)

000-21467

(Commission File Number)

41-2170618

(IRS Employer
Identification No.)

**1300 South Second Street
Pekin, Illinois**

(Address of Principal Executive Offices)

61554

(Zip Code)

Registrant's Telephone Number, Including Area Code: **(916) 403-2123**

(Former Name or Former Address, if Changed Since Last Report)

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

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.001 par value	ALTO	The Nasdaq Stock Market LLC (Nasdaq Capital Market)

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2). Emerging growth company ☐

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

Item 1.01. Entry into a Material Definitive Agreement.

Credit Agreement

On November 7, 2022, Alto Ingredients, Inc. (the "Company") entered into a Credit Agreement, dated November 7, 2022 (the "Credit Agreement"), by and among the Company, the Subsidiary Guarantors (as defined in the Credit Agreement) from time to time party thereto, certain funds managed by Orion Infrastructure Capital (collectively, the "Lenders"), and OIC Investment Agent, LLC, as administrative agent and collateral agent ("OIC"), under which the Lenders agreed to extend a senior secured credit facility in an amount of up to \$125,000,000 in accordance with the terms of the Credit Agreement (the "Credit Facility"). The Credit Facility is secured by the grant to OIC, for the benefit of the Lenders and OIC, of a first priority lien on certain assets of the Company and its subsidiaries and a second priority lien on certain assets of Kinergy Marketing LLC, a wholly-owned subsidiary of the Company ("Kinergy"), and Alto Nutrients, LLC, an indirect wholly-owned subsidiary of the Company ("Alto Nutrients").

On the Initial Funding Date (as defined in the Credit Agreement), the Lenders agreed to advance to the Company an aggregate amount not to exceed \$100,000,000, with up to an additional \$25,000,000 from time to time upon the satisfaction of certain conditions as set forth in the Credit Agreement. The Company also agreed to issue to the Lenders an aggregate of 1,282,051 shares of its common stock, par value \$0.001 per share ("Common Stock"), and up to an additional 320,513 shares of Common Stock upon the funding or fundings of any Specified CapEx Loans (as defined in the Credit Agreement) (collectively, the "Participation Shares").

Interest accrues on the unpaid principal amount of the loans under the Credit Facility at a fixed rate of 10% per annum and the loans mature on the earliest to occur of (i) November 7, 2028, or (ii) the date upon which the entire outstanding principal amount of the loans, together with all unpaid interest, fees, charges and costs, are accelerated pursuant to the terms of the Credit Agreement.

The Company is required to make mandatory prepayments of amounts outstanding under the Credit Agreement (without payment of a premium or penalty) on a semi-annual basis beginning with the six-month period ending December 31, 2023 in an amount equal to percentage of Excess Cash Flow (as defined in the Credit Agreement) based on the Company's Leverage Ratio (as defined in the Credit Agreement) in accordance with the following terms: (i) if the Leverage Ratio is greater than or equal to 3.0x, then the prepayment amount will equal 100% of Excess Cash Flow, (ii) if the Leverage Ratio is less than 3.0x and greater than or equal to 1.5x, then the prepayment amount will equal

50% of Excess Cash Flow and (iii) if the Leverage Ratio is less than 1.5x, then the prepayment amount will equal 25% of Excess Cash Flow.

The Credit Agreement also contains customary affirmative covenants for a transaction of this nature, including, among other things, covenants relating to (i) preservation of existence of the Company and its subsidiaries and foreign qualification, (ii) conduct of business, (iii) compliance with laws and obligations, (iv) maintenance of title, (v) maintenance of insurance, (vi) maintenance of adequate financial and accounting books and records, (vii) access to records, (viii) payment of taxes, (ix) delivery of financial statements and other information, and (x) use of proceeds.

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The Credit Agreement also contains customary negative covenants for a transaction of this nature, including, among other things, covenants relating to (i) formation of subsidiaries and capital stock issuances, (ii) indebtedness, (iii) liens, (iv) investments, advances and loans, (v) principal place of business and business activities, (vi) restrictions on certain payments, (vii) use of proceeds, (viii) restrictions on fundamental changes, (ix) dispositions, (x) accounting changes, (xi) amendment or termination of material contracts, (xii) transactions with affiliates, (xiii) hazardous materials, (xiv) restrictions on speculative transactions, (xv) change of auditors, (xvi) capital expenditures, (xvii) the Employee Retirement Income Security Act ("ERISA"), (xviii) amendments to organizational documents, and (xix) restrictions on bank accounts.

The Credit Agreement also contains various events of default (subject to certain grace periods, to the extent applicable), including events of default for (i) the nonpayment of principal, interest or fees, (ii) the inaccuracy of the representations or warranties in any material respect, (iii) the failure to observe or perform certain covenants or agreements, (iv) bankruptcy, (v) certain unsatisfied judgments, (vi) the termination, invalidity or unenforceability of the Credit Agreement and the agreements contemplated thereby, (vii) certain ERISA violations, (viii) change of control, (ix) certain uninsured losses or condemnations, (x) certain abandonments, or (xi) certain defaults under indebtedness. If an event of default occurs, the Company may be required to repay all amounts outstanding under the Credit Agreement.

The Credit Agreement also contains customary representations and warranties and other customary terms and conditions.

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

Amendment No. 6 to Second Amended and Restated Credit Agreement

On November 7, 2022, Kinergy and Alto Nutrients entered into an Amendment No. 6 to Second Amended and Restated Credit Agreement, dated November 7, 2022 ("Amendment No. 6"), by and among Wells Fargo Bank, National Association ("Wells Fargo"), Kinergy and Alto Nutrients further amending that certain Second Amended and Restated Credit Agreement dated August 2, 2017 by and among Wells Fargo, the financial institutions from time to time party thereto as lenders, Kinergy and Alto Nutrients (as amended, the "Second Amended and Restated Credit Agreement").

Under Amendment No. 6, the parties agreed, among other things, to extend the maturity date of the loans under the Second Amended and Restated Credit Agreement from 2023 to 2027. The parties also agreed to amend the fixed charge coverage ratio from not less than 2.00 to 1.00 to not less than 1.10 to 1.00 and amended the amount of cash distributions that Kinergy or Alto Nutrients could make to the Company from up to 50% of excess cash flow to up to 75% of excess cash flow. Under Amendment No. 6, the Company and certain of its subsidiaries also agreed to (i) guarantee the obligations of Kinergy and Alto Nutrients arising under or in connection with the Second Amended and Restated Credit Agreement, and (ii) grant second priority liens on certain of their assets to secure such obligations.

The description of Amendment No. 6 does not purport to be complete and is qualified in its entirety by reference to Amendment No. 6, which is filed as Exhibit 10.2 to this Current Report on Form 8-K and is incorporated herein by this reference.

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Registration Rights Agreement

On November 7, 2022, the Company entered into a registration rights agreement, dated November 7, 2022 (the "Registration Rights Agreement"), by and among the Company and the Lenders pursuant to which, among other things, the Company will prepare and file with the Securities and Exchange Commission a registration statement or registration statements to register for resale the Participation Shares issued to the Lenders under the Credit Agreement.

At the time of issuance of any of the Participation Shares pursuant to the terms of the Credit Agreement, such Participation Shares will not be registered under the Securities Act of 1933, as amended (the "Securities Act"), and until so registered, the Participation Shares may not be reoffered or resold absent registration or availability of an applicable exemption from registration.

The description of the Registration Rights Agreement does not purport to be complete and is qualified in its entirety by reference to the Registration Rights Agreement, which is filed as Exhibit 10.3 to this Current Report on Form 8-K and is incorporated herein by this reference.

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

On November 7, 2022, the Company, the Lenders and OIC entered into the Credit Agreement, as described in Item 1.01 above and incorporated herein by this reference.

On November 7, 2022, Kinergy, Alto Nutrients and Wells Fargo entered into Amendment No. 6, as described in Item 1.01 above and incorporated herein by this reference.

Item 3.02. Unregistered Sales of Equity Securities.

Pursuant to the terms and conditions of the Credit Agreement described in Item 1.01 of this Current Report on Form 8-K, which description is incorporated by reference into this Item 3.02 in its entirety, the Company has agreed to issue the Participation Shares to the Lenders in reliance on the exemption from registration afforded by Section 4(a)(2) of the Securities Act and Rule 506 of Regulation D promulgated under the Securities Act and corresponding provisions of state securities or "blue sky" laws. The Lenders have represented to the Company that they will acquire the Participation Shares for investment only and not with a view towards, or for resale in connection with, the public sale or distribution thereof. Accordingly, upon issuance the Participation Shares will not be registered under the Securities Act and such securities may not be reoffered or resold in the United States absent registration or an exemption from registration under the Securities Act and any applicable state securities laws.

Neither this Current Report on Form 8-K nor any exhibit attached hereto is an offer to sell or the solicitation of an offer to buy securities of the Company.

Item 9.01. Financial Statements and Exhibits.(d) Exhibits.

Number	Description
10.1*+	Credit Agreement dated November 7, 2022 among Alto Ingredients, Inc., the subsidiary guarantors signatory thereto, the lenders from time to time party thereto, and OIC Investment Agent, LLC
10.2*+	Amendment No. 6 to Second Amended and Restated Credit Agreement dated November 7, 2022 by and among Wells Fargo Bank, National Association, Kinergy Marketing LLC and Alto Nutrients, LLC
10.3	Registration Rights Agreement dated November 7, 2022 by and among Alto Ingredients, Inc. and the holders set forth on the signature pages thereto
104	Cover Page Interactive Data File (formatted as Inline XBRL)

- * Certain schedules, exhibits or annexes to this Exhibit have been omitted. The Company agrees to furnish a copy of the omitted schedules, exhibits and annexes, as applicable, to the Securities and Exchange Commission on a supplemental basis upon its request.
- + Certain portions of this Exhibit have been omitted pursuant to Item 601(b)(10)(iv) of Regulation S-K.

SIGNATURES

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

Date: November 14, 2022

ALTO INGREDIENTS, INC.

By: /S/ AUSTE M. GRAHAM
Auste M. Graham,
General Counsel, Vice President and
Secretary

CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY [***], HAS BEEN OMITTED BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE AND CONFIDENTIAL

Execution Version

CREDIT AGREEMENT

dated as of

November 7, 2022

among

ALTO INGREDIENTS, INC.,
as Borrower,

THE SUBSIDIARY GUARANTORS SIGNATORY HERETO,

THE LENDERS FROM TIME TO TIME PARTY HERETO,

and

OIC INVESTMENT AGENT, LLC,
as Administrative Agent and Collateral Agent

\$125,000,000 Senior Secured Term Loan Facility

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This **CREDIT AGREEMENT** (this “Agreement”) is dated as of November 7, 2022, among Alto Ingredients, Inc., a Delaware corporation (“Borrower”), the Subsidiary Guarantors (as defined below) from time to time party hereto, each lender from time to time party hereto and OIC INVESTMENT AGENT, LLC, as the Administrative Agent (as defined below) and the Collateral Agent (as defined below).

WHEREAS, Borrower is in the business of (a) producing and marketing specialty alcohols, essential ingredients and fuel-grade ethanol produced in its alcohol production facilities and (b) marketing fuel-grade ethanol produced by third-parties (the “Business”);

WHEREAS, Borrower has requested Lenders to extend, and Lenders have agreed to extend, a senior secured credit facility in an amount up to \$125,000,000 in accordance with the terms hereof;

WHEREAS, the credit facility provided hereunder will be secured by the grant to the Collateral Agent, for the benefit of the Secured Parties (as defined below), of (a) a first priority Lien on the Term Loan Priority Collateral (subject to Permitted Liens) (as each such term is defined below) and (b) a second priority Lien on the ABL Priority Collateral (as each such term is defined below); and

WHEREAS, the Lenders are willing to provide the credit facility described herein upon the terms and subject to the conditions set forth herein and in the other Financing Documents (as defined below).

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

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

“ABL Amendment No. 6” means that certain Amendment No. 6 to Second Amended and Restated Credit Agreement and Amendment to Security Agreement, dated November 7, 2022, by and among Wells Fargo Bank, National Association, as Administrative Agent, the “Lenders” (as defined in the ABL Credit Agreement) and Kinergy Marketing LLC and Alto Nutrients, LLC (f/k/a Pacific Ag. Products, LLC), as borrowers.

“ABL Collateral” has the meaning assigned to such term in the Intercreditor Agreement.

“ABL Priority Collateral” has the meaning assigned to such term in the Intercreditor Agreement.

“ABL Credit Agreement” means that certain Second Amended and Restated Credit Agreement, dated August 2, 2017, by and among Wells Fargo Bank, National Association, as Administrative Agent, Sole Lead Arranger, Book Runner, Syndication Agent, and Documentation Agent, the lenders party thereto and Kinergy Marketing LLC and Alto Nutrients, LLC (f/k/a Pacific Ag. Products, LLC), as borrowers, as amended by that certain Amendment No. 1 to ABL Credit Agreement, dated March 27, 2019, as further amended by that certain Amendment No. 2 to ABL Credit Agreement, dated July 31, 2019, as further amended by that certain Amendment No. 3 to ABL Credit Agreement, dated as of November 19, 2019, as further amended by that certain Waiver, Consent, and Amendment No. 4 to ABL Credit Agreement, dated March 8, 2021, as further amended by that certain Waiver, Consent and Amendment No. 5 to the ABL Credit Agreement and as further amended by the ABL Amendment No. 6, and as further amended, restated, modified, supplemented, extended or otherwise superseded from time to time in accordance with the terms thereof and this Agreement.

“ABL Loan Document” has the meaning assigned to the term “Loan Documents” as set forth in the ABL Credit Agreement.

“ABL Security Document” has the meaning assigned to the term “Security Documents” as set forth in the ABL Credit Agreement.

“Additional Issuance Event” has the meaning assigned to such term in Section 2.14(b).

“Additional Material Contract” means (a) any Intercompany Agreement entered into after the Closing Date, and (b) any other contract, agreement, instrument (or series of related contracts, agreements, or instruments), entered into by any Loan Party if (i) the aggregate cost or value of consideration pursuant to such Additional Material Contract could reasonably be expected to exceed \$15,000,000 in the aggregate, (ii) the aggregate amount of upfront fees, termination fees, liquidated damages, or other liabilities which could be incurred by any Loan Party in respect of such Additional Material Contract could reasonably be expected to exceed \$15,000,000 in the aggregate or (iii) such Loan

Party is a Marketing Affiliate and such agreement involves the marketing of products or services of, or procurement of any products or services to be sold to or by, any other Loan Party.

“Additional Participation Shares” has the meaning assigned to such term in Section 2.14(b).

“Adjusted EBITDA” means, for any date of determination, an amount equal to (a) the amount of Consolidated EBITDA of the Loan Parties for the twelve-month period ending on such date of determination minus (b) the amount of Capital Expenditures paid by any Loan Party in cash during the twelve-month period ending on such date of determination (but only the extent such cash payments are financed with cash from operations and other internally generated cash).

“Administrative Agent” means OIC Investment Agent, LLC, in its capacity as administrative agent for the Lenders hereunder, and any permitted assignee or successor thereto pursuant to Article VIII.

“Administrative Questionnaire” means a questionnaire, in a form supplied by the Administrative Agent, completed by a Lender or an assignee of a Lender.

“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 at such time directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“Agent Reimbursement Amount” means any fees or other amounts payable to the Administrative Agent and the Collateral Agent, in their respective capacity as and in compensation of their respective role as the Administrative Agent and Collateral Agent, together with their respective successors in such capacity, under the terms of the Agent Reimbursement Letter or any replacement thereof.

“Agent Reimbursement Letter” means that certain Agent Reimbursement Letter, dated as of the Closing Date, among Borrower, the Administrative Agent and the Collateral Agent.

“Agents” means, collectively, the Administrative Agent and the Collateral Agent.

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

“Alcoholic Beverage Laws” means all national, federal, state or other applicable Laws, related to the manufacture, distillation, aging, blending, bottling, initial distribution, import, marketing or export of alcoholic beverages.

“Anti-Corruption Laws” means any law of any jurisdiction relating to corruption in which any Loan Party performs business or that are otherwise applicable to any Loan Party, including the FCPA, the U.K. Bribery Act, and where applicable, legislation relating to corruption enacted by member states and signatories implementing the OECD Convention Combating Bribery of Foreign Officials.

“Anti-Corruption Prohibited Activity” means the offering, payment, promise to pay, authorization or the payment of any money or the offer, promise to give, given, or authorized giving of anything of value, to any Government Official or to any person under the circumstances where the Person, such Person’s Affiliate’s or such Person’s representative knew or had reason to know that all or a portion of such money or thing of value would be offered, given or promised, directly or indirectly, to any Government Official, for the purpose of (a) influencing any act or decision of such Government Official in his or her official capacity, (b) inducing such Government Official to do or omit to do any act in relation to his or her lawful duty, (c) securing any improper advantage, or (d) inducing such Government Official to influence or affect any act or decision of any Governmental Authority, in each case, in order to assist such Person in obtaining or retaining business for or with, or in directing business to, any Person, in the case of any of clauses (a) through (d), in violation of any applicable Anti-Corruption Laws.

“Anti-Money Laundering Laws” means the U.S. Currency and Foreign Transaction Reporting Act of 1970, as amended, and all money laundering-related laws of the United States and other jurisdictions where such Person conducts business or owns assets, and any related or similar law issued, administered or enforced by any government authority.

“Applicable Law” means, with respect to any Person, property or matter, any of the following applicable thereto: any constitution, writ, injunction, statute, law, regulation, ordinance, rule, judgment, rule of common law, order, decree, court decision, Authorization, approval, concession, grant, franchise, license, agreement, directive, guideline, policy, requirement, or other governmental restriction or any similar form of decision of, or determination by, or any interpretation or administration of any of the foregoing, by any Governmental Authority, whether in effect as of the date hereof or thereafter and, in each case, as amended, including Environmental Laws and Alcoholic Beverage Laws. For the avoidance of doubt, “Applicable Law” includes the rules, regulations and requirements of any grant program, the EPA’s Renewable Fuel Standard, or any low carbon fuel standards plan managed by a Governmental Authority that Borrower participates in or receives benefits from.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 10.04), in the form of Exhibit A or any other form approved by the Administrative Agent.

“Authorization” means any consent, waiver, variance, registration, filing, declaration, agreement, notarization, certificate, license, tariff, approval, permit, orders, authorization, exception or exemption from, by or with any Governmental Authority, whether given by express action or deemed given by failure to act within any specified period, and all corporate, creditors’, shareholders’ and partners’ approvals or consents.

“Authorized Representative” means, with respect to any Person, the chief executive officer, the chief financial officer or any other appointed officer of such Person as may be designated from time to time by such Person in writing. Any document or certificate delivered under the Financing Documents that is signed by an Authorized Representative may be conclusively presumed by the Administrative Agent and Lenders to have been authorized by all necessary corporate, limited liability company or other action on the part of the relevant Person.

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of any 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” means, with respect to any Person (i) commencement by such Person of any case or other proceeding (x) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (y) seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its assets; or (ii) commencement against such Person of any case or other proceeding of a nature referred to in clause (x) or (y) above which (a) results in the entry of an order for relief or any such adjudication or appointment or (b) remains undismissed, undischarged or unbonded for a period of sixty (60) days; or (iii) commencement against such Person of any case or other proceeding seeking issuance of a warrant of attachment, execution or similar process against all or any substantial part of its assets which results in the entry of an order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof; or (iv) such Person shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii) or (iii) above; or (v) such Person shall admit in writing its inability to pay its debts as they become due or shall make a general assignment for the benefit of its creditors.

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

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

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

“Board Observer Rights Agreement” means that certain Committee Observer Rights Agreement, entered into by the Borrower, Lenders and the other signatories party thereto, dated on or about the date hereof.

“Board of Directors” shall mean, as to any Person, the board of directors or other governing body of such Person, or if such Person is owned or managed by a single entity, the board of directors or other governing body of such entity.

“Borrower” has the meaning assigned to such term in the preamble.

“Borrower SEC Reports” has the meaning assigned to such term in Section 3.28(a).

“Borrowing” means a borrowing consisting of simultaneous Loans made by the Lenders.

“Borrowing Request” means a request by Borrower for a Loan in accordance with Section 2.01 and substantially in the form of Exhibit C.

“Business” has the meaning assigned to such term in the preamble.

“Business Day” means a day other than a Saturday, Sunday or other day on which commercial banks in New York City, New York are authorized or required by law to close.

“Capital Expenditures” means, with respect to any Person, the aggregate of all expenditures and costs (whether paid in cash or accrued as liabilities and including that portion of payments under Capital Lease Obligations that are capitalized on the balance sheet of such Person) by such Person and its Subsidiaries which are required to be capitalized under GAAP on a balance sheet of such Person.

“Capital Expenditures Plan and Budget” means that certain budget and schedule for Growth Projects, which shall include the total amount of costs to complete each Growth Project on a line item basis, the Growth Project Milestones for each Growth Project and the dates by which such Growth Project Milestones are expected to be achieved, as delivered pursuant to Section 4.01(c), or, if applicable, the updated version thereof delivered and approved by the Administrative Agent pursuant to Section 2.13(a), Section 4.03(b), Sections 6.16(b) or (c).

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“Capital Lease Obligations” means, with respect to any Person, the obligations of such Person to pay rent or any other amounts under any lease of (or other arrangements conveying the right to use) real or personal property, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person in accordance with GAAP.

“Capital Rights” means all (a) options, warrants, purchase rights, conversion rights, convertible or exchangeable securities and other rights to subscribe for, purchase or otherwise acquire any Capital Stock, with or without payment of consideration, whether immediately or upon the occurrence of any specified date or event(s) or the satisfaction of any condition(s), and (b) rights that confer on any Person the economic benefits and/or burdens of any Capital Stock, including a share of the profits and/or losses of, or distribution of the assets of the issuer of such Capital Stock (whether through stock appreciation, phantom equity, profit participation or other similar rights).

“Capital Stock” means, with respect to any Person (other than any natural person), any and all corporate or capital stock, preferred stock (including Series B Units), shares, partnership interests, limited liability company interests, membership interests or units, or any other equity interests (however designated, whether voting or nonvoting, ordinary or preferred) of such Person, now or hereafter outstanding.

“CARES Act” means the Coronavirus Aid, Relief and Economic Security Act, 15 U.S. Code Chapter 116.

“Cash Equivalents” means:

(a) direct obligations of the United States of America or any agency thereof or obligations guaranteed by the United States of America or any agency thereof, in each case with maturities not exceeding two years;

(b) time deposit accounts, certificates of deposit and money market deposits maturing within 180 days of the date of acquisition thereof issued by a bank or trust company that is organized under the laws of the United States of America, or any state thereof having capital, surplus and undivided profits in excess of \$250,000,000 and whose long-term debt, or whose parent holding company’s long-term debt, is rated A (or such similar equivalent rating or higher) by at least one nationally recognized statistical rating organization (as defined in Rule 436 under the Securities Act);

(c) repurchase obligations with a term of not more than 180 days for underlying securities of the types described in clause (a) above entered into with a bank meeting the qualifications described in clause (b) above;

(d) commercial paper, maturing not more than one year after the date of acquisition, issued by a corporation (other than an Affiliate of Borrower) organized and in existence under the laws of the United States of America or any foreign country recognized by the United States of America with a rating at the time as of which any investment therein is made of P-1 (or higher) according to Moody's or A-1 (or higher) according to S&P;

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(e) securities with maturities of two years or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States of America, or by any political subdivision or taxing authority thereof, and rated at least A by S&P or A-2 by Moody's;

(f) shares of mutual funds whose investment guidelines restrict 95% of such funds' investments to those satisfying the provisions of clauses (a) through (e) above;

(g) taxable and tax-exempt auction rate securities rated AAA by S&P and Aaa by Moody's and with a reset of less than 90 days;

(h) money market funds that (i) comply with the criteria set forth in Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated A or higher by S&P and A-2 or higher by Moody's and (iii) have portfolio assets of at least \$500,000,000;

(i) cash; and

(j) any other debt security approved by the Administrative Agent in its sole discretion.

"Change in Law" means (a) the adoption of any law, rule or regulation after the date of this Agreement, (b) any change in any law, rule or regulation or in the interpretation or application thereof (including any change in the reserve percentage under, or other change in, Regulation D) by any Governmental Authority after the date of this Agreement or (c) compliance by any Lender (or, for purposes of Section 2.08(b), by any Lending Office of such Lender or by such Lender's holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement. Notwithstanding anything herein to the contrary, (x) the Dodd Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) 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 or issued.

"Change of Control" means the occurrence of any of the following:

(a) with respect to Borrower, an event or series of events by which any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934 (the "Exchange Act"), becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a person or group shall be deemed to have "beneficial ownership" of all securities that such person or group has the right to acquire (such right, an "option right"), whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of 42.5% or more of the equity securities of Borrower entitled to vote for members of the Board of Directors of Borrower on a fully-diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right) or otherwise has the direct or indirect right to appoint 42.5% or more of the members of the Board of Directors of Borrower; provided, however, for purposes of this subsection (a), a "person" or "group" shall include, in connection with any merger, acquisition, other business combination or issuance involving Borrower or any of its Subsidiaries and another entity and the issuance of equity securities of Borrower or a successor entity following or in connection with such transaction, the equityholders of such other entity or that become equityholders of Borrower or such successor in connection with such a transaction;

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(b) the direct or indirect sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or more series of related transactions, of all or substantially all of the assets of Borrower and its Subsidiaries, taken as a whole, to any person, other than a Loan Party;

(c) Borrower consolidates with, or merges with or into, any person, or any person consolidates with, or merges with or into, Borrower, in any such event pursuant to a transaction in which any of Borrower's outstanding Voting Stock is converted into or exchanged for cash, securities or other property;

(d) the first day on which a majority of the members of Borrower's Board of Directors are not Continuing Directors;

(e) the adoption of a plan relating to the Borrower's liquidation or dissolution;

(f) the occurrence of any "Change of Control" as defined in the ABL Credit Agreement, or the occurrence of a "change of control" (or term of like import) as defined in any other agreement evidencing Indebtedness with a principal balance greater than \$5,000,000; or

(g) the failure of the Borrower at any time to own, directly or indirectly (through one or more wholly-owned Subsidiary Guarantors), 100% of the issued and outstanding Capital Stock in each Subsidiary Guarantor.

"Charges" has the meaning assigned to such term in Section 10.19.

"Class" means (i) with respect to Commitments or Loans, those of such Commitments or Loans that have the same terms and conditions; *provided* that such Commitments or Loans may be designated in writing by the Administrative Agent, the Borrower and Lenders holding such Commitments or Loans as a separate Class from other Commitments or Loans that have the same terms and conditions and (ii) with respect to Lenders, those of such Lenders that have Commitments or Loans of a particular Class.

"Closing Date" means the date on or following the date of execution of this Agreement on which all conditions precedent specified in Section 4.01 are satisfied (or waived by the Administrative Agent and the Lenders in their sole discretion in accordance with Section 10.02).

"Code" means the U.S. Internal Revenue Code of 1986.

"Collateral" means, collectively, (a) the ABL Collateral and (b) the Term Loan Collateral.

“Collateral Accounts” means each account of each Loan Party that is subject to a Control Agreement pursuant to the terms of this Agreement and the Intercreditor Agreement and with respect to which the Secured Parties have (a) a valid subsisting first priority Lien, to the extent such account constitutes part of the Term Loan Priority Collateral or (b) a valid subsisting second priority Lien, to the extent such account constitutes part of the ABL Priority Collateral (including, for the avoidance of doubt, the Marketing Affiliate Accounts).

“Collateral Accounts (Term Loan)” means Collateral Accounts of the type described in clause (a) of the definition thereof.

“Collateral Agent” means OIC Investment Agent, LLC, in its capacity as collateral agent for the Secured Parties under the Security Documents, and any permitted assignee or successor thereto pursuant Article VIII.

“Collateral and Guarantee Requirement” means, at any time, the requirement that:

(a) the Administrative Agent and Collateral Agent shall have received each Security Document required to be delivered on the Closing Date pursuant to Section 4.01(h) or from time to time pursuant to Section 5.15, Section 5.16, Section 5.20 or the Security Agreement, subject to the limitations and exceptions of this Agreement, duly executed by each Loan Party party thereto;

(b) the Obligations shall have been Guaranteed pursuant to this Agreement (or a joinder hereto) by each direct or indirect Subsidiary of the Borrower;

(c) the Obligations shall have been secured pursuant to the Security Agreement by a first-priority perfected security interest in all Capital Stock of each Subsidiary Guarantor, subject to exceptions and limitations otherwise set forth in this Agreement and the Security Documents (and the Collateral Agent shall have received certificates or other instruments representing all such Capital Stock (if any), together with undated stock powers or other instruments of transfer with respect thereto endorsed in blank);

(d) all Pledged Debt owing to any Loan Party that is evidenced by a promissory note shall have been delivered to the Collateral Agent pursuant to the Security Agreement or other Security Documents and the Collateral Agent shall have received all such promissory notes, together with undated instruments of transfer with respect thereto endorsed in blank;

(e) subject to limitations and exceptions of this Agreement and the Security Documents, to the extent a security interest in any property (other than real property) is required pursuant to Section 4.01(h) or from time to time pursuant to Section 5.15, Section 5.16, Section 5.20 or the Security Agreement, the Obligations shall have been secured by a perfected security interest in all now owned, or at any time hereafter acquired tangible and intangible assets of each Loan Party (including Capital Stock, intercompany debt, accounts, inventory, equipment, investment property, contract rights, intellectual property, other general intangibles and proceeds of the foregoing, but excluding real property), in each case, subject to exceptions and limitations otherwise set forth in this Agreement and the Security Documents (to the extent appropriate in the applicable jurisdiction), in each case with the priority required by the Security Documents;

(f) subject to limitations and exceptions of this Agreement, including Section 5.20(d), and the Security Documents, to the extent a security interest in, and Mortgages, on any Material Real Property are required pursuant to Section 4.01(h) or from time to time pursuant to Section 5.15, Section 5.16 or Section 5.20, the Administrative Agent and Collateral Agent shall have received:

(i) counterparts of a Mortgage with respect to such Material Real Property duly executed and delivered by the record owner of such property, together with evidence such Mortgage has been duly executed, acknowledged and delivered by a duly authorized officer of each party thereto, in form suitable for filing or recording in all filing or recording offices that the Administrative Agent may reasonably deem necessary or desirable in order to create a valid and subsisting perfected Lien (subject only to Liens described in clause (ii) below) on the property and/or rights described therein in favor of the Collateral Agent for the benefit of the Secured Parties, and evidence that all filing and recording taxes and fees have been paid or otherwise provided for in a manner reasonably satisfactory to the Administrative Agent (it being understood that if a mortgage tax will be owed on the entire amount of the indebtedness evidenced hereby, then the amount secured by the Mortgage shall be limited to 100% of the fair market value of the property covered by such Mortgage (as reasonably determined by the Borrower in good faith) at the time the Mortgage is entered into if such limitation results in such mortgage tax being calculated based upon such fair market value);

(ii) a fully paid and irrevocable commitment from the Title Insurance Company (defined herein) to issue an American Land Title Association Lender’s policy of title insurance (or a marked-up title insurance commitment or pro forma title policy having the effect of a policy of said title insurance) on such Material Real Property (or jurisdictional equivalent), naming the Collateral Agent as the insured for its benefit and that of the Secured Parties and their respective successors and assigns (each, a “Mortgage Policy”, and collectively the “Mortgage Policies”) issued by a nationally recognized title insurance company reasonably acceptable to the Collateral Agent (the “Title Insurance Company”) in form and substance and in an amount reasonably acceptable to the Collateral Agent, insuring such Mortgage to be a valid subsisting first priority Lien on the property described therein, free and clear of all Liens other than Liens permitted pursuant to Section 6.03 or Liens otherwise consented to by the Collateral Agent, each of which shall (1) to the extent reasonably necessary, include such coinsurance and reinsurance arrangements (with provisions for direct access, if reasonably necessary) as shall be reasonably acceptable to the Collateral Agent and (2) have been supplemented by such endorsements as shall be reasonably requested by the Collateral Agent (including endorsements on matters relating to usury, first loss, zoning, contiguity, doing business, public road access, variable rate, environmental lien, subdivision, mortgage recording tax, separate tax lot, revolving credit and so-called comprehensive coverage over covenants and restrictions), to the extent such endorsements are available in the applicable jurisdiction at commercially reasonable rates; provided, however, that in lieu of a zoning endorsement the Collateral Agent shall accept a zoning report from a nationally recognized zoning report provider;

(iii) an opinion from local counsel in each jurisdiction (1) where such Material Real Property is located regarding the enforceability and perfection of such Mortgage and any related fixture filings and (2) where the applicable Loan Party granting the Mortgage on such Material Real Property is organized, regarding the due authorization, execution and delivery of such Mortgage, and in each case, such other matters as Administrative Agent may reasonably request, and in form and substance reasonably satisfactory to the Collateral Agent;

(iv) a completed “life of the loan” Federal Emergency Management Agency Standard Flood Hazard Determination with respect to such Material Real Property, to the extent such Material Real Property contains “Building” or “Manufactured (Mobile) Home” (each as defined in the applicable Flood Insurance Laws), together with a notice about special flood hazard area status and flood disaster assistance, duly executed and acknowledged by the applicable Loan Party if required by Flood Insurance Laws (as defined below), together with evidence of flood insurance, to the extent required under Section 5.06(c); and

(v) a certified ALTA/ACSM Land Title Survey, which survey shall be acceptable to the Title Insurance Company and otherwise enable the Title Insurance Company to issue the Mortgage Policies and all required endorsements thereto;

(g) except as otherwise contemplated by this Agreement or any Security Document, all certificates, agreements, documents and instruments, including Uniform Commercial Code financing statements and filings with the United States Patent and Trademark Office and United States Copyright Office, required by the Security Documents, applicable Law or reasonably requested by the Collateral Agent to be filed, delivered, registered or recorded to create the Liens intended to be created by the Security Documents and perfect such Liens to the extent required by, and with the priority required by, the Security Documents and the other provisions of the term "Collateral and Guarantee Requirement," shall have been filed, registered or recorded or delivered to the Collateral Agent (or its designee) for filing, registration or recording;

(h) after the Closing Date, each direct and indirect Subsidiary of the Borrower that is not then a Guarantor shall become a Guarantor and signatory to this Agreement pursuant to a joinder agreement in accordance with Section 5.15 or Section 5.16 and a party to the Security Documents in accordance with Section 5.16;

(i) from and after the Closing Date, each securities account, deposit account or commodity account of the Loan Parties that is not an Excluded Account shall be subject to a Control Agreement, subject to Section 5.20(c); and

(j) after the Closing Date, subject to Section 5.20(a), the Material Contracts set forth on Schedule 3.09(a) shall be subject to a Direct Agreement and concurrently with entering into any contract that satisfies the requirement set forth in subpart (b)(i) or (b)(ii) of the defined term "Additional Material Contract", any Loan Party party to such Additional Material Contract shall have delivered to the Administrative Agent, a Direct Agreement among the Loan Party, the counterparty to the Additional Material Contract and Administrative Agent.

Notwithstanding the foregoing provisions of this definition or anything in this Agreement or any other Financing Document to the contrary:

(A) the foregoing definition shall not require the creation or perfection of pledges of, security interests in, Mortgages on, or the obtaining of title insurance or taking other actions with respect to Excluded Assets (as defined in the Security Agreement);

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(B) no account control agreements shall be required with respect to any Excluded Account; and

(C) no actions in any non-U.S. jurisdiction or required by the laws of any non-U.S. jurisdiction shall be required in order to create any security interests in assets located or titled outside of the U.S., including any intellectual property registered in any non-U.S. jurisdiction, or to perfect such security interests (it being understood that there shall be no security agreements or pledge agreements governed under the laws of any non-U.S. jurisdiction).

"Columbia Lease" has the meaning set forth in Section 5.20(b)(iii).

"Columbia Production Facility" means the fuel-grade ethanol production facility operated by Alto Columbia, LLC and located in Boardman, Oregon.

"Commitment" means an Initial Term Loan Commitment, a Specified CapEx Commitment and/or Incremental Commitment, as the context may require.

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

"Common Stock" has the meaning assigned to such term in Section 2.14(a).

"Competitor" means any operating company that produces ethanol and other essential ingredients and specialty alcohol products similar to those produced by the Borrower and its Subsidiaries in the United States.

"Condemnation" means any temporary or permanent involuntary condemnation, seizure or taking by any Governmental Authority as the result or in lieu or in anticipation of the exercise of the right of condemnation or eminent domain, or confiscation or requisition of property or any interest therein or right accruing thereto, including any right of access thereto.

"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" refers to the consolidation of any Person, in accordance with GAAP, with its properly consolidated Subsidiaries. References herein to a Person's consolidated financial statements, financial position, financial condition, liabilities, etc. refer to the consolidated financial statements, financial position, financial condition, liabilities, etc. of such Person and its properly consolidated Subsidiaries.

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"Consolidated EBITDA" means, for any period, an amount equal to:

(a) the Consolidated Net Income of the Loan Parties for such period, plus

(b) without duplication and to the extent deducted in the calculation of Consolidated Net Income of the Loan Parties for such period, the sum of:

(i) any provision for (or less any benefit for) income, franchise or similar Taxes of the Loan Parties for such period;

(ii) Consolidated interest expense (as determined in accordance with GAAP and including the interest component of Capital Lease Obligations) of the Loan Parties for such period;

(iii) amortization and depreciation expense of the Loan Parties for such period;

(iv) any extraordinary, non-recurring, or unusual costs, charges, accruals, reserves, or expenses of the Loan Parties for such period; and

(v) any non-cash losses, expenses, impairments or charges of the Loan Parties during such period; provided that cash payments made during such period or in any future period in respect of non-cash charges, expenses or losses shall be subtracted from Consolidated Net Income in calculating Consolidated EBITDA for the

period in which such payments are made; minus

(c) without duplication and to the extent included in the calculation of Consolidated Net Income of the Loan Parties for such period, the sum of:

- (i) interest income of the Loan Parties for such period;
- (ii) gains from sales or other dispositions of assets outside of the ordinary course of business for such period;
- (iii) any extraordinary, non-recurring or unusual income or gains of the Loan Parties for such period; and
- (iv) any non-cash income or gains of the Loan Parties for such period;

provided, that the aggregate amount of add-backs pursuant to clause (b)(iv) above on account of any cash costs, charges, accruals, reserves, expenses, losses, impairments or other cash items plus the aggregate amount of positive adjustments to Consolidated EBITDA included in any pro forma calculation of Consolidated EBITDA shall, together, be capped at 25% of Consolidated EBITDA of the Loan Parties for such period (calculated, in each case, prior to giving effect to such items and adjustments).

For purposes of calculating the Leverage Ratio, Consolidated EBITDA for any period of four consecutive fiscal quarters (each, a Reference Period) shall be adjusted as follows: (i) if during such Reference Period (or, in the case of pro forma calculations, during the period from the last day of such Reference Period to and including the date as of which such calculation is made) any Loan Party shall have made a Material Disposition or Material Acquisition, Consolidated EBITDA (including Consolidated Net Income) for such Reference Period shall be calculated after giving pro forma effect thereto as if such Material Disposition or Material Acquisition by any Loan Party occurred on the first day of such Reference Period and (ii) if any calculations in the foregoing clause (i) are made on a pro forma basis, such pro forma adjustments are factually supportable and are determined in good faith by an officer of the Borrower and subject to supporting documentation reasonably acceptable to the Administrative Agent. As used in this definition, Material Acquisition means any acquisition by the Loan Parties of Property or series of related acquisitions of Property that involves consideration in excess of \$5,000,000, and Material Disposition means any Disposition of property or series of related sales, transfers or other dispositions of Property that yields gross proceeds to the Loan Parties in excess of \$5,000,000.

Consolidated Net Income means for any period and without duplication, the Consolidated net income (or loss) of the Loan Parties determined in accordance with GAAP; provided that there shall be excluded from such net income (to the extent otherwise included therein) the following: (a) any gain or loss from the sale of assets other than in the ordinary course of business, (b) the income (or deficit) of any Person accrued prior to the date it becomes a Subsidiary of the Borrower, or is merged into or consolidated with the Borrower or any of its Subsidiaries, as applicable, (c) the income (or deficit) of any Person in which any other Person (other than a Loan Party) has Capital Stock, except to the extent of the amount of dividends or other distributions actually paid in cash to a Loan Party during such period, (d) the net income (but not loss) during such period of any Subsidiary to the extent that the declaration or payment of dividends or similar distributions or transfers or loans by that Subsidiary is not at the time permitted by operation of the terms of its charter or any agreement, instrument or Governmental Requirement applicable to such Subsidiary or is otherwise restricted or prohibited, and (e) any income from non-recurring government incentives and grants, in each case determined in accordance with GAAP.

Consolidated Total Debt means, as of any date of determination, the aggregate principal amount of Indebtedness of the Loan Parties outstanding on such date.

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

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.

Control Agreement means each account control agreement entered into by one or more of the Loan Parties, the applicable depository bank or securities intermediary and the Collateral Agent, in form and substance reasonably satisfactory to the Administrative Agent and the Collateral Agent.

Cyber-security Incident has the meaning assigned to such term in Section 5.11(n).

Debt Prepayment Offer has the meaning assigned to such term in Section 2.05(b)(iii).

Default means any event, condition or circumstance that, with notice or lapse of time or both, would (unless cured or waived) become an Event of Default.

Direct Agreement means, with respect to an agreement (the Underlying Agreement) between a Loan Party and a third party counterparty (the Contract Counterparty), a direct agreement among such Loan Party, the Contract Counterparty, and Administrative Agent, in substantially the form of Exhibit I hereto or otherwise in form and substance reasonably satisfactory to Administrative Agent, pursuant to which the Contract Counterparty, among other agreements, acknowledges certain rights of Administrative Agent, agrees not to terminate the Underlying Agreement without providing notice and cure rights to the Administrative Agent, consents to the collateral assignment of any related licensing, rental, or other agreements, and agrees to provide certain information to Administrative Agent from time to time.

Disposition has the meaning assigned to such term in Section 2.05(b)(ii).

Disposition Proceeds Prepayment Offer has the meaning assigned to such term in Section 2.05(b)(ii).

Disqualification Event has the meaning assigned to such term in Section 3.33.

Disqualified Institution means each Person that is (a) designated by the Borrower, by written notice delivered to the Administrative Agent on or prior to the Closing Date, as a (x) disqualified institution or (y) Competitors or (b) clearly identifiable solely on the basis of such Person's name, as an Affiliate of any person referred to in clauses (a)(x) or (a)(y) above (other than any bona fide debt fund or investment vehicle that is primarily engaged in the making, purchasing, holding or otherwise investing in commercial loans, bonds and other similar extensions of credit in the ordinary course and is not organized for the purpose of making equity investments); provided, that Disqualified Institutions shall include any Person that from time to time is added as a Competitor, pursuant to a written supplement to the list of Competitors that are Disqualified Institutions delivered after the Closing Date by the Borrower to the Administrative Agent (it being understood that any update pursuant to clause (b) above shall not become effective until the third Business Day following Administrative Agent's receipt of such notice, and, in any event, shall not apply retroactively to a Lender or Participant, as applicable, that was not a Disqualified Institution on such trade date or to any entity that is a Lender as of the third Business Day following Administrative Agent's receipt of

such notice).

“Dollars” or “\$” refers to the lawful currency of the United States of America.

“Domestic Subsidiary” means any Subsidiary that is organized under the Laws of the United States, any state thereof or the District of Columbia.

“Eagle Distribution Center” means the distribution and marketing facility that is located in St. Louis, Missouri and that is owned and operated by Eagle Alcohol Company LLC.

“Eagle Lease” has the meaning set forth in Section 5.20(b)(ii).

“Eagle Purchase and Sale Agreement” means that certain Membership Interest Purchase Agreement, dated as of January 14, 2022, by and among the Borrower, Eagle Alcohol Company LLC, Daniel J. Croghan, and Andrew Bivona.

“ECF Prepayment Offer” has the meaning assigned to such term in Section 2.05(b)(iv).

“ECF Sweep Amount” means, each applicable semi-annual period, an amount equal to the applicable percentage set forth in the table below of Excess Cash Flow for such semi-annual period:

Leverage Ratio as of the Immediately Preceding Fiscal Quarter End Date	Percentage of Excess Cash Flow
Greater than or equal to 3.00:1.00	100.00%
Less than 3.00:1.00 and greater than 1.50:1.00	50.00%
Less than or equal to 1.50:1.00	25.00%

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

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

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

“Environment” means soil, surface water and groundwater (including potable water, groundwater and wetlands), the land, surface or subsurface strata or sediment, indoor and ambient air, and natural resources such as flora and fauna or any other environmental media.

“Environmental Attribute” means (a) renewable energy credits associated with the generation of energy by a renewable energy facility, offsets or similar benefits, (b) any emissions, air quality or other environmental attribute, aspect, characteristic, claim, credit, benefit, reduction, offset or allowance, howsoever entitled or designated, resulting from, attributable to or associated with the generation of the energy by a renewable energy facility or resulting from the reduction of emissions and (c) the reporting rights related to any such attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances, including, but not limited to, credits generated under the California Low Carbon Fuel Standard or any other low carbon fuel standard, Renewable Identification Numbers under the federal Renewable Fuel Standard, state and local tax credits, renewable natural gas credits and credits issued under any voluntary emissions reduction program.

“Environmental Claim” means any action, suit, proceeding, notice, claim or demand by any Person seeking to enforce any obligation or responsibility arising under or relating to Environmental Law or alleging or asserting a violation or liability including for investigatory costs, cleanup or other remedial costs, legal costs, environmental consulting costs, governmental response costs, damages to natural resources or other property, personal injuries, fines or penalties related to (a) the presence, Release or threatened Release into the Environment, of any Hazardous Material at any location, whether or not owned by the Person against whom such claim is made, or (b) any violation of, or alleged violation of, or liability arising under any Environmental Law. The term “Environmental Claim” shall include, without limitation any claim by any Person for damages, contribution, indemnification, cost recovery, compensation or injunctive relief or costs associated with any remediation plan, in each case, relating to any Environmental Law.

“Environmental Laws” means any Applicable Laws regulating or imposing liability or standards of conduct concerning or relating to pollution, public or worker health and safety or the protection of the Environment, natural resources or special status species and their habitat, including all Applicable Laws concerning the presence, use, manufacture, generation, transportation, Release, threatened Release, disposal, arrangement for disposal, dumping, discharge, treatment, storage or handling of, exposure to, Hazardous Materials. Environmental Laws shall also include any permit issued by any Governmental Authority pursuant to Environmental Laws.

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

“ERISA Affiliate” means any Person or trade or business (whether or not incorporated) that, together with any Loan Party, is or was at any relevant time treated as a single employer under Section 414 of the Code.

“ERISA Event” means (a) a Reportable Event with respect to any Pension Plan, (b) the failure by any Borrower or any ERISA Affiliate to satisfy the minimum funding standard (within the meaning of Sections 412 or 430 of the Code or Sections 302 or 303 of ERISA) applicable to any Plan, whether or not waived, (c) the filing pursuant to Section 412 of the Code or Section 302 of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan, (d) a determination that any Plan is, or is expected to be, in “at-risk” status (as defined in Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code), (e) the receipt by a Loan Party or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to the intention to terminate any Pension Plan (as described in Section 4041 of ERISA) or to appoint a trustee to administer any Pension Plan under Section 4042 of ERISA, (f) the incurrence by a Loan Party or any ERISA Affiliate of any liability with respect to the withdrawal from any Plan subject to Section 4063 of ERISA during a plan year in which it 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(c) of ERISA, or a complete or partial withdrawal by a Loan Party or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is insolvent (within the meaning of Title IV of ERISA), (g) the receipt by a Loan Party or any ERISA Affiliate of

any notice concerning the imposition on it of withdrawal liability or a determination that a Multiemployer Plan is, or is expected to be, in “endangered or critical status,” within the meaning of Section 305 of ERISA, (h) the imposition or incurrence of any liability under Title IV of ERISA, other than PBGC premiums due but not delinquent under Section 4007 of ERISA, upon a Loan Party or any ERISA Affiliate, (i) the institution by the PBGC of proceedings to terminate a Pension Plan or Multiemployer Plan, (j) the appointment of a trustee to administer any Pension Plan under Section 4042 of ERISA, (k) the occurrence of an act or omission which could give rise to the imposition on any Loan Party or any ERISA Affiliates of fines, penalties, excise taxes or related charges under Section 409 of ERISA in respect of any Plan, or (l) the incurrence of liability or the imposition of a Lien pursuant to Sections 430(k) or 436 of the Code or Section 303(k) of ERISA.

“Erroneous Payment” has the meaning assigned to it in Section 10.21(a).

“Erroneous Payment Deficiency Assignment” has the meaning assigned to it in Section 10.21(d)(i).

“Erroneous Payment Impacted Class” has the meaning assigned to it in Section 10.21(d)(i).

“Erroneous Payment Return Deficiency” has the meaning assigned to it in Section 10.21(d)(i).

“Erroneous Payment Subrogation Rights” has the meaning assigned to it in Section 10.21(e).

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

“Event of Abandonment” means (a)(i) the abandonment by any Loan Party of the operations of any Production Facilities; or (ii) a strike, labor dispute, slowdown, or stoppage at any Production Facility imposed or caused by a union which has caused production at such Production Facility to cease for a period of ninety (90) or more consecutive days; or (b) the written announcement by Loan Party of its intention to do any of the foregoing in clause (a); *provided, however*, that no Loan Party shall be deemed to have abandoned the operations of any Production Facility if a force majeure event or Applicable Law prevent such Loan Party or its personnel from accessing the applicable leased premises for such Production Facility or operating such Production Facility.

“Event of Default” has the meaning assigned to such term in Section 7.01.

“Event of Loss” means any loss of, destruction of or damage to, or any Condemnation or other taking of any property of any Loan Party.

“Event of Loss Prepayment Offer” has the meaning assigned to such term in Section 2.05(b)(i).

“Excess Cash Flow” means, for any period:

(a) Consolidated EBITDA for such period, less

(b) the sum, without duplication, of:

(i) the difference between the outstanding principal amount of loans under the ABL Credit Agreement on the last day of such period and the outstanding principal amount of loans under the ABL Credit Agreement on the first day of such period;

(ii) the aggregate amount of all principal payments under this Agreement made in cash during such period (including the amount of any scheduled repayment of Loans pursuant to Section 2.04, any voluntary prepayments pursuant to Section 2.05(a) and any mandatory prepayments pursuant to Section 2.05(b) but excluding mandatory prepayments pursuant to Section 2.05(b)(iv));

(iii) the aggregate amount of all interest payments under this Agreement and the ABL Credit Agreement made in cash during such period;

(iv) any amounts paid in cash in connection with the Loans during such period to the extent not funded with Indebtedness;

(v) the aggregate amount of Capital Expenditures incurred in accordance with the Capital Expenditures Plan and Budget and paid in cash during such period to the extent financed with internally generated cash;

(vi) the aggregate amount of scheduled fees and other similar fees payable under the Financing Documents paid in cash during such period;

(vii) the aggregate amount of cash taxes paid by the Loan Parties in such period;

(viii) the aggregate amount necessary to meet the Minimum Liquidity Threshold;

(ix) the amount related to items that were deducted from or not added to net income in connection with calculating Consolidated Net Income or were deducted from or not added to Consolidated Net Income in calculating Consolidated EBITDA to the extent either (i) such items represented cash received by the Borrower or any Subsidiary or (ii) such items do not represent cash paid by the Borrower or any Subsidiary, in each case on a consolidated basis during such applicable period; and

(x) the aggregate amount of any Restricted Payments made pursuant to Section 6.06(f) in such period; plus

(c) the sum, without duplication, of the Net Proceeds of any extraordinary, non-recurring or unusual cash income or gains of the Loan Parties for such period, in each case to the extent not included in Consolidated EBITDA for such period.

Notwithstanding anything in the definition of any term used in the definition of Excess Cash Flow to the contrary, all components of Excess Cash Flow shall be computed for the Loan Parties on a consolidated basis.

“Excluded Account” means any deposit, securities, or brokerage account that is (i) a zero-balance account, (ii) a deposit account used solely for payroll, payroll taxes, tax purposes, trust or fiduciary purposes, employee benefits, bona fide escrow with respect to third parties in connection with Investments permitted hereunder or collateral deposits securing Liens permitted under Section 6.03, (iii) a deposit account or brokerage account used solely to secure commodity hedging transactions permitted by Section 6.14; provided, that the aggregate amount on deposit in such accounts does not exceed the amount permitted by Section 6.03(a)(ix), or (iv) other deposit accounts not otherwise covered by clauses (i), (ii) or (iii) that are established and maintained by a Loan Party, solely to the extent that the 5-day average aggregate balance on deposit in all such deposit accounts does not exceed \$1,000,000 at any time after the Closing Date.

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

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office, or, in the case of a 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 Recipient, any United States federal withholding Tax that is imposed on amounts payable to or for the account of such Recipient under the laws effective at the time (i) such Recipient becomes a party hereto or (ii) such Recipient designates a new Lending Office, except to the extent that such Recipient (or its assignor, if any) was entitled, immediately before its designation of a new Lending Office (or assignment), to receive additional amounts from Borrower with respect to such withholding Tax pursuant to Section 2.09(a), (c) Taxes imposed as a result of the failure of a Recipient to comply with Section 2.09(e), and (d) any United States federal withholding Taxes imposed under FATCA.

“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), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules, or practices adopted pursuant to any intergovernmental agreement, treaty, or convention among Governmental Authorities and implementing such Sections of the Code.

“FCPA” means the United States Foreign Corrupt Practices Act of 1977, as amended.

“Federal Funds Effective Rate” means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

“Fee Letters” means (a) the Agent Reimbursement Letter and (c) the Lender Loan Discount Letter.

“Fees” means the Agent Reimbursement Amounts and any other fees payable in accordance with Section 2.06.

“Financial Model” means the projections of the Loan Parties’ operating results (on a quarterly basis over a period ending on the Maturity Date) delivered to the Lenders on or prior to the Closing Date pursuant to Section 4.01(c).

“Financing Documents” means this Agreement, each Note (if requested by a Lender), the Agent Reimbursement Letter, the Lender Loan Discount Letter, the Intercreditor Agreement, any Intercompany Note, the Security Documents and each certificate, agreement, instrument, amendment, waiver, consent or document executed by a Loan Party and delivered by or on behalf of a Loan Party to Agent or any Lender in connection with or pursuant to any of the foregoing.

“Flood Insurance Laws” means, collectively, (i) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (iii) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto, (iv) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and (v) Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor thereto.

“Foreign Plan” means any employee benefit plan, program, policy, arrangement or agreement maintained or contributed to by any Loan Party or any ERISA Affiliate or with respect to which any Loan Party or any ERISA Affiliate could have any liability, in each case with respect to employees or individual service providers engaged outside the United States (other than any arrangement with the applicable Governmental Authority).

“Foreign Subsidiary” means any direct or indirect Subsidiary of the Borrower which is not a Domestic Subsidiary.

“Funding Date” has the meaning assigned to such term in Section 2.01(c).

“Funding Office” means the office specified from time to time by the Administrative Agent as its funding office by notice to Borrower and the Lenders.

“Funds Flow Memorandum” means the memorandum, in form and substance satisfactory to the Administrative Agent detailing the proposed flow, and use, of the Loan proceeds on the Initial Funding Date or any other Funding Date, as applicable.

“GAAP” means generally accepted accounting principles in effect from time to time in the United States of America, applied on a consistent basis.

“Government Official” means an official of a Governmental Authority.

“Governmental Authority” means any federal, tribal, regional, state or local government, or political subdivision thereof or other entity exercising executive,

legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government and having jurisdiction over the Person or matters in question, including all agencies and instrumentalities of such governments and political subdivisions.

“Growth Project” means any growth and expansion project described on Schedule 5.23 and any other growth and expansion project approved after the Closing Date in accordance with Section 6.16(b).

“Growth Project Milestones” means the key milestones for each Growth Project, which shall be set forth in the Capital Expenditures Plan and Budget for each Growth Project described therein.

“Guarantee” means, as to any Person (the “guaranteeing person”), any obligation of (a) the guaranteeing person or (b) another Person (including any bank under any letter of credit), if to induce the creation of such obligation of such other Person, the guaranteeing person has issued a reimbursement, counterindemnity or similar obligation, in either case guaranteeing or in effect guaranteeing any Indebtedness, leases, dividends or other obligations (the “primary obligations”) of any other third Person (the “primary obligor”) in any manner, whether directly or indirectly, including any obligation of the guaranteeing person, whether or not contingent, (w) to purchase any such primary obligation or any Property constituting direct or indirect security therefor, (x) to advance or supply funds (i) for the purchase or payment of any such primary obligation or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (y) to purchase Property, securities or services, in each case, primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (z) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof; *provided* that the term Guarantee shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Guarantee of any guaranteeing person shall be deemed to be the lower of (A) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee is made and (B) the maximum amount for which such guaranteeing person may be liable pursuant to the terms of the instrument embodying such Guarantee, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case the amount of such Guarantee shall be such guaranteeing person’s maximum reasonably anticipated liability in respect thereof as determined by Borrower in good faith.

“Guarantors” means, collectively, (i) the direct or indirect Subsidiaries of the Borrower listed on Schedule 1; (ii) those direct or indirect Subsidiaries of the Borrower that are organized or acquired after the Closing Date and that execute and deliver a joinder to this Agreement or guarantee supplement pursuant to Section 5.16(a).

“Harvesting Technology Licensing Agreement” has the meaning set forth in Section 5.20(b)(i).

“Hazardous Material” means, but is not limited to, any solid, liquid, gas, odor, radiation or other substance, material, contaminant or waste or emission which is or becomes regulated by applicable Environmental Laws or which is classified as hazardous or toxic under applicable Environmental Laws (including gasoline, diesel fuel or other petroleum hydrocarbons, products or byproducts, polychlorinated biphenyls, asbestos or asbestos-containing material, per- and poly-fluoroalkyl substances, lead, noise, odor, toxic mold and urea formaldehyde foam insulation) or with respect to which liability or standards of conduct may be imposed under any Environmental Laws.

“ICP Facility” means the Production Facility located in Pekin, Illinois, that is owned and operated by Alto ICP, LLC.

“Incremental Commitment” means, with respect to each Lender, the commitment of such Lender to make an Incremental Loan in accordance with Section 2.13 in the amount of such Lender’s Incremental Commitment set forth on Annex I, as such commitment may be terminated or reduced pursuant to Section 2.03, or if such Lender has entered into one or more Assignment and Assumptions following the Closing Date, the amount set forth for such Lender in the Register maintained by the Administrative Agent as such Lender’s “Incremental Commitment”. The aggregate amount of Incremental Commitments shall not at any time exceed \$25,000,000.

“Incremental Commitment Expiration Date” means November 7, 2024.

“Incremental Loan” has the meaning assigned to such term in Section 2.01(a)(iii).

“Incremental Request” means any request by Borrower for Incremental Loans pursuant to Section 2.13.

“Indebtedness” of any Person means, without duplication, all (a) indebtedness for borrowed money and every reimbursement obligation with respect to letters of credit, bankers’ acceptances or similar facilities, (b) obligations evidenced by bonds, debentures, notes or other similar instruments, (c) obligations to pay the deferred purchase price of property or services, except accounts payable and accrued expenses arising in the ordinary course of business and payable within ninety (90) days past the original invoice or billing date thereof, (d) liabilities under interest rate or currency swap agreements, interest rate or currency collar agreements and all other agreements or arrangements designed to protect against fluctuations in interest rates and currency exchange rates, (e) the capitalized amount (determined in accordance with GAAP) of all payments due or to become due under all leases and agreements to enter into leases required to be classified and accounted for as a capital lease in accordance with GAAP, (f) reimbursement obligations (contingent or otherwise) pursuant to any performance bonds or collateral security, (g) Indebtedness of others described in clauses (a) through (f) above secured by (or for which the holder thereof has an existing right, contingent or otherwise, to be secured by) a Lien on the property of such Person, whether or not the respective Indebtedness so secured has been assumed by such Person and (h) Indebtedness of others described in clauses (a) through (g) above guaranteed by such Person. The Indebtedness of any Person shall include the Indebtedness of any partnership in which such Person is a general partner to the extent such Person is liable therefor as a result of such Person’s general partner interest in such partnership, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

“Indemnified Party” has the meaning assigned to such term in Section 10.03(b).

“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 this Agreement or any Financing Document and (b) to the extent not otherwise described in (a), Other Taxes.

“Independent Auditor” means any “big four” accounting firm as selected by Borrower and notified to the Administrative Agent, or such other firm of independent public accountants of recognized national standing in the United States selected by Borrower and acceptable to the Administrative Agent, acting reasonably.

“Initial Funding Date” means the date on which all conditions precedent specified in Section 4.02 are satisfied (or waived by the Administrative Agent and the Lenders in their sole discretion in accordance with Section 10.02) and the Initial Term Loans are disbursed.

“Initial Participation Shares” has the meaning assigned to such term in Section 2.14(a).

“Initial Term Loan” has the meaning assigned to such term in Section 2.01(a)(i).

“Initial Term Loan Commitment” means, with respect to each Initial Term Loan Lender, the commitment of such Lender to make an Initial Term Loan on the Initial Funding Date in the amount of such Lender’s Initial Term Loan Commitment set forth on Annex I, as such commitment may be reduced or terminated pursuant to Section 2.03, or if such Lender has entered into one or more Assignment and Assumptions following the Closing Date, the amount set forth for such Lender in the Register maintained by the Administrative Agent as such Lender’s “Initial Term Loan Commitment”.

“Initial Term Loan Lender” means each Lender with an Initial Term Loan Commitment.

“Intercompany Agreement” means any contract, agreement, instrument (or series of related contracts, agreements, or instruments) between a Loan Party (other than a Marketing Affiliate) and a Marketing Affiliate, including for the avoidance of doubt, the agreements set forth on Schedule 3.09(b).

“Intercompany Note” means a subordinated intercompany note substantially in the form of Exhibit F.

“Intercreditor Agreement” means an intercreditor agreement, dated as of the Closing Date, among the Collateral Agent and the collateral agent under the ABL Credit Agreement.

“Interest Rate” means a rate per annum equal to 10.00%.

“Investment” means, for any Person (a) the acquisition (whether for cash, Property of such Person, services or securities or otherwise) of Capital Stock, Capital Rights, bonds, notes, debentures, debt securities or hybrid securities (whether or not convertible or exchangeable into Capital Stock) of, or any Property constituting an ongoing business, line of business, division or business unit of or constituting all or substantially all the assets of, or the making of any capital contribution to, any other Person, (b) the making of any advance, loan or other extension of credit to, any other Person (including the purchase of Property from another Person subject to an understanding or agreement, contingent or otherwise, to resell such Property to such Person, but excluding any such advance, loan or extension of credit having a term not exceeding ninety (90) days representing the purchase price of inventory or supplies sold in the ordinary course of business), (c) the entering into of any Guarantee with respect to Indebtedness or other liability of any other Person, and (d) any other investment that would be classified as such on a balance sheet of such Person in accordance with GAAP.

“Investment Committee” means, as of any date, the committee of OIC, L.P., the members of which have a right or duty to vote on whether the general partner of the Lenders shall cause the Lenders to make an investment in the form of a loan.

“IP Security Agreements” means those certain security agreements, to be entered into on the Closing Date, among the Loan Parties and the Collateral Agent, substantially in the forms attached as Exhibits A, B and C of the Security Agreement.

“Issuer Covered Person(s)” has the meaning assigned to such term in Section 3.33.

“Legal Requirements” means, as to any Person, any requirement under any Authorization by any Governmental Authority or under any Applicable Law, in each case applicable to or binding upon such Person or any of its properties or to which such Person or any of its property is subject.

“Lender” means (a) a lender that holds Loans and/or Commitments and (b) each Person that shall become a Lender hereunder pursuant to an Assignment and Assumption that assumes Loans and/or Commitments, in each case, so long as such lender continues to hold such Loans and/or Commitments.

“Lender Loan Discount Letter” means that certain Loan Discount Letter, dated as of the date hereof, by and among Borrower and each Lender as of the Closing Date.

“Lending Office” means the office designated as such beneath the name of a Lender set forth on Annex III to this Agreement or such other office of such Lender as such Lender may specify in writing from time to time to the Administrative Agent and Borrower.

“Leverage Ratio” means, as of any date of determination, the ratio of (a) Consolidated Total Debt as of such date of determination to (b) Adjusted EBITDA for the twelve-month period ending on such date of determination.

“Lien” means any mortgage, charge, pledge, lien (statutory or other), privilege, security interest, hypothecation, collateral assignment or preference, priority or other security agreement, mandatory deposit arrangement, preferential arrangement, restriction or other encumbrance upon or with respect to any property of any kind, real or personal, movable or immovable, now owned or hereafter acquired (including any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing and the filing of any financing statement under the Uniform Commercial Code or comparable law of the relevant jurisdiction).

“Loan” means, collectively or individually as the context may require, Initial Term Loans, Specified CapEx Loans and/or Incremental Loans.

“Loan Parties” means, collectively or individually as the context may require, Borrower and each Subsidiary Guarantor from time to time party hereto.

“Loss Proceeds” means insurance proceeds, condemnation awards or other similar compensation, awards, damages and payments or relief (exclusive, in each case, of proceeds of business interruption, workers’ compensation, employees’ liability, automobile liability, builders’ all risk liability and general liability insurance) with respect to any Event of Loss.

“Maintenance Capital Expenditures” means Capital Expenditures reasonably necessary (a) to permit any Loan to comply with Legal Requirements or (b) for any Loan Party to operate its properties and assets in accordance with Prudent Industry Practice.

“Make-Whole Amount” means, with respect to the prepayment or repayment of any Loan on or prior to the Make-Whole Expiry Date (including any acceleration of Loans pursuant to Section 7.01), a premium equal to the present value of the sum of (a) all remaining required payments of Interest, through the second anniversary of such Loan’s Funding Date plus (b) the product of (i) 7.00% and (ii) the amount of the principal of such Loan prepaid or repaid (in each case, computed on the basis of actual days elapsed over a year of 360 days and using a discount rate equal to the Treasury Rate as of such prepayment or repayment date plus 50 basis points), provided that the Make-Whole Amount shall in no event be less than zero.

“Make-Whole Expiry Date” means, with respect to any Loan, the second anniversary of such Loan’s Funding Date.

“Marketing Affiliate Accounts” means [***]

“Marketing Affiliates” means Kinery Marketing LLC, Alto Nutrients, LLC (f/k/a Pacific Ag. Products, LLC) and Alto Specialty Products, LLC.

“Material Adverse Effect” means, with respect to any Loan Party, a material adverse effect on: (a) the business, assets, properties (including any leased premises), operations or financial condition of the Loan Parties, taken as a whole; (b) the ability of the Loan Parties, taken as a whole, to perform their material obligations under the Financing Documents in accordance with the terms thereof; or (c) the rights and remedies of the Secured Parties, taken as a whole, under the Financing Documents, taken as a whole.

“Material Contracts” means each of the following:

- (a) those agreements set forth on Schedule 3.09(a);
- (b) Intercompany Agreements entered into on or before the Closing Date set forth on Schedule 3.09(b);
- (c) at all times after the execution and delivery thereof, each Additional Material Contract; and
- (d) each Replacement Material Contract for any Material Contract.

Notwithstanding the foregoing, if any Material Contract (other than a Intercompany Agreement) no longer has any remaining material obligations thereunder and all material warranties (other than contingent indemnities that survive indefinitely) have expired, then such document shall no longer be deemed a “Material Contract”, an “Additional Material Contract” or a “Replacement Material Contract” for purposes of this Agreement or any other Financing Document.

“Material Real Property” means real property (including fixtures) (a) with a fair market value (as determined by the Administrative Agent and Borrower in good faith) or lease liability greater than or equal to \$3,500,000 or (b) material to the Business, as determined by the Administrative Agent and Borrower in good faith (including, for the avoidance of doubt, the land leases for Columbia Production Facility, and any other land lease or fee owned real property where a Production Facility is located (other than the Eagle Distribution Center)).

“Maturity Date” means the earliest to occur of (a) November 7, 2028, or (b) the date upon which the entire outstanding principal amount of the Loans, together with all unpaid interest, fees, charges and costs, shall be accelerated in accordance with this Agreement.

“Minimum Liquidity Threshold” means, as of any date of determination, that the amount of unrestricted cash and cash equivalents on deposit in Collateral Accounts (Term Loan) is equal to the sum of the interest payments projected to be due and payable pursuant to Section 2.07 on the three (3) Quarterly Dates immediately following such date of determination.

“Moody’s” means Moody’s Investors Service, Inc., or any successor to the rating agency business thereof.

“Mortgaged Property” means any Property that is subject to a Mortgage.

“Mortgages” means, collectively, those certain Mortgages, Security Agreements, Assignment of Rents and Leases and Fixture Filings or those certain Leasehold Mortgages, Security Agreements, Assignment of Rents and Leases and Fixture Filings, as applicable, required pursuant to Section 5.16(a)(ii), from any Loan Party, as trustor, to the trustee named herein, for the benefit of the Collateral Agent, as beneficiary, which agreement shall be substantially in the form attached hereto as Exhibit G (with such changes thereto as may be necessary to account for local law matters).

“Multiemployer Plan” means a “multiemployer plan” as defined in Sections 4001(a)(3) or 3(37) of ERISA to which any Loan Party or any ERISA Affiliate contributes or is obligated to contribute, or with respect to which any Loan Party or any ERISA Affiliate has or could have any liability.

“Nasdaq” has the meaning assigned to such term in Section 3.31.

“Net Proceeds” means:

(a) 100% of the cash proceeds actually received by any Loan Party from any Disposition (other than Dispositions permitted pursuant Sections 6.09(b)(b)(c), (d), (e), (f) and (h)), net of (i) attorneys’ fees, accountants’ fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes, other customary expenses and brokerage, consultant and other customary fees actually incurred in connection therewith, (ii) the principal amount, premium or penalty, if any, interest and other amounts on any Indebtedness that is secured by a Lien (other than a Lien that ranks pari passu with or subordinated to the Liens securing the Obligations) on the asset subject to such Disposition and that is required to be repaid (and is timely repaid) in connection with such Disposition (other than Indebtedness under the Financing Documents) and (iii) taxes paid by any Loan Party as a result thereof; provided that so long as no Default or Event of Default has occurred and is continuing, the Borrower may reinvest any portion of such proceeds in assets useful for its business in accordance with Prudent Industry Practice (which shall include any Investment permitted, or not otherwise prohibited, by this Agreement) within 12 months of such receipt and such portion of such proceeds shall not constitute Net Proceeds except to the extent not, within 12 months of such receipt, so reinvested or contractually committed to be so reinvested (it being understood that if any portion of such proceeds are not so used within such 12-month period but within such 12-month period are contractually committed to be used, then upon the termination of such contract or if such Net Proceeds are not so used within 18 months of initial receipt, such remaining portion shall constitute Net Proceeds as of the date of such termination or expiry without giving effect to this proviso); it being further understood that such proceeds shall constitute Net Proceeds notwithstanding any investment notice if a Default or Event of Default has occurred and is continuing at the time of a proposed reinvestment, unless such proposed reinvestment is made pursuant to a binding commitment entered into at a time when no such Default or Event of Default was continuing; provided, further, that only the aggregate amount of Disposition proceeds in excess of \$5,000,000 in any calendar year shall constitute Net Proceeds under this clause (a);

(b) 100% of the cash proceeds actually received by any Loan Party from any Event of Loss, net of (i) attorneys’ fees, accountants’ fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes, other customary expenses and brokerage, consultant and other customary fees actually incurred in connection therewith, (ii) the principal amount, premium or penalty, if any, interest and other amounts on any

Indebtedness that is secured by a Lien (other than a Lien that ranks pari passu with or subordinated to the Liens securing the Obligations) on the asset subject to such Event of Loss and that is required to be repaid (and is timely repaid) in connection with such Event of Loss (other than Indebtedness under the Financing Documents) and (iii) taxes paid by any Loan Party as a result thereof; provided that so long as no Default or Event of Default has occurred and is continuing, the Borrower may reinvest any portion of such proceeds in assets useful for its business in accordance with Prudent Industry Practice (which shall include any Investment permitted, or not otherwise prohibited, by this Agreement) within 12 months of such receipt and such portion of such proceeds shall not constitute Net Proceeds except to the extent not, within 12 months of such receipt, so reinvested or contractually committed to be so reinvested (it being understood that if any portion of such proceeds are not so used within such 12-month period but within such 12-month period are contractually committed to be used, then upon the termination of such contract or if such Net Proceeds are not so used within 18 months of initial receipt, such remaining portion shall constitute Net Proceeds as of the date of such termination or expiry without giving effect to this proviso); it being further understood that such proceeds shall constitute Net Proceeds notwithstanding any investment notice if a Default or Event of Default has occurred and is continuing at the time of a proposed reinvestment, unless such proposed reinvestment is made pursuant to a binding commitment entered into at a time when no such Default or Event of Default was continuing; provided, further, that only the aggregate amount of Loss Proceeds in excess of \$7,500,000 in any calendar year or \$15,000,000 during the term of this Agreement shall constitute Net Proceeds under this clause (b); provided, further that no reinvestment of any such proceeds in excess of \$25,000,000 individually shall be permitted unless Borrower has provided to the Administrative Agent a reinvestment plan with respect thereto that has been approved by the Administrative Agent in consultation with the Lenders' independent engineer, which approval shall not be unreasonably withheld; and

(c) 100% of the cash proceeds from the incurrence, issuance or sale by any Loan Party of any Indebtedness (other than Permitted Indebtedness), net of all taxes paid by any Loan Party as a result thereof and fees (including investment banking fees and discounts), commissions, costs and other expenses, in each case incurred in connection with such incurrence, issuance or sale.

"Note" has the meaning assigned to such term in Section 2.04(b)(ii).

"Obligations" means all advances to, and debts (including interest accruing after the maturity of the Loan and interest accruing after the filing of any Bankruptcy), liabilities, obligations, Prepayment Premium, covenants and duties of, any Loan Party arising under any Financing Document, or otherwise with respect to any Loan, in each case whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising 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 law naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding, including the Loan Parties' obligations to pay, discharge and satisfy the Erroneous Payment Subrogation Rights.

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"Officer's Certificate" means, with respect to any Loan Party, a certificate signed by an Authorized Representative of such Loan Party.

"Organizational Documents" means, with respect to any Person, (i) in the case of any corporation, the certificate of incorporation and by-laws, shareholder or investor agreement (or similar documents) of such Person (including, without limitation, with respect to Borrower, the Series B Certificate of Designations), (ii) in the case of any limited liability company, the certificate of formation and operating agreement (or similar documents) of such Person, (iii) in the case of any limited partnership, the certificate of formation and limited partnership agreement (or similar documents) of such Person, (iv) in the case of any general partnership, the partnership agreement (or similar document) of such Person and (v) in any other case, the functional equivalent of the foregoing (or similar document) executed, adopted or filed in connection with the creation, formation, organization or governance of such Person or otherwise to provide for the rights and/or obligations of the holders of Capital Stock of such Person with respect to each other and such Person.

"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 Financing Document, or sold or assigned an interest in any Financing Document).

"Other Taxes" means any and all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes arising from any payment made under any Financing Document or from the execution, delivery, performance, registration or enforcement of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Financing Document except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than pursuant to an assignment request by the Borrower under Section 2.11).

"Participant" has the meaning assigned to such term in Section 10.04(f).

"Participant Register" has the meaning assigned to such term in Section 10.04(f).

"Participation Shares" has the meaning assigned to such term in Section 2.14(b).

"Paycheck Protection Program" means U.S. Small Business Administration's Paycheck Protection Program established under Section 1102 of the CARES Act.

"Payment in Full of Term Loan Debt" means, subject to Section 10.15:

- (a) payment in U.S. Dollars in full in cash or immediately available funds of all of the Obligations (other than unasserted contingent indemnification obligations);

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- (b) termination or expiration of all Commitments, if any, of the Lenders to extend credit to the Borrower; and

(c) providing cash collateral to Collateral Agent in such amount as Collateral Agent determines is reasonably necessary to secure the Secured Parties in respect of any asserted or threatened (in writing) claims, demands, actions, suits, proceedings, investigations, liabilities, fines, costs, penalties, or damages for which any of the Secured Parties may be entitled to indemnification by any Loan Party pursuant to the indemnification provisions in the Financing Documents.

"Payment Recipient" has the meaning assigned to it in Section 10.21(a).

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

"Pekin Production Facility" means the two Production Facilities that are located in Pekin, Illinois, and owned and operated by Alto Pekin, LLC.

"Pension Plan" means any "employee pension benefit plan" as defined in Section 3(2) of ERISA (other than a Multiemployer Plan) that is subject to the provisions of

Title IV or Section 302 of ERISA, or Section 412 of the Code, and in respect of which any Loan Party or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA or with respect to which any Loan Party or ERISA Affiliate has or could have any liability.

“Permitted Contest Conditions” means, with respect to any Loan Party, a contest, pursued in good faith, challenging the enforceability, validity, interpretation, amount or application of any law, tax or other matter (legal, contractual or other) by appropriate proceedings timely instituted if (a) such Loan Party diligently pursues such contest, (b) such Loan Party establishes adequate reserves with respect to the contested claim if and to the extent required by GAAP and (c) such contest (i) could not reasonably be expected to have a Material Adverse Effect and (ii) does not involve any material risk or danger of any criminal or unindemnified civil liability being incurred by the Administrative Agent or the Lenders.

“Permitted Indebtedness” has the meaning assigned to such term in Section 6.02.

“Permitted Lien” has the meaning assigned to such term in Section 6.03.

“Permitted Refinancing” means, with respect to any Person, any modification, refinancing, refunding, renewal, replacement or extension of any Indebtedness of such Person; *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, refunded, renewed, replaced or extended except by an amount equal to unpaid accrued interest, premium and penalties thereon plus other reasonable amounts paid, and fees and expenses reasonably incurred, in connection with such modification, refinancing, refunding, renewal, replacement or extension, (b) at the time thereof, no Default or Event of Default shall have occurred and be continuing, and (c) (i) to the extent such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is subordinated in right of payment to the Obligations, such modification, refinancing, refunding, renewal, replacement or extension is subordinated in right of payment to the Obligations on terms at least as favorable (as reasonably determined by the Borrower) to the Lenders taken as a whole, as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended, *provided* that such modification, refinancing, refunding, renewal, replacement or extension shall not be considered less favorable as a result of having a higher rate of interest so long as such interest rate is consistent with market rates at the time of such modification, refinancing, refunding, renewal, replacement or extension, (ii) such modification, refinancing, refunding, renewal, replacement or extension is incurred by the Person who is the obligor of the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended, and (iii) if the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended was subject to an intercreditor agreement, the holders of such modified, refinanced, refunded, renewed, replaced or extended Indebtedness (if such Indebtedness is secured) or their representative on their behalf shall become party to an intercreditor agreement in form and substance reasonably acceptable to the Administrative Agent.

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

“Plan” means any “employee benefit plan” within the meaning of Section 3(3) of ERISA sponsored, maintained or contributed to, or required to be contributed to by any Loan Party or any ERISA Affiliate or with respect to which any Loan Party or ERISA Affiliate has liability.

“Pledged Debt” has the meaning set forth in the Security Agreement.

“Post-Default Rate” means a rate per annum which is equal to the sum of 2.00% per annum *plus* the Interest Rate.

“Prepayment Offer Deadline” has the meaning assigned to such term in Section 2.05(c)(iii).

“Prepayment Premium” means, with respect to the prepayment or repayment of any Loan as described in Section 2.05 (including any acceleration of Loans pursuant to Section 7.01), (i) on and prior to the Make-Whole Expiry Date, the Make-Whole Amount and (ii) after the Make-Whole Expiry Date, the Repayment Fee. An example of the Prepayment Premium calculation is set forth on Annex II.

“Prepayment Premium Event” has the meaning assigned to such term in Section 2.05(c)(iv).

“Production Facilities” means the specialty alcohols, essential ingredients and fuel-grade ethanol production facilities and distribution and marketing facilities identified as such on Schedule 1.01(a).

“Projections” has the meaning assigned to such term in Section 3.12(b).

“Property” means any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

“Prudent Industry Practices” means those practices, methods, equipment, specifications and standards of safety and performance, as the same may change from time to time, as are commonly used by specialty alcohols, essential ingredients and fuel-grade ethanol production facilities in the United States, as applicable, of a type and size similar to the Production Facilities as good, safe and prudent engineering practices in connection with the design, construction, operation, maintenance, repair and use of electrical and other equipment, facilities and improvements of such facilities, with commensurate standards of safety, performance, dependability, efficiency and economy; *provided*, that “Prudent Industry Practices” does not necessarily mean one particular practice, method, equipment specification or standard in all cases and shall not be interpreted to require the adoption or implementation of any particular best or most optimal practice, but is instead intended to encompass a broad range of acceptable practices, methods, equipment specifications and standards.

“Quarterly Date” means the last Business Day of September, December, March and June in each fiscal year, the first of which shall be the first such day after the date hereof.

“Real Property” means all right, title and interest of the Loan Parties in and to any and all parcels of real property owned or leased by the Loan Parties together with all of the Loan Parties’ interests in all improvements and appurtenant fixtures, equipment, personal property, easements and other property and rights incidental to the ownership, lease or operation thereof.

“Recipient” means any Agent, any Lender, or any other recipient of any payment to be made by or on account of any obligation of any Loan Party under any Transaction Document.

“Register” has the meaning assigned to such term in Section 10.04(c).

“Registration Rights Agreement” means that certain Registration Rights Agreement, entered into by the Borrower and the Lenders, dated on or about the date hereof.

“Regulation D” means Regulation D of the Board.

“Regulation U” means Regulation U of the Board.

“Related Fund” means, with respect to any Lender, any fund that invests in loans and is managed or advised by the same investment advisor as such Lender, by such Lender or an Affiliate of such Lender.

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

“Release” means any release, spill, emission, emanation, leaking, pumping, pouring, injection, deposit, disposal, discharge, dispersal, leaching or migration into, on, under or through the indoor or outdoor Environment, including the movement through ambient air, soil, surface water, ground water, wetlands, land or subsurface strata.

“Repayment Fee” means, with respect to the prepayment or repayment of any Loan, a premium in an amount equal to the product of (i) the principal amount of such payment and (ii) the percentage set forth below in respect of the period in which such payment is made as indicated below:

Period	Repayment Fee Percentage
From the day after the second anniversary of the Funding Date of such Loan until and including the third anniversary of such Funding Date	7.00%
From the day after the third anniversary of the Funding Date of such Loan until and including the fourth anniversary of such Funding Date	5.00%
From the day after the fourth anniversary of the Funding Date of such Loan until and including the fifth anniversary of such Funding Date	2.00%
The day after the fifth anniversary of the Funding Date of such Loan and any time thereafter	0.00%

“Replacement Material Contract” means one or more contracts, agreements, instruments (or series of related contracts, agreements, or instruments) entered into in replacement of a Material Contract which provide for obligations in favor of the applicable Loan Party as of the date of cancellation or termination of the applicable Material Contract, taken as a whole, substantially similar, and have terms which are, taken as a whole and as of the date of cancellation or termination of the applicable Material Contract, not materially more onerous to such Loan Party as the Material Contract being replaced.

“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, at any time, Lenders having aggregate Commitments (or, if the Commitments are terminated, holding Loans) representing more than fifty percent (50%) or more of the sum of the total Commitments (or, if the Commitments are terminated, aggregate outstanding principal amount of Loans) at such time; *provided* that, for the avoidance of doubt, the term “Commitments” as used in this definition refers to the Lenders’ aggregate Commitments, whether drawn or undrawn, as of the applicable date of determination.

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

“Restricted Payment” means:

(a) any dividend paid by any Loan Party (in cash, Property or obligations) on, or other payments or distributions on account of, or the setting apart of money for a sinking or other analogous fund for, or the purchase, redemption, retirement or other acquisition by any Loan Party of, any portion of any membership interests in any Loan Party or any warrants, rights or options to acquire any such membership interests;

(b) any payment of development, management or other fees, or of any other amounts, by any Loan Party to any Affiliate thereof; and/or

(c) any other payment (in cash, Property or obligations to a parent company of the Loan Parties) to a parent company or Affiliate of the Loan Parties.

For the avoidance of doubt, and without limiting the foregoing, any dividend or other distribution (whether in cash, securities or other property) with respect to any Series B Units (or any other forms of membership interests and/or units, profit-sharing, or participation interests, or other equity interests), or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Series B Units (or any other forms of membership interests and/or units, profit-sharing, or participation interests, or other equity interests) or any option, warrant or other right to acquire any such Series B Units (or any other forms of membership interests and/or units, profit-sharing, or participation interests, or other equity interests) shall, in each case, constitute a “Restricted Payment”.

“Restricted Payment Conditions” means, with respect to any Restricted Payment, (a) there shall not have occurred and be continuing any Default or Event of Default as of the date of such Restricted Payment and no Default or Event of Default shall occur as a result of such Restricted Payment, (b) after taking into account the amount of such Restricted Payment, the Minimum Liquidity Threshold will be met as of the date of such Restricted Payment and (c) except with regard to Restricted Payments permitted under Section 6.06(f), such Restricted Payment is funded with Retained Excess Cash Flow and paid after the date on which any prepayment required to be paid pursuant to Section 2.05(b)(iv) and Section 2.05(c) with respect to the semi-annual period ending December 31, 2023 has been paid.

“Retained Excess Cash Flow” means, on a cumulative basis, (i) for any semi-annual period ending on or after December 31, 2023, the portion of Excess Cash Flow for such semi-annual period that the Borrower is not required to offer to apply to prepay the Loans pursuant to Section 2.05(b)(iv) and Section 2.05(c), from and after the date on which any such prepayment offer is required to be made under Section 2.05(b)(iv), plus (ii) for any semi-annual period ending on or after December 31, 2023, the portion of Excess Cash Flow for such semi-annual period that (x) the Borrower offered to apply to prepay the Loans in accordance with Section 2.05(b)(iv) and Section 2.05(c), and (y) was declined by the Lenders in accordance with Section 2.05(c), from and after the date on which such prepayment was declined by the Lenders pursuant to Section 2.05(c), minus (iii) any amounts referred to in clauses (i) and (ii) which have been applied to a Restricted Payment, Investment, or Capital Expenditure using Retained Excess Cash Flow in accordance with this Agreement.

“S&P” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., or any successor to the rating agency business thereof.

“Sanctioned Country” means, at any time, a country or territory that is subject to comprehensive Sanctions. For the avoidance of doubt, as of the Closing Date, Sanctioned Countries include the Crimea region and so-called Donetsk People’s Republic and Luhansk People’s Republic in Ukraine, Cuba, Iran, North Korea and Syria.

“Sanctioned Person” means, at any time, any Person who is the subject of Sanctions, including as a result of being (a) listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, the United Nations Security Council, His Majesty’s Treasury, the European Union or any EU member state, (b) any Person operating, organized or resident in a Sanctioned Country, or (c) any Person owned or controlled by any such Person.

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or (b) the United Nations Security Council, the European Union or Her Majesty’s Treasury of the United Kingdom.

“SEC” means the Securities and Exchange Commission.

“SEC Regulation D” has the meaning assigned to such term in Section 2.14(c).

“Secured Parties” means, collectively, (a) the Agents and (b) the Lenders.

“Securities Act” means the Securities Act of 1933, as amended.

“Security Agreement” means that certain Security Agreement, to be entered into on the Closing Date, among the Loan Parties and the Collateral Agent, substantially in the form attached hereto as Exhibit E.

“Security Documents” means the Security Agreement, the Intercreditor Agreement, the IP Security Agreements, the Mortgages, the Control Agreements, all Uniform Commercial Code financing statements required by any Security Document and any other security agreement or instrument to be executed or filed pursuant hereto or any other Financing Document.

“Series B Certificate of Designations” means Borrower’s Certificate of Designations, Power, Preferences and Rights of the Series B Cumulative Convertible Preferred Stock filed with the Secretary of State of the State of Delaware on March 26, 2008.

“Series B Unit” means “Series B Preferred Stock”, as defined in the Series B Certificate of Designations.

“Solvent” means, with respect to any Person on a particular date, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay such debts and liabilities as they mature, (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute an unreasonably small capital and (e) such Person is not insolvent as defined under applicable Bankruptcy or insolvency laws; *provided* that unless otherwise provided under Applicable Law, the amount of contingent liabilities at any time shall be computed as the amount that, in light of all the facts and circumstances existing at such date, represents the amount that can reasonably be expected to become an actual or matured liability.

“Specified CapEx Commitment” means, with respect to each Specified CapEx Commitment, the commitment of such Lender to make a Specified CapEx Loan in the amount of such Lender’s Specified CapEx Commitment set forth on Annex I, as such commitment may be reduced or terminated pursuant to Section 2.03, or if such Lender has entered into one or more Assignment and Assumptions following the Closing Date, the amount set forth for such Lender in the Register maintained by the Administrative Agent as such Lender’s “Specified CapEx Commitment”.

“Specified CapEx Commitment Expiration Date” means November 7, 2023.

“Specified CapEx Loan” has the meaning assigned to such term in Section 2.01(a)(ii).

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

“Subsidiary Guarantor” means, collectively, the Subsidiaries of the Borrower that are Guarantors.

“SVO” means the Securities Valuation Office of the National Association of Insurance Commissioners or any successor to such office.

“Swap Agreement” means any agreement or instrument (including a cap, swap, collar, option, forward purchase agreement or other similar derivative instrument) relating to the hedging of any interest under any Indebtedness or hedging of the prices of products, inputs or environmental attributes.

“Swap Obligation” means (a) solely to the extent such term is used in the definition of “Excluded Swap Obligation”, 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 and (b) other than as described in paragraph (a), with respect to any Person, any obligation of such Person to pay or perform under any Swap Agreement.

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

“Term Loan Collateral” means all property that is subject, intended, or required to become subject to the first priority security interests or Liens granted by a Security Document in accordance with the Intercreditor Agreement.

“Term Loan Priority Collateral” has the meaning assigned to such term in the Intercreditor Agreement.

“Transaction Documents” means individually or collectively, as the context may require, each of the Financing Documents, the Board Observer Rights Agreement and the Registration Rights Agreement.

“Transaction Expenses” means any fees or expenses incurred or paid by the Loan Parties or any of its (or their) Subsidiaries in connection obligations under this Agreement and the other Financing Documents and the transactions contemplated hereby and thereby.

“Treasury Rate” means, with respect to any applicable date, a rate per annum (computed on the basis of actual days elapsed over a year of 360 days) equal to the rate determined by the Administrative Agent on the date three (3) Business Days prior to such date, to be the yield expressed as a rate listed in The Wall Street Journal for United States Treasury securities having a term that is closest to sixty (60) months minus the number of months that have passed since the Closing Date (or, if such rate is no longer published in The Wall Street Journal, any publicly available source of similar market data).

“UCC” or “Uniform Commercial Code” means the Uniform Commercial Code as in effect from time to time in the State of New York; *provided that* if, with respect to any filing statement or by reason of any mandatory provisions of law, the perfection or the effect of perfection or non-perfection of the security interests granted to the Collateral Agent pursuant to the applicable Security Document is governed by the Uniform Commercial Code as in effect in a jurisdiction of the United States other than New York, UCC means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions of each applicable Financing Document and any filing statement relating to such perfection or effect of perfection or non-perfection.

“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.

“United States” and “U.S.” mean the United States of America.

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

“USA PATRIOT Act” has the meaning assigned to such term in Section 10.17.

“Voting Stock” means, with respect to any person, such person’s Capital Stock having the right to vote for the election of directors of such person under ordinary circumstances.

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

Section 1.02 Terms Generally. Except as otherwise expressly provided, the following rules of interpretation shall apply to this Agreement and the other Financing Documents:

- (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) unless the context requires otherwise, any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or therein) and shall include any appendices, schedules, exhibits, clarification letters, side letters and disclosure letters executed in connection therewith;

(f) any reference herein to any Person shall be construed to include such Person’s successors and assigns to the extent permitted under the Financing Documents and, in the case of any Governmental Authority, any Person succeeding to its functions and capacities;

(g) 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;

- (h) all references herein to Articles, Sections, Appendices, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Appendices, Exhibits and

Schedules to, this Agreement;

(i) 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; and

(j) any reference to any law or regulation herein shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time.

Section 1.03 Accounting Terms. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP. If Borrower notifies the Administrative Agent that Borrower wishes to amend any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision, regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then Borrower’s compliance with such provision shall be determined on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in a manner satisfactory to Borrower and the Administrative Agent. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Borrower and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof.

Section 1.04 Divisions. Any reference herein or in any other Financing Document to a merger, transfer, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a Person, or an allocation of assets to a series of a Person (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, amalgamation, assignment, sale or transfer or similar term, as applicable to, of or with a separate Person. Any division of a limited liability company shall constitute a separate Person hereunder and under any other Financing Document (and each division of any limited liability company that is a Subsidiary, Affiliate, joint venture or any other like term shall also constitute such a separate Person or entity hereunder or any other Financing Document).

ARTICLE II

THE CREDITS

Section 2.01 Loan.

(a) Loans. Subject to the terms and conditions set forth in this Agreement (including Section 4.01, Section 4.02, Section 4.03 or Section 4.04, as applicable) and in reliance upon the representations and warranties of the Loan Parties set forth herein, each Lender severally, but not jointly, agrees to advance to Borrower:

(i) on the Initial Funding Date, loans in an aggregate amount not to exceed the amount of such Lender’s Initial Term Loan Commitment (each, an “Initial Term Loan”);

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(ii) on and after the Closing Date until the Specified CapEx Commitment Expiration Date, loans in an aggregate amount not to exceed such Lender’s Specified CapEx Commitment (each, a “Specified CapEx Loan”);

(iii) subject to satisfaction of the conditions specified in Section 2.13, from time to time as agreed pursuant to Section 2.13, loans in an aggregate amount not to exceed such Lender’s Incremental Commitment (each, an “Incremental Loan”). Each Lender’s Commitment shall automatically and without notice be reduced immediately after the funding of any Loan by the principal amount of the Loan then funded.

(b) No Reborrowing. Amounts prepaid or repaid in respect of any Loan may not be reborrowed, and any Commitment, once terminated or reduced, may not be reinstated.

(c) Notice of Loan Borrowing. To request a Borrowing of Loans, the Borrower shall deliver to the Administrative Agent and the Lenders, on a Business Day, a Borrowing Request. In the case of any disbursement of the Loans, the date of the proposed Borrowing (each such date, including the Initial Funding Date, and subject to the immediately succeeding sentence below, a “Funding Date”) specified in a Borrowing Request shall be no earlier than twelve (12) Business Days after the delivery of such Borrowing Request. Each Borrowing Request shall specify (i) the amount to be borrowed, (ii) whether such Loan is an Initial Term Loan, Specified CapEx Loan, or Incremental Loan, (iii) the proposed Funding Date (which shall be a Business Day), (iv) the account into which such Loan should be deposited, (v) (A) in the case of Specified CapEx Loans, the Growth Project to which the proceeds of the Borrowing will be applied, or (B) in the case of Incremental Loans, the intended use of the proceeds of the Borrowing, as agreed in accordance with Section 2.13(a). Upon receipt of such Borrowing Request, the Administrative Agent shall promptly notify each Lender thereof. Borrower may deliver no more than two (2) Borrowing Requests for Specified CapEx Loans and Incremental Loans in any three (3) month period.

(d) Notice by the Administrative Agent to the Lenders. Promptly following receipt of a Borrowing Request in accordance with this Section 2.01, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender’s Loan requested to be made as part of the Loan.

(e) Tax Considerations. For U.S. federal income tax purposes, each of the Loan Parties and the Lenders agree: (i) that each Loan together with the Participation Shares issued by the Borrower in connection therewith shall be treated as an “investment unit” within the meaning of Section 1273 of the Code, the issue price of such investment unit shall equal the total purchase price paid by the Lenders for such Loan made on the date such Loan is advanced and the portion of the issue price of the investment unit that shall, for U.S. federal income tax purposes, be allocated to the purchase of the Participation Shares shall equal the fair market value of such shares based on their trading price at the time of issuance, and (ii) to treat the Loans as a debt instrument, and not as a “contingent payment debt instrument,” for U.S. federal and state income tax purposes. Each of the Loan Parties and the Lenders understand that the Loans will be issued with original issue discount for U.S. federal income tax purposes. The Loan Parties will provide any information reasonably requested from time to time by any Lender regarding such original issue discount. Each of Borrower and the Lenders agrees to file tax returns consistent with the treatment set forth in this clause (e). For all non-tax purposes, the Loan Parties and the Lenders agree to treat each Lender as having lent the full amount of its pro rata portion of the principal amount of the Loans.

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Section 2.02 Funding of the Loans. Subject to the satisfaction or waiver of the conditions set forth in Section 4.01, Section 4.02, Section 4.03 or Section 4.04, as applicable, each Lender shall, no later than 12:00 Noon, New York City time, on the Funding Date specified in the respective Borrowing Request, make available to the Administrative Agent at the Funding Office an amount in Dollars and in immediately available funds equal to the Loan to be made by such Lender. Administrative Agent shall make available to Borrower the aggregate of the amounts made available to Administrative Agent by the Lenders, in like funds as received by the Administrative Agent.

Section 2.03 Termination and Reduction of the Commitments. The Commitments of each Lender shall be permanently reduced by the amount of each Loan made by such Lender on the applicable Funding Date thereof, and once borrowed or repaid, the Loan may not be reborrowed.

Section 2.04 Repayment of Loans; Evidence of Debt

(a) Promise to Repay at Maturity. Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of the Lenders, the unpaid principal amount of the Loans then outstanding on the Maturity Date.

(b) Evidence of Debt

(i) Each Lender may maintain in accordance with its usual practice an account or accounts evidencing the Indebtedness of Borrower to such Lender resulting from the Loans made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder. In the case of a Lender that does not request execution and delivery of a Note evidencing the Loans made by such Lender to Borrower, such account or accounts shall, to the extent not inconsistent with the notations made by the Administrative Agent in the Register, be conclusive and binding on Borrower absent manifest error; *provided* that the failure of any Lender to maintain such account or accounts or any error in any such account shall not limit or otherwise affect any obligations of Borrower.

(ii) Borrower agrees that, upon the request to the Administrative Agent by any Lender, Borrower will execute and deliver to such Lender, as applicable, a promissory note (a "Note") substantially in the forms of Exhibits B-1, B-2, and B-3, as applicable, payable to such Lender in an amount equal to such Lender's Loans evidencing the Loan made by such Lender. Borrower hereby irrevocably authorizes each Lender to make (or cause to be made) appropriate notations on the grid attached to such Lender's Notes (or on any continuation of such grid), which notations, if made, shall evidence, inter alia, the date of, the outstanding principal amount of, and the interest rate applicable to the Loans evidenced thereby. Such notations shall, to the extent not inconsistent with any Borrowing Request (or, in the absence of which, the notations made by the Administrative Agent in the Register), be conclusive and binding on Borrower absent manifest error; *provided* that the failure of any Lender to make any such notations or any error in any such notations shall not limit or otherwise affect any obligations of Borrower. A Note and the obligation evidenced thereby may be assigned or otherwise transferred in whole or in part only in accordance with Section 10.04(b).

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Section 2.05 Prepayment of the Loan

(a) Optional Prepayments. Borrower shall have the right at any time and from time to time, upon at least ten (10) Business Days' prior written notice to the Administrative Agent stating the prepayment date and aggregate principal amount of the prepayment, to prepay any Loan in whole or in part, subject to the requirements of this Section 2.05. Each prepayment pursuant to this Section 2.05(a) shall be accompanied by the Prepayment Premium (if any, as provided in Section 2.05(c)) with respect to the principal amount of the Loan being prepaid. Each partial prepayment of any Loan under this Section 2.05(a) shall be in an aggregate amount at least equal to \$1,000,000 and an integral multiple of \$500,000 in excess thereof (or such lesser amount as may be necessary to prepay the aggregate principal amount then outstanding with respect to such Loan). No prepayment under Section 2.05(b) shall constitute a voluntary prepayment under this Section 2.05(a).

(b) Mandatory Prepayments and Offers to Prepay

(i) Event of Loss. If the Loan Parties receive Net Proceeds from any Event of Loss, subject to the reinvestment rights specified in the definition of "Net Proceeds", the Borrower shall, within five (5) Business Days of the receipt of any such Net Proceeds, offer to prepay the Loans in an amount equal to 100% of such Net Proceeds, pursuant to a written notice sent to the Administrative Agent and the Lenders describing in reasonable detail the event giving rise to the obligation under this Section 2.05(b)(i) to make such offer (each such offer to prepay referred to in this Section 2.05(b)(i), an "Event of Loss Prepayment Offer"); *provided* that if all or any part of such Net Proceeds are required to be applied to make a mandatory prepayment under the ABL Credit Agreement, such prepayment under this Section 2.05(b)(i) will be paid in accordance with the Intercreditor Agreement.

(ii) Disposition of Assets. Without limiting the obligation of the Loan Parties to obtain the consent of the Administrative Agent to any sale, transfer or other disposition of any assets or property (herein, the "Disposition") not otherwise permitted hereunder, if the Loan Parties receive Net Proceeds from any Disposition (other than Dispositions permitted pursuant Section 6.09(b)(b), (c), (d), (e), (f), and (h)), subject to the reinvestment rights specified in the definition of "Net Proceeds", the Borrower shall, within five (5) Business Days of the receipt of any such Net Proceeds, offer to prepay the Loan ratably in an amount equal to 100% of such Net Proceeds. Any such offer to prepay shall be made pursuant to a written notice sent to the Administrative Agent and the Lenders describing in reasonable detail the event giving rise to the obligation under this Section 2.05(b)(ii) to make such offer (each such offer to prepay referred to in this Section 2.05(b)(ii), a "Disposition Proceeds Prepayment Offer"); *provided* that if all or any part of such Net Proceeds are required to be applied to make a mandatory prepayment under the ABL Credit Agreement, such prepayment under this Section 2.05(b)(ii) will be paid in accordance with the Intercreditor Agreement.

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(iii) Incurrence of Debt. If any Loan Party issues or incurs any Indebtedness (other than Permitted Indebtedness), then Borrower shall, within two (2) Business Days of the receipt of the Net Proceeds therefrom, offer to prepay the Loan with an amount equal to 100% of such Net Proceeds, pursuant to a written notice sent to the Administrative Agent and the Lenders describing in reasonable detail the event giving rise to the obligation under this Section 2.05(b)(iii) to make such offer (each such offer to prepay referred to in this Section 2.05(b)(iii), a "Debt Prepayment Offer").

(iv) Excess Cash Flow Sweep. In the event that there shall be Excess Cash Flow for any semi-annual period (commencing with the semi-annual period ending December 31, 2023), the Borrower shall, no later than ten (10) Business Days after financial statements are required to be delivered pursuant to Section 5.10(a) or (b), as applicable, for such semi-annual period, offer to prepay the Loans in an amount equal to the ECF Sweep Amount, accompanied by payment of all accrued interest on the amount prepaid and a calculation as to the ECF Sweep Amount (which calculation shall be in form and substance reasonably satisfactory to the Administrative Agent) (each such offer to prepay referred to in this Section 2.05(b)(iv), an "ECF Prepayment Offer").

(c) Terms of All Prepayments

(i) All partial prepayments of the Loans shall be applied on *pro rata* basis to the Loan of all Lenders who have accepted their respective applicable Event of Loss Prepayment Offer, Disposition Proceeds Prepayment Offer, Debt Prepayment Offer or ECF Prepayment Offer, as applicable.

(ii) Each prepayment of Loans shall be accompanied by payment of all accrued interest on the amount prepaid, the Prepayment Premium (other than in the case of Section 2.05(b)(i) and 2.05(b)(iv) above) and any additional amounts required pursuant to Section 2.09.

(iii) No later than ten (10) Business Days after receiving an Event of Loss Prepayment Offer, a Disposition Proceeds Prepayment Offer, a Debt Prepayment Offer or an ECF Prepayment Offer (the expiration of such ten (10) Business Day-period, the "Prepayment Offer Deadline"), each Lender shall advise Borrower in writing whether it has elected to accept such prepayment offer, in whole or in part, which it shall determine in its sole discretion; *provided* that any Lender which shall fail to so advise Borrower by the Prepayment Offer Deadline shall have been deemed to have accepted such prepayment offer. Each of the Lenders shall have the right, but not the

obligation, to accept or reject its *pro rata* portion of the prepayment offer by Borrower. Borrower shall have no obligation to prepay any amounts in respect of any declining Lender's *pro rata* portion of the prepayment offer. In connection with any prepayment pursuant to Section 2.05(b)(ii) and/or Section 2.05(b)(iii), the amount of the Loan prepaid shall be calculated so that the total amount of Loans prepaid, the accrued but unpaid interest on such Loans and any Prepayment Premium applicable to such prepayment of Loans shall be no more than the Net Proceeds.

(iv) Except as otherwise set forth in Section 2.05(c)(ii), notwithstanding anything herein to the contrary, and for the avoidance of doubt, upon any repayment, refinancing, prepayment, substitution, or replacement of the Loans or repayment as a result of an acceleration of the Loans pursuant to Section 7.01 (whether automatic or optional acceleration) following an Event of Default or otherwise, the Borrower shall make a payment to the Administrative Agent in cash for the account of the Lenders in an amount equal to the Prepayment Premium, if any. Notwithstanding anything herein to the contrary, and for the avoidance of doubt, the Prepayment Premium, if any, shall apply to the repayment of any Incremental Loans based upon the applicable Funding Date of each Incremental Loan. It is understood and agreed that if the Obligations are accelerated or otherwise become due prior to their maturity date, in each case, in respect of any Event of Default (including, but not limited to, upon the occurrence of a bankruptcy or insolvency event (including the acceleration of claims by operation of law)), the Prepayment Premium that would have applied if, at the time of such acceleration, Borrower had prepaid, refinanced, substituted or replaced any or all of the Loan as contemplated in Section 2.05(a) (any such event, a "Prepayment Premium Event"), will also be due and payable without any further action (including any notice requirements otherwise applicable to Prepayment Premium Events, if any) as though a Prepayment Premium Event had occurred and such Prepayment Premium shall constitute part of the Obligations, in view of the impracticability and extreme difficulty of ascertaining actual damages and by mutual agreement of the parties as to a reasonable calculation of each Lender's lost profits as a result thereof. Any Prepayment Premium payable above shall be presumed to be the liquidated damages sustained by each Lender as the result of the early termination and Borrower agrees that it is reasonable under the circumstances currently existing. The Prepayment Premium shall also be payable in the event the Obligations (and/or this Agreement) are satisfied or released by foreclosure (whether by power of judicial proceeding), deed in lieu of foreclosure or by any other means. EACH LOAN PARTY EXPRESSLY WAIVES (TO THE FULLEST EXTENT IT MAY LAWFULLY DO SO) (ON BEHALF OF ITSELF AND THE OTHER LOAN PARTIES) THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS, OR MAY PROHIBIT, THE COLLECTION OF THE FOREGOING PREPAYMENT PREMIUM IN CONNECTION WITH ANY SUCH ACCELERATION. Each Loan Party expressly agrees (to the fullest extent that each may lawfully do so) that: (A) the Prepayment Premium is reasonable and is the product of an arm's length transaction between sophisticated business people, ably represented by counsel; (B) the Prepayment Premium shall be payable notwithstanding the then prevailing market rates at the time payment is made; (C) there has been a course of conduct between Lenders and the Loan Parties giving specific consideration in this transaction for such agreement to pay the Prepayment Premium; and (D) the Loan Parties shall be estopped hereafter from claiming differently than as agreed to in this Section 2.05(c)(iv). Each Loan Party expressly acknowledges that its agreement to pay the Prepayment Premium to Lenders as herein described is a material inducement to Lenders to provide the Commitments and make the Loans contemplated hereby. Borrower acknowledges, and the parties hereto agree, that each Lender has the right to maintain its investment in the Loans free from repayment by Borrower (except as herein specifically provided for) and that the provision for payment of a Prepayment Premium by Borrower, in the event that the Loans are prepaid or are accelerated as a result of an Event of Default, is intended to provide compensation for the deprivation of such right under such circumstances.

(v) Each party hereto acknowledges and agrees that Loans of a particular Lender shall be prepaid pursuant to Section 2.05(a) or Section 2.05(b) (as applicable) in the order in which such Loans were made or acquired by such Lender pursuant to Section 2.01.

Section 2.06 Fees.

(a) Agent Fees. Borrower agrees to pay to each Lender and Agent, for its own account, any Fees set forth in any Fee Letter to which such Lender or Agent is a party.

(b) Payment of Fees. All Fees shall be paid on the dates due, in immediately available funds, in the case of each Agent's Fees, to such Agent, and, in the case of all other Fees, to the Administrative Agent for distribution, if and as appropriate, among the Lenders. Once paid, no Fee shall be refundable under any circumstances, absent manifest error.

(c) AHYDO. Notwithstanding anything in this Agreement or in any Transaction Document to the contrary, if any Loan shall remain outstanding after the fifth (5th) anniversary of the initial issuance thereof and the aggregate amount that would be includible in the gross income of a Lender with respect to such Loan (within the meaning of Section 163(i) of the Code or any successor provision) for the periods ending on or before any Quarterly Date that occurs after such fifth (5th) anniversary (the "**Aggregate Accrual**") would otherwise exceed an amount equal to the sum of (i) the aggregate amount of interest to be paid (within the meaning of Section 163(i) of the Code) under the Loan on or before any applicable interest payment date, and (ii) the product of (A) the issue price (as defined in Section 1273(b) of the Code) of the Loan and (B) the yield to maturity (interpreted in accordance with Section 163(i) of the Code) of the Loan (such sum, the "**Maximum Accrual**"), then the Borrower shall pay on each applicable Quarterly Date occurring after such fifth (5th) anniversary that portion of the outstanding principal amount of the Loan necessary to prevent the Loan from constituting an "applicable high yield discount obligation" within the meaning of Section 163(i) of the Code, up to an amount equal to the excess, if any, of the Aggregate Accrual over the Maximum Accrual (each such payment, an "**AHYDO Payment**") and the amount of such AHYDO Payments and any interest thereon shall be treated for U.S. federal income tax purposes as an amount of interest to be paid (within the meaning of Section 163(i)(2)(B)(i) of the Code) under the Loan. This provision is intended to prevent the Loans from being classified as "applicable high yield discount obligations," as defined in Section 163(i) of the Code, and shall be interpreted consistently therewith.

Section 2.07 Interest.

(a) Loan. The Loans shall bear interest at a rate per annum equal to the Interest Rate on and after the date of borrowing of such Loans.

(b) Default Interest. If all or a portion of the principal amount of any Loan, interest in respect thereof or any other amount due under the Financing Documents shall not be paid when due (whether at the stated maturity, by acceleration or otherwise) or there shall occur and be continuing any other Event of Default, then, to the extent so elected by the Administrative Agent, acting at the direction of the Required Lenders, after Borrower has been notified in writing by the Administrative Agent, acting at the direction of the Required Lenders (or automatically upon the occurrence of an Event of Default pursuant to Section 7.01(f) hereof), the outstanding principal amount of the Loan (whether or not overdue) (to the extent legally permitted) shall bear interest at a rate per annum equal to the Post-Default Rate, from the date of such nonpayment or occurrence of such Event of Default, respectively, until such amount is paid in full (after as well as before judgment) or until such Event of Default is no longer continuing, respectively.

(c) Payment of Interest. Accrued interest on each Loan shall be payable in arrears on each Quarterly Date and on the Maturity Date; *provided* that (i) interest accrued

pursuant to Section 2.07(b) shall be payable on demand and (ii) in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment.

(d) Computation. All interest hereunder shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The computation of interest shall be determined by the Administrative Agent and such determination shall be conclusive absent manifest error.

Section 2.08 Increased Costs.

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

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement (including any such requirement imposed by the Board under Regulation D or otherwise) against assets of, deposits with or for account of, or credit extended by, any Lender;

(ii) subject any Recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder to any Taxes (other than (i) Indemnified Taxes or clauses (b) through (d) of Excluded Taxes and (ii) Other Connection Income Taxes) on its loan, loan principal, commitments or other obligations or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender any other condition (other than Taxes) not otherwise contemplated hereunder affecting this Agreement or the Loan made by such Lender; and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Loan (or of maintaining its obligation to make any such Loan) to Borrower or to increase the cost to such Lender or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or otherwise), then Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender reasonably determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement or the Loan made by such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

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(c) Certificates from Lenders. A certificate of a Lender setting forth calculations in reasonable detail of the amount or amounts necessary to compensate such Lender or its respective holding company, as the case may be, as specified in Section 2.08(a) or Section 2.08(b) shall be delivered to Borrower and shall be conclusive absent manifest error. Borrower shall pay such Lender the amount shown as due on any such certificate within thirty (30) Business Days after receipt thereof.

(d) Delay in Requests. Promptly after any Lender has determined that it will make a request for increased compensation pursuant to this Section 2.08, such Lender shall notify Borrower thereof. Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation; *provided* that Borrower shall not be required to compensate a Lender pursuant to this Section 2.08 for any increased costs or reductions incurred more than ninety (90) days prior to the date that such Lender notifies Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor; *provided, further*, that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the ninety (90)-day period referred to above shall be extended to include the period of retroactive effect thereof.

Section 2.09 Taxes.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Loan Party hereunder or under any other Financing Document shall be made free and clear of and without withholding or deduction for any Taxes except as required by Applicable Law; *provided* that if such Loan Party (or the applicable withholding agent) shall be required by Applicable Law (as determined in the good faith discretion of such Loan Party or an applicable withholding agent) to withhold or deduct any Taxes from such payments, then (i) to the extent such Taxes are Indemnified Taxes, the sum payable by such Loan Party shall be increased as necessary so that after making all required withholdings and deductions (including withholdings and deductions applicable to additional sums payable under this Section) the Administrative Agent, the Collateral Agent or the Lender (as the case may be) receives an amount equal to the sum it would have received had no such withholdings or deductions been made, (ii) such Loan Party shall make or shall cause to be made such withholdings and deductions and (iii) such Loan Party shall pay or shall cause to be paid the full amount withheld and deducted to the relevant Governmental Authority in accordance with Applicable Law.

(b) Payment of Other Taxes by Borrower. Borrower shall timely pay or cause to be paid any Other Taxes 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.

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(c) Indemnification by Loan Parties. Loan Parties shall jointly and severally indemnify or cause to be indemnified the Administrative Agent, the Collateral Agent and each Lender, 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 but without duplication of any additional amounts paid under Section 2.09(a)) paid or payable by the Administrative Agent, the Collateral Agent or such Lender, as the case may be, and 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 Borrower by the Collateral Agent or a Lender, or by the Administrative Agent on its own behalf or on behalf of the Collateral Agent or a Lender, shall be conclusive absent manifest error.

(d) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes by any Loan Party to a Governmental Authority, the relevant Loan Party shall deliver or cause to be delivered 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.

(e) Forms. (i) Any of the Administrative Agent, the Collateral Agent or any Lender (including any assignee Lender) that is legally entitled to an exemption from or reduction of withholding Tax with respect to payments under any Financing Document shall deliver to Borrower (with a copy to the Administrative Agent), at the time or times reasonably requested by Borrower, the Collateral Agent or the Administrative Agent, such properly completed and executed documentation reasonably requested by a Loan Party or the Administrative Agent or prescribed by Applicable Law as will permit such payments to be made without, or at a reduced rate of, withholding. In addition, any of the Administrative Agent, the Collateral Agent or any Lender, if reasonably requested by Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by Borrower or the Administrative Agent as will enable Borrower or the Administrative Agent to determine whether or not such Administrative Agent, the Collateral Agent or Lender is subject to any withholding tax or information reporting requirements. Upon the reasonable written request of Borrower

or the Administrative Agent, or if any form or certification previously delivered expires or becomes obsolete or inaccurate, the Administrative Agent, the Collateral Agent and any Lender shall update any such form or certification previously delivered pursuant to this Section 2.09(e) Notwithstanding anything to the contrary in the preceding three sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.09(e)(ii)(A), Section 2.09(e)(ii)(B), or Section 2.09(e)(ii)(D)) shall not be required if in the Administrative Agent's, the Collateral Agent's or Lender's reasonable judgment such completion, execution or submission would subject such Administrative Agent, the Collateral Agent or Lender to any material unreimbursed cost or expense (or would materially prejudice the legal or commercial position of such Administrative Agent, Collateral Agent or Lender.

(ii) Without limiting the generality of the foregoing, in the event that Borrower is a US Person,

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

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(B) any Recipient who is not a US Person shall, to the extent it is legally entitled to do so, deliver to 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 Recipient becomes a party to this Agreement (and from time to time thereafter upon the reasonable request of Borrower or the Administrative Agent), whichever of the following is applicable:

(I) in the case of a Recipient who is not a US Person claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under this Agreement or any Transaction Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under this Agreement or any Transaction Document, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(II) executed copies of IRS Form W-8ECI;

(III) in the case of a Recipient who is not a US Person claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate to the effect that such Recipient is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable; or

(IV) to the extent a Recipient who is not a US Person is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, a U.S. Tax Compliance Certificate, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; *provided* that if such Recipient is a partnership and one or more direct or indirect partners of such Recipient are claiming the portfolio interest exemption, such Recipient may provide a U.S. Tax Compliance Certificate on behalf of each such direct and indirect partner.

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(C) Any Recipient who is not a US Person shall, to the extent it is legally entitled to do so, deliver to Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or about the date on which such Recipient becomes a Recipient under this Agreement (and from time to time thereafter upon the reasonable request of 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 U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit Borrower or the Administrative Agent to determine the withholding or deduction required to be made;

(D) If a payment made to the Administrative Agent, the Collateral Agent or any Lender under this Agreement would be subject to U.S. federal withholding Tax imposed by FATCA if such Administrative Agent, Collateral Agent or 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 Administrative Agent, Collateral Agent or Lender shall deliver to Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by 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 Borrower or the Administrative Agent as may be necessary for Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Administrative Agent, Collateral Agent or Lender has complied with such Person's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause, "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(f) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.09 (including by the payment of additional amounts pursuant to this Section 2.09), 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 (f) (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 (f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (f) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph 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.

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(g) Survival. Each party's obligations under this Section 2.09 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 Loans and the repayment, satisfaction or discharge of all obligations under any Transaction Documents.

Section 2.10 Payments Generally; Pro Rata Treatment; Sharing of Setoffs.

(a) Payments by Borrower. Unless otherwise specified, Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees, or under Section 2.08 or 2.09, or otherwise) or under any other Financing Document (except to the extent otherwise provided therein) prior to 4:00 p.m., New York City time, on the date when due, in immediately available funds, without setoff or counterclaim. Any amounts received after such time on any date shall be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. Unless otherwise notified by the Administrative Agent in writing to Borrower, all such payments shall be made to the Administrative Agent for the benefit of each Agent and Lender at: OIC Investment Agent, LLC (payment instructions: Bank Name: [***], ABA/Routing No.: [***], Account Name: [***], Account No.: [***]); and in each case, except as otherwise expressly provided in the relevant Financing Document and payments pursuant to Section 2.09, Section 2.10 and 10.03, which shall be made directly to the Persons entitled thereto, in each case subject to the terms of this Agreement. The Administrative Agent shall distribute any such payments received by it in like funds as received for account of any other Person to the appropriate recipient promptly (and in any case not more than one (1) Business Day) following receipt thereof. Payments to each Lender shall be made to such Lender in accordance with its Administrative Questionnaire. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the immediately preceding Business Day and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All amounts owing under this Agreement or under any other Financing Document are payable in Dollars.

(b) Application of Insufficient Payments. If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest, fees and other amounts then due hereunder, such funds shall be applied (i) first, to pay interest, fees and other amounts (except for the amounts required to be paid pursuant to the following clause (ii)) then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest, fees and such other amounts then due to such parties, and (ii) second, to pay principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

(c) Pro Rata Treatment. Except to the extent otherwise provided herein: (i) the Loan shall be made from the Lenders, and each termination or reduction of the amount of the Commitments under Section 2.03 shall be applied to the respective Commitments of the Lenders, *pro rata* according to the amounts of their respective applicable Commitments; (ii) except as provided in Section 2.05(c), each payment or prepayment of principal of the Loan by Borrower shall be made for account of the Lenders *pro rata* in accordance with the respective unpaid principal amounts of the Loan held by them being paid or prepaid; and (iii) each payment of interest on the Loan by Borrower shall be made for account of the Lenders (except, in the case of prepayments under Section 2.05(b), for Lenders not receiving a principal repayment thereunder) *pro rata* in accordance with the amounts of interest on the Loan then due and payable to the respective Lenders.

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(d) Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment or recover any amount in respect of any principal of or interest on any of its Loan resulting in such Lender receiving a greater proportion of the aggregate amount of the Loan and accrued interest thereon then due than the proportion received by any other Lender, then, unless otherwise agreed in writing by the Lenders, the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loan; *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 Section 2.10(d) shall not be construed to apply to any payment made by Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loan to any assignee or Participant, other than to Borrower or any Affiliate thereof (as to which the provisions of this Section 2.10(d) shall apply), provided further that no Lender shall be required to purchase a participation from a Lender rejecting its option to receive prepayments under Section 2.05(b) to the extent disproportionality results from the rejecting Lender's election under Section 2.05(b). Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under Applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

(e) Presumptions of Payment. Unless the Administrative Agent shall have received notice from Borrower prior to the date on which any payment is due to the Administrative Agent for account of the Lenders hereunder that Borrower will not make such payment, the Administrative Agent may assume that Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due to them. In such event, if Borrower has not in fact made such payment within one (1) Business Day after such due date, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(f) Certain Deductions by the Administrative Agent. If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.02, 2.10(c) or 10.03(c), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

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Section 2.11 Change of Lending Office. If any Lender requests compensation under Section 2.08, or if Borrower is required to pay any Indemnified Taxes or additional amount to any Lender or any Governmental Authority for account of any Lender pursuant to Section 2.09 then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loan hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the sole judgment of such Lender exercised in good faith, such designation or assignment (x) would eliminate or reduce amounts payable pursuant to Section 2.08 or 2.09, as the case may be, in the future and (y) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender in any material respect. Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

Section 2.12 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Financing Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an Affected Financial Institution arising under any Financing Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of an 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 to any Lender 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 Financing Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any the applicable Resolution Authority.

Section 2.13 Incremental Facility. On or prior to the Incremental Commitment Expiration Date, Borrower may, pursuant to an Incremental Request delivered to the Administrative Agent from time to time, request the establishment of an incremental term loan facility in an aggregate principal amount to be agreed between Borrower and the Administrative Agent, not to exceed the aggregate amount of the Incremental Commitments, to be documented as an increase in the total amount of the Loans under this Agreement. Each Lender will participate in such Incremental Commitments if each of the following conditions have been satisfied:

(a) Borrower shall have presented to the Administrative Agent reasonably detailed information on the use of proceeds for the Incremental Loans and the commercial arrangements in respect thereof, including an updated Capital Expenditures Plan and Budget, reflecting any Capital Expenditures for Growth Projects to be funded with Incremental Loans, and the Administrative Agent shall have approved such uses and arrangements;

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(b) no Default or Event of Default has occurred and is continuing as of the effective date of such Incremental Loans or would exist after giving effect thereto;

(c) the total available amount of Initial Term Loans and Specified CapEx Loans has been fully drawn, and the proceeds thereof have been used in accordance with this Agreement;

(d) [reserved];

(e) the representations and warranties of each of the Loan Parties set forth in the Financing Documents shall be true and correct in all material respects on and as of the date of the applicable Incremental Request (except where already qualified by materiality or Material Adverse Effect, in which case, in all respects);

(f) the Mortgage Policies shall have been increased or supplemented pursuant to an endorsement thereto or documentation otherwise reasonably acceptable to the Administrative Agent by an amount equal to such Incremental Commitment;

(g) Investment Committee approval (which shall be at the Investment Committee's sole and absolute discretion) for such Incremental Request shall have been obtained; and

(h) the terms of any such Incremental Commitments and Incremental Loans shall be identical to those of the existing Commitments and Loans except that such Incremental Commitments and Incremental Loans shall be used for the approved uses and arrangements referred to in clause (a) above; *provided* that each borrowing of Incremental Loans shall be in an aggregate amount of \$10,000,000 or a larger multiple of \$1,000,000; *provided, further* that the final borrowing of such Incremental Loans may be in an amount equal to the then current amount of the unfunded Incremental Commitments with respect to the applicable Incremental Loans.

In connection therewith, this Agreement and the other Financing Documents shall be amended as necessary to effectuate such increase, such amendments to be acceptable to the Administrative Agent in its reasonable discretion (including to Annex I to reflect such Incremental Commitment).

Section 2.14 Issuance of Common Stock

(a) On the Initial Funding Date, subject to the terms and conditions set forth herein, the Lenders shall acquire from Borrower, and Borrower shall issue and deliver to the Lenders (or their designated Affiliates), an aggregate of 1,282,051 shares of common stock, \$0.001 par value per share (the "Common Stock") (the "Initial Participation Shares"), which shall be allocated among the Lenders (or their designated Affiliates), *pro rata* according to their respective amounts funded under the Initial Term Loans, for an issue price per Initial Participation Share equal to \$3.90.

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(b) Upon the funding of any Specified CapEx Loans (each such funding, an "Additional Issuance Event"), at and as of such time as the Additional Issuance Event, the Lenders shall acquire from the Borrower, and the Borrower shall issue and deliver to the Lenders (or their designated Affiliates), an aggregate amount of shares of Common Stock equal to (i) 320,513 shares (as equitably adjusted by approval of the Administrative Agent for stock splits, stock dividends, reorganizations, recapitalizations and the like after the Initial Funding Date and through such issuance), *multiplied by* (ii)(x) the amount funded under such Additional Issuance Event, up to \$35,000,000, *divided by* (y) \$35,000,000 ("Additional Participation Shares"), and together with the Initial Participation Shares, the "Participation Shares"), which shall be allocated among the Lenders (or their designated Affiliates), *pro rata* according to their respective amounts funded under such Additional Issuance Event, for an issue price per Additional Participation Share equal to \$3.90.

(c) The Participation Shares shall be issued to the Lenders in reliance upon the exemption from securities registration afforded by Section 4(a)(2) of the Securities Act and Rule 506(b) of Regulation D as promulgated by the SEC under the Securities Act ("SEC Regulation D").

(d) It is understood that the certificates evidencing the Participation Shares shall bear the following legend:

"NEITHER THESE SECURITIES NOR THE SECURITIES ISSUABLE UPON THE CONVERSION OF THESE SECURITIES HAVE BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR SECURITIES LAWS OF ANY STATE OR JURISDICTION. THE SECURITIES REPRESENTED HEREBY MAY NOT BE CONVERTED, OFFERED, SOLD, TRANSFERRED, PLEDGED, HYPOTHECATED OR OTHERWISE ASSIGNED (EACH A "TRANSFER") EXCEPT (X) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSFER NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND (Y) TO THE EXTENT THE TRANSFER DOES NOT CONSTITUTE AND WILL NOT RESULT IN A VIOLATION OF APPLICABLE FEDERAL OR STATE SECURITIES LAWS, AS EVIDENCED BY A LEGAL OPINION OF COUNSEL TO THE TRANSFEROR TO SUCH EFFECT (TO THE EXTENT REQUESTED BY COUNSEL OF THE COMPANY), THE SUBSTANCE OF WHICH SHALL BE REASONABLY ACCEPTABLE TO THE COMPANY. THE HOLDER HEREOF AGREES THAT IT WILL DELIVER, OR CAUSE TO BE DELIVERED, TO EACH PERSON TO WHOM THE SECURITIES HEREBY REPRESENTED ARE TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND."

(c) The parties acknowledge and agree that the Participation Shares are being issued as consideration for the Lenders' entry into, and extensions of credit in accordance with, this Agreement.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE LOAN PARTIES

On each of the Closing Date, the Initial Funding Date and any other Funding Date and on any other date that the representations herein are required to be made pursuant to the Financing Documents, each Loan Party represents and warrants to each Agent and the Lenders that, as of such date:

Section 3.01 Due Organization, Etc. Borrower is a Delaware corporation, and each other Loan Party is a limited liability company, limited partnership or corporation, as applicable, in each case duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization. Each Loan Party has all requisite limited liability company, limited partnership, corporate or other organizational power and authority to own or lease and operate its assets and to carry on its business as now conducted and as proposed to be conducted and each Loan Party is duly qualified to do business and is in good standing in each jurisdiction where necessary in light of its business as now conducted and as proposed to be conducted, except where the failure to so qualify, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. No filing, recording, publishing or other act by a Loan Party that has not been made or done is necessary in connection with the existence or good standing of such Loan Party.

Section 3.02 Authorization, Etc. Each Loan Party has full corporate, limited liability company, limited partnership or other organizational powers, authority and legal right to enter into, deliver and perform its respective obligations under each of the Transaction Documents to which it is a party and to consummate each of the transactions contemplated herein and therein, and has taken all necessary corporate, limited liability company, limited partnership or other organizational action to authorize the execution, delivery and performance by it of each of the Transaction Documents to which it is a party. Each of the Transaction Documents to which any Loan Party is a party has been duly executed and delivered by such Loan Party and is in full force and effect and constitutes a legal, valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its respective terms, except as enforcement may be limited (i) by Bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar laws affecting creditors' rights generally, (ii) by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law) or (iii) by implied covenants of good faith and fair dealing.

Section 3.03 No Conflict. The execution, delivery and performance by each Loan Party of each of the Transaction Documents to which it is a party and all other documents and instruments to be executed and delivered hereunder by it, as well as the consummation of the transactions contemplated herein and therein, do not and will not (i) conflict with the Organizational Documents of such Loan Party, (ii) conflict with or result in a breach of, or constitute a default under, any indenture, loan agreement, mortgage, deed of trust or other instrument or agreement to which such Loan Party is a party or by which it is bound or to which such Loan Party's property or assets are subject, except where such contravention, breach or default, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, (iii) conflict with or result in a breach of, or constitute a default under, in any material respect, any Applicable Law (including, assuming the accuracy of the representations and warranties of the Lenders set forth in a certificate or certificates delivered by the Lenders to Borrower at or prior to any issuance of Participation Shares, federal and state securities laws and regulations and the rules and regulations of any self-regulatory organization to which Borrower or its securities are subject), except where such contravention or breach could not reasonably be expected to have a Material Adverse Effect, or (iv) with respect to each Loan Party, result in the creation or imposition of any Lien (other than a Permitted Lien) upon any of such Loan Party's property or the Collateral.

Section 3.04 Approvals, Etc.

(a) The Loan Parties have obtained all Authorizations required by any Governmental Authority under any Applicable Law, in each case that are necessary for the operation, maintenance and ownership of the Business and the Production Facilities (other than those Authorizations that are immaterial to such Production Facilities, are ministerial in nature, or are not necessary as of the Closing Date or Funding Date, as applicable, for such purposes but can reasonably be expected to be obtained in due course, without materially adverse conditions or requirements, on or before the date required). Each Authorization is in full force and effect and is not subject to any current legal proceeding (including administrative or judicial appeal, permit renewals or modification) or to any unsatisfied condition (required to be satisfied as of date this representation and warranty is made) that, in each case, could reasonably be expected to have a Material Adverse Effect, and all statutorily prescribed appeal periods with respect to the issuance of such Authorizations have expired. The Loan Parties are in compliance with all Authorizations except such non-compliance as could not reasonably be expected to have a Material Adverse Effect.

(b) With respect to each Authorization that was not required to be obtained as of the Closing Date pursuant to clause (a), to the knowledge of the Loan Parties after due investigation, there exists no impediment that could reasonably be expected to prevent such Authorization from being obtained in due course, without materially adverse conditions or requirements and prior to the time such Authorization is required to be obtained.

(c) Each Loan Party that is engaged in the manufacture, production, distillation, aging, blending, bottling or distribution of alcoholic beverages possesses all material permits, licenses, or authorizations required to engage in its activities or businesses related to alcoholic beverages pursuant to Alcoholic Beverage Laws except for such permits, licenses, or authorizations, the failure of which to obtain, could not reasonably be expected to have a Material Adverse Effect.

Section 3.05 No Material Adverse Effect. Since December 31, 2021, there has been no event or occurrence which has resulted in a Material Adverse Effect and is continuing or could reasonably be expected to result in, individually or in the aggregate, any Material Adverse Effect.

Section 3.06 Litigation. There is no pending or threatened litigation, investigation, action or proceeding of or before any court, arbitrator or Governmental Authority (i) seeking to restrain or prohibit the consummation of the transactions contemplated by the Transaction Documents, (ii) purporting to affect the legality, validity or enforceability of any of the Transaction Documents, (iii) that either individually or in the aggregate could reasonably be expected to have a Material Adverse Effect or (iv) affecting the Loan Parties as of the Closing Date that has not been disclosed to the Administrative Agent in writing prior to the Closing Date and which is material.

Section 3.07 Authorizations; Environmental Matters. Except as set forth on Schedule 3.07:

(a) each Loan Party and their respective assets and operations are now and have been in compliance for the past three (3) years with all applicable Environmental Laws, except as could not reasonably be expected to have a Material Adverse Effect;

(b) each Loan Party (i) holds or, maintains all Authorizations required under Environmental Laws (each of which is in full force and effect) or has applied for all Authorizations required for any of its current operations or for any property owned, leased or otherwise operated by it; and (ii) is and has been in compliance with all Authorizations required under Applicable Laws, except for any noncompliance as could not reasonably be expected to have a Material Adverse Effect;

(c) there are no past, pending or threatened Environmental Claims asserted against any Loan Party, including any consent decrees, orders, settlements or other agreements relating to compliance or noncompliance with or liability under Environmental Laws, except for any Environmental Claim that could not reasonably be expected to have a Material Adverse Effect;

(d) there has been no Release, threatened Release, treatment, storage, disposal, arranging for or permitting the disposal of, transportation, handling, manufacturing, distributing or sale of, exposure to, or ownership or operation of any property or facility contaminated by, Hazardous Materials, including at, on, from or under the leased premises of any Loan Party or any other real property currently or formerly owned, leased or operated by any Loan Party, except in each case as has not had and could not reasonably be expected to have a Material Adverse Effect;

(e) there have been no environmental investigations, studies, audits, reviews or other analyses conducted by any Loan Party in relation to their respective assets and operations which disclose any potential basis for Environmental Claims, except as could not reasonably be expected to have a Material Adverse Effect;

(f) the Loan Parties have not received any written notice, report, order, directive or other information from any Person relating to a violation of any Environmental Law or liability under any Environmental Law except as could not reasonably be expected to have a Material Adverse Effect;

(g) no Loan Party has assumed, undertaken, provided an indemnity with respect to, or otherwise become subject to, the liability of any other Person under Environmental Law or relating to Hazardous Materials that has had or would have a Material Adverse Effect;

(h) no Environmental Attributes, credits, or offsets purchased, sold, traded or otherwise transferred by the Loan Parties have been invalidated or subject to recapture, in each case to the extent giving rise to material liability of the Loan Parties under Environmental Law; and

(i) each Loan Party has made available copies of all environmental reports, audits, assessments and other material environmental, health or safety documents in its possession, custody or control regarding compliance by any of the Loan Parties with, or potential liability of any of the Loan Parties under Environmental Laws or Authorizations required under Environmental Laws or relating to the Loan Parties' current or former properties, facilities or operations.

Section 3.08 Compliance with Laws and Obligations; No Default. Each Loan Party is in compliance with all Applicable Laws applicable to it or its respective assets and operations, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

Section 3.09 Material Contracts. To the knowledge of the Loan Parties, no termination event has occurred under any Material Contract and each Material Contract is in full force and effect, except to the extent the Loan Parties have delivered notice thereof to the Administrative Agent in accordance with this Agreement. No Loan Party has received any default, expiration, breach or termination notice pursuant to any Material Contract and no Loan Party is in material default under any Material Contract, except to the extent the Loan Parties have delivered notice thereof to the Administrative Agent in accordance with this Agreement. Each Loan Party is in compliance in all material respects with all of the terms of the Material Contract to which it is a party.

Section 3.10 Licenses. Each Loan Party owns, or is licensed to use, all patents, trademarks, permits, proprietary information and knowledge, technology, copyrights, licenses, franchises and formulas, or rights with respect thereto and all other intellectual property, reasonably necessary for the operation of their respective businesses as currently conducted and that are material to the performance by it of its obligations under the Transaction Documents to which it is a party, in each case, as to which the failure of such Loan Party to so own or be licensed could reasonably be expected to have a Material Adverse Effect, and the use thereof by such Loan Party does not infringe in any respect upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

Section 3.11 Taxes. Each Loan Party (a) has timely filed or caused to be timely filed all Tax returns and reports required to have been filed by it and each such Tax return is complete and accurate in all respects, and (b) has paid or has caused to be paid prior to delinquency all Taxes required to have been paid by it (whether or not shown as due on any Tax returns), other than Taxes that are being contested in accordance with the Permitted Contest Condition, except, in each case, where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

Section 3.12 Full Disclosure; Projections.

(a) None of the written reports, financial statements, certificates or other written information (other than Projections and information of a general economic or industry nature) furnished by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the negotiation and execution of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished), taken as a whole, contains any material misstatement of fact or omits to state any material fact necessary to make such statements therein, in the light of the circumstances under which they were made, not materially misleading.

(b) Each Loan Party's sole representation with respect to information consisting of statements, estimates, forecasts and projections regarding the Loan Parties and the future performance of the Business or the Production Facilities or other expressions of view as to future circumstances (including the Financial Model, the Capital Expenditures Plan and Budget and estimates, budgets, forecasts, financial information and "forward-looking statements" that have been made available to any Secured Party by or on behalf of any Loan Party or any of its representatives or Affiliates (collectively, "Projections")), shall be that such Projections have been prepared in good faith based upon assumptions believed to be reasonable at the time of preparation thereof and are consistent in all material respects with the Financing Documents as of the time of preparation thereof; *provided* that it is understood and acknowledged that such Projections are based upon a number of estimates and assumptions and are subject to business, economic and competitive uncertainties and contingencies, that actual results during the period or periods covered by any such Projections may differ from the projected results and such differences may be material and that, accordingly, no assurances are given and no representations, warranties or covenants are made that any of the assumptions are correct, that such Projections will be achieved or that the forward-looking statements expressed in such Projections will correspond to actual results.

Section 3.13 Senior Indebtedness. Each Loan Party's obligations under the Financing Documents are the direct and unconditional general obligations of such Loan

Party and, on and after the Closing Date, (a) rank senior in priority of payment with respect to the claims of the Secured Parties against each Loan Party that is not a Marketing Affiliate to the claims of the secured parties under the ABL Credit Agreement and financing documents entered into in connection therewith against such Loan Parties, (b) have the lien priority as provided in the Intercreditor Agreement, and (c) rank at least *pari passu* in priority of payment and in all other respects with all other present or future unsecured and secured Indebtedness of such Loan Party.

Section 3.14 Solvency. Immediately after giving effect to the transactions to occur on the Closing Date and immediately following the occurrence of each Funding Date, the Loan Parties, on a consolidated basis, will be Solvent.

Section 3.15 Regulatory Restrictions on the Loan. No Loan Party is an “investment company” as defined in the Investment Company Act of 1940 of the United States (including the rules and regulations thereunder), as amended.

Section 3.16 Title; Security Documents.

(a) Borrower owns and has good and valid title to, or valid leasehold or other interests in, its Real Property, free and clear of all Liens other than Permitted Liens, except where the failure to have such title or other interest could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Other than with respect to the Real Property, each Loan Party owns all material properties and assets in each case purported to be covered by the Security Documents to which it is party free and clear of all Liens other than Permitted Liens.

(b) The provisions of the Security Documents to which any Loan Party is a party that have been delivered on or prior to the date this representation is made are (and each other Security Document to which any Loan Party will be a party when delivered thereafter will be), effective to create, in favor of the Collateral Agent for the benefit of the Secured Parties, a legal, valid and enforceable (a) a first-priority Lien on the Term Loan Priority Collateral (subject to Permitted Liens) and (b) a second-priority Lien on the ABL Priority Collateral (subject to the Intercreditor Agreement), and all necessary recordings and filings have been (or, in the case of such other Security Documents, will be) made in all necessary public offices, and all other necessary and appropriate action has been (or, in the case of such other Security Documents, will be) taken, so that the security interest created by each Security Document is a first-priority perfected Lien, in the case of Term Loan Priority Collateral, and second-priority perfected Lien, in the case of the ABL Priority Collateral, as the case may be, on and security interest in all right, title and interest of such Loan Party in the Collateral purported to be covered thereby, prior and superior to all other Liens other than Permitted Liens and all necessary and appropriate consents to the creation, perfection and enforcement of such Liens have been (or, in the case of such other Security Documents, will be) obtained in accordance with this Agreement.

Notwithstanding anything herein (including this Section 3.16) or in any other Financing Document to the contrary, neither the Borrower nor any other Loan Party makes any representation or warranty as to the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest to the extent such pledge, security interest, perfection or priority is not required pursuant to the Collateral and Guarantee Requirement.

Section 3.17 Employees; Labor Relations.

(a) Except as could not reasonably be expected to have a Material Adverse Effect (i) each individual who is providing, or has provided, services to any Loan Party and is or was classified and treated as an (y) exempt employee, or (z) independent contractor, consultant, leased employee, or other non-employee service provider is and has been properly classified and treated as such for all applicable purposes and (ii) no Loan Party has violated the Fair Labor Standards Act or any other applicable law relating to wage and hour matters.

(b) No Loan Party is engaged in any unfair labor practice that could reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect. There is (i) no strike, labor dispute, slowdown, or stoppage pending against any Loan Party or, to the Borrower's knowledge, threatened against or affecting a Loan Party and (ii) to the Borrower's knowledge, no union representation proceeding is pending with respect to the employees of any Loan Party and no union organizing activities are taking place, except (with respect to any matter specified in clause (i) or (ii) above, either individually or in the aggregate) such as could not reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 3.17(b) or as otherwise disclosed to Administrative Agent in writing in accordance with this Agreement, no Loan Party is party to a collective bargaining agreement or other contract, agreement, or arrangement with any labor union, works council, trade union, labor organization or other employee representative.

Section 3.18 ERISA.

(a) No ERISA Event has occurred or is reasonably expected to occur which has resulted in or could reasonably be expected to result in liability in excess of \$3,500,000. Each Plan is in material compliance and has complied in all material respects with its terms and the applicable provisions of ERISA, the Code, and other federal or state laws. Each Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter, or may rely on an opinion letter, from the Internal Revenue Service to the effect that the form of such plan is qualified under Section 401(a) of the Code. There are no pending or, to the knowledge of any Loan Party, threatened claims, actions or lawsuits, or action by any Governmental Authority with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. No termination of a Pension Plan has occurred resulting in any liability that has remained underfunded and no Lien against any Loan Party or any of its ERISA Affiliates in favor of the PBGC or a Pension Plan has arisen. None of the Loan Parties or any of its ERISA Affiliates has incurred any liability in an amount which has resulted in or could result in liabilities in excess of \$3,500,000 on account of a complete or partial withdrawal from a Multiemployer Plan.

(b) None of the Loan Parties has incurred any obligation which has resulted in or could reasonably be expected to result in liabilities in excess of \$3,500,000 on account of the termination or withdrawal from any Foreign Plan.

Section 3.19 Insurance. All insurance policies required to be obtained by the Loan Parties pursuant to Section 5.06, if any, have been obtained and are in full force and effect as required under Section 5.06 and all premiums then due and payable thereon have been paid in full. No Loan Party has received any notice from any insurer that any insurance policy has ceased to be in full force and effect or claiming that the insurer's liability under any such insurance policy can be reduced or avoided.

Section 3.20 PPP Loan; CARES Act. Any Paycheck Protection Program loan under the CARES Act obtained by any Loan Party has been fully repaid or forgiven and the Borrower has maintained all records required to be submitted in connection with the forgiveness of each such loan.

Section 3.21 Use of Proceeds. The proceeds of the Loan(s) have been used solely in accordance with, and solely for the purposes contemplated by Section 5.13. No part of the proceeds of any Loan and other extensions of credit hereunder will be used, either directly or indirectly, by any Loan Party to purchase or carry any Margin Stock (as defined in Regulation U) or to extend credit to others for the purpose of purchasing or carrying any Margin Stock or for any purpose that entails a violation of any of the regulations of the Board.

Section 3.22 Capital Stock and Related Matters.

(a) Schedule 3.22(a) sets forth a true and complete list of the Loan Parties and, with respect to each Loan Party, (i) its name and jurisdiction of organization, (ii) its form of organization, and (iii) other than with respect to the Borrower, all of the issued and outstanding Capital Stock thereof and the legal and beneficial owner of such Capital Stock as of the Closing Date. Other than set forth on Schedule 3.22(a), as of the Closing Date, no Loan Party owns directly or indirectly, or Controls any Capital Stock in any Person.

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(b) All of the Capital Stock of each Loan Party have been duly authorized and validly issued in accordance with its Organizational Documents and, to the extent applicable, are fully paid and non-assessable and free and clear of all Liens other than Permitted Liens, and were not issued in violation of any preemptive rights, rights of first refusal or offer, or any other agreement, commitment, understanding or arrangement to which any such Loan Party is a party. Other than as set forth on Schedule 3.22(b), no Loan Party has outstanding Capital Rights, or any agreement, commitment, understanding or arrangement (contingent or otherwise), including any agreements granting any preemptive rights, subscription rights, anti-dilutive rights, rights of first refusal or similar rights, obligating such Loan Party to issue, sell, transfer or otherwise dispose of, repurchase, redeem or otherwise acquire any Capital Stock of, or other equity or voting interests of any character in, any Loan Party, or issue or grant any Capital Right (except as expressly provided for or permitted herein or in the Security Documents).

(c) Except as set forth on Schedule 3.22(c), there are no agreements, commitments, understandings or arrangements (other than the Financing Documents and Borrower's Organizational Documents), including any stockholders' agreement, voting trust agreement, registration rights agreement or other similar agreement, to which Borrower is a party with respect to the disposition or voting of any Capital Stock of Borrower (including any voting trust, voting agreement or proxy).

Section 3.23 Permitted Indebtedness; Investments.

(a) No Loan Party has created, incurred, assumed or suffered to exist any Indebtedness, other than Permitted Indebtedness.

(b) As of the Closing Date, all Indebtedness of the Loan Parties incurred pursuant to Section 6.02(m)(ii) is listed on Schedule 3.23(b).

(c) None of the Loan Parties has made any advance, loan or extension of credit to, or made any acquisition or Investment (whether by way of transfers of property, contributions to capital, acquisitions of stock, securities, evidences of Indebtedness or otherwise) in, or purchase of any stock, bonds, notes, debentures or other securities of, any other Person, other than as permitted under Section 6.04.

Section 3.24 Agreements with Affiliates. As of the Closing Date, Schedule 3.24 sets forth any and all agreements, transactions or series of related transactions among, on one hand, one or more Loan Parties, and on the other hand, one or more Affiliates of a Loan Party (other than the Loan Parties) that provides for the payment of, or receipt of, or the provision of goods or services with a value in excess of, \$1,000,000 in the aggregate over its term.

Section 3.25 No Other Bank Accounts. The Loan Parties do not have any accounts other than the Collateral Accounts and Excluded Accounts. The Marketing Affiliates do not have any accounts other than the Marketing Affiliate Accounts. Each of the accounts of each Loan Party are listed on Schedule 3.25.

Section 3.26 No Default or Event of Default. No Default or Event of Default has occurred and is continuing.

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Section 3.27 Anti-Corruption; Sanctions; AML.

(a) None of the Loan Parties, and none of their respective officers or directors, or, to any of the Loan Parties' knowledge, their respective Affiliates or agents (i) is a Sanctioned Person; or (ii) engages in any dealings or transactions in or with a Sanctioned Country or a Sanctioned Person, or that are otherwise prohibited by Sanctions.

(b) Each of the Loan Parties has implemented and currently maintains policies and procedures designed to comply with Sanctions, Anti-Corruption Laws, and Anti-Money Laundering Laws.

(c) Each of the Loan Parties and their respective officers, directors, employees and, to the Loan Parties' knowledge, agents are in compliance with Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions.

(d) No part of the proceeds of the Loans will be used, directly or indirectly (i) to or for the benefit of any Sanctioned Person, (ii) in violation of the Anti-Corruption Laws, Anti-Money Laundering Laws or Sanctions or (iii) to offer or make payments or to take any other action that could constitute a violation, or implicate any Lender, Administrative Agent, Collateral Agent or their respective Affiliates in a violation, of Anti-Corruption Laws or applicable Sanctions.

(e) Each of the Loan Parties has disclosed all facts known to it regarding (a) all claims, damages, liabilities, obligations, losses, penalties, actions, judgment, and/or allegations of any kind or nature that are asserted against, paid or payable by such Person, any of its Affiliates or any of its representatives in connection with non-compliance with Anti-Corruption Laws, Sanctions or Anti-Money Laundering Laws by such Person, and (b) any investigations involving possible non-compliance with Anti-Corruption Laws, Sanctions or Anti-Money Laundering Laws by such Person or such Affiliate or such representative. No proceeding by or before any Governmental Authority involving any Loan Party with respect to Anti-Corruption Laws, Sanctions or Anti-Money Laundering Laws is pending or, to the knowledge of the Loan Parties, threatened.

Section 3.28 Borrower SEC Reports; Financial Statements.

(a) The Borrower has filed all reports required to be filed by the Borrower with the SEC pursuant to the Exchange Act (collectively, the "Borrower SEC Reports") for the two years preceding the date hereof. As of their respective SEC filing dates, the Borrower SEC Reports complied in all material respects with the requirements of the Exchange Act and the rules and regulations of the SEC promulgated thereunder, and none of the Borrower SEC Reports as of such respective dates (or, if amended prior to the date of this Agreement, the date of the filing of such amendment, with respect to the disclosures that are amended) contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

(b) The consolidated financial statements of the Borrower and its Subsidiaries (including all related notes or schedules) included or incorporated by reference in the Borrower SEC Reports complied as to form, as of their respective dates of filing with the SEC, in all material respects with the published rules and regulations of the SEC with respect thereto, have been prepared in accordance with GAAP (except, in the case of unaudited quarterly statements, as permitted by Form 10-Q of the SEC or other rules and regulations of the SEC) applied on a consistent basis during the periods involved (except (i) as may be indicated in the notes thereto or (ii) as permitted by Regulation S-X) and present fairly, in all material respects, the consolidated financial position of the Borrower and its consolidated Subsidiaries as of the dates thereof and the consolidated results of

their operations and cash flows for the periods shown (subject, in the case of unaudited quarterly financial statements, to normal year-end adjustments, which are not reasonably expected to be materially adverse individually or in the aggregate to the Borrower and its Subsidiaries, taken as a whole).

(c) Except as set forth in the Borrower's SEC Reports, the Borrower is in compliance with applicable requirements of the Sarbanes-Oxley Act of 2002 and applicable rules and regulations promulgated by the SEC thereunder, except where such noncompliance could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(d) The Borrower has established and maintains disclosure controls and procedures and a system of internal controls over financial reporting (as such terms are defined in paragraphs (e) and (f), respectively, of Rule 13a-15 under the Exchange Act) as required by Rule 13a-15 under the Exchange Act relating to the Borrower and its consolidated Subsidiaries sufficient to provide reasonable assurance that (i) transactions are executed in accordance with the Borrower management's general or specific authorization, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP, consistently applied, and to maintain accountability for assets, (iii) access to assets is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences. There are no "significant deficiencies" or "material weaknesses" (as defined by the Public Company Accounting Oversight Board) in the design or operation of the Borrower's internal controls over and procedures relating to financial reporting which could reasonably be expected to adversely affect in any material respect the Borrower's ability to record, process, summarize and report financial data, in each case which has not been subsequently remediated. Since January 1, 2019, there has not been any fraud, whether or not material, that involves management or other employees of the Borrower or any of its Subsidiaries who have a significant role in the Borrower's internal controls over financial reporting. To the knowledge of the Borrower, there is no reason that its outside auditors and its chief executive officer and chief financial officer will not be able to give the certifications and attestations required pursuant to the rules and regulations adopted pursuant to Section 404 of the Sarbanes-Oxley Act of 2002, without qualification, when next due.

(e) There is no transaction, arrangement or other relationship between the Borrower or any of its Subsidiaries and an unconsolidated or other off-balance sheet entity that is required by Applicable Law to be disclosed by the Borrower in its Borrower SEC Reports and is not so disclosed.

Section 3.29 No Rights Agreement; Anti-Takeover Provisions

(a) Neither the Borrower nor any of its Subsidiaries is party to a stockholder rights agreement, "poison pill" or similar anti-takeover agreement or plan.

(b) The Board has taken all necessary actions to ensure that no restrictions included in any "control share acquisition," "fair price," "moratorium," "business combination" or other state anti-takeover law (including Section 203 of the Delaware General Corporation Law (as amended, supplemented or restated from time to time)) is, or as of the Closing Date will be, applicable to the transactions contemplated herein, including the Borrower's issuance of the Participation Shares.

Section 3.30 Sale of Securities. Neither the Borrower nor any other Person authorized by the Borrower to act on its behalf, has engaged in a general solicitation or general advertising (within the meaning of SEC Regulation D) of investors with respect to offers or sales of the Participation Shares, and neither the Borrower nor any Person acting on its behalf has made any offers or sales of any security or solicited any offers to buy any security, under circumstances that could cause the offering or issuance of the Participation Shares under this Agreement to be integrated with prior offerings by the Borrower for purposes of the Securities Act that could result in none of SEC Regulation D or any other applicable exemption from registration under the Securities Act to be available, nor will the Borrower take any action or steps that could cause the offering or issuance of the Participation Shares under this Agreement to be integrated with other offerings by the Borrower.

Section 3.31 Listing and Maintenance Requirements. The Common Stock is registered pursuant to Section 12(b) of the Exchange Act and listed on the Nasdaq Capital Market ("Nasdaq"), and the Borrower has taken no action designed to, or which to the knowledge of the Borrower is reasonably likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act or delisting the Common Stock from Nasdaq, nor has the Borrower received any notification that the SEC or Nasdaq is contemplating terminating such registration or listing. The Borrower is in compliance in all material respects with the listing and listing maintenance requirements of Nasdaq applicable to it for the continued trading of its Common Stock on Nasdaq.

Section 3.32 Status of Securities. The Participation Shares, will be, when issued, duly authorized by all necessary corporate action on the part of the Borrower, validly issued, fully paid and nonassessable and issued in compliance with all applicable federal and state securities laws and will not be subject to preemptive rights of any other stockholder of the Borrower, and will be free and clear of all Liens, except restrictions imposed by the Securities Act, this Agreement and any applicable securities laws. At or prior to the Closing Date, the Participation Shares shall have been duly reserved for issuance and approved for listing on Nasdaq, subject to official notice of issuance thereof.

Section 3.33 No "Bad Actor" Disqualification. With respect to the Participation Shares to be offered and sold hereunder in reliance on SEC Regulation D under the Securities Act, none of Borrower, any of its predecessors, any affiliated issuer, any director, executive officer, other officer of Borrower participating in the offering of Participation Shares hereunder, any beneficial owner of 20% or more of Borrower's outstanding voting equity securities, calculated on the basis of voting power, nor any promoter (as that term is defined in Rule 405 under the Securities Act) connected with Borrower in any capacity at the time of sale (each, an "Issuer Covered Person" and, together, "Issuer Covered Persons") is subject to any of the "Bad Actor" disqualifications described in Rule 506(d)(1)(i) to (viii) under the Securities Act (a "Disqualification Event"), except for a Disqualification Event covered by Rule 506(d)(2) or (d)(3). Borrower has exercised reasonable care to determine whether any Issuer Covered Person is subject to a Disqualification Event. Borrower has complied, to the extent applicable, with its disclosure obligations under Rule 506(e), and has furnished to the Lenders a copy of any disclosures provided thereunder.

ARTICLE IV

CONDITIONS

Section 4.01 Conditions to the Closing Date. The occurrence of the Closing Date is subject to the receipt by the Administrative Agent (except as set forth otherwise below) of each of the following documents, and the satisfaction of the conditions precedent set forth below, each of which must be satisfied to the reasonable satisfaction of the Administrative Agent and each Lender (unless waived in accordance with Section 10.02):

(a) Execution of Financing Documents. The Financing Documents contemplated to be entered into as of the Closing Date, shall have been duly executed and delivered by the Persons intended to be parties thereto and shall be in full force and effect.

(b) Corporate Documents. The following documents, each certified as of the Closing Date as indicated below:

(i) copies of the Organizational Documents, together with any amendments thereto, of each of each Loan Party and a certificate of good standing or its equivalent (if any) for (A) the applicable jurisdiction of organization for each such party and (ii) each jurisdiction (other than the jurisdiction of organization of such Loan Party) in which the failure to be duly qualified or licensed would constitute a Material Adverse Effect, (in each case such good standing certificate or its equivalent dated no more than ten (10) Business Days prior to the Closing Date);

(ii) an Officer's Certificate of each Loan Party dated as of the Closing Date, certifying:

(A) that attached to such certificate is a correct and complete copy of the Organizational Documents referred to in clause (i) above for such Person;

(B) attached to such certificate is a correct and complete copy of resolutions duly adopted by the Board of Directors, member(s), partner(s) or other authorized governing body of such Person, and that such resolutions or other evidence of authority have not been modified, rescinded or amended and are in full force and effect;

(C) that the certificate of incorporation, certificate of formation, charter or other Organizational Documents (as the case may be) referred to in clause (A) above for such Person has not been amended since the date of the certification furnished pursuant to clause (ii) above;

(D) as to the incumbency and specimen signature of each officer, member or partner (as applicable) of such Person executing the Financing Documents to which such Person is or is intended to be a party (and each Lender may conclusively rely on such certificate until it receives notice in writing from such Person); and

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(E) as to the qualification of such Person to do business in each jurisdiction where its operations require qualification to do business and as to the absence of any pending proceeding for the dissolution or liquidation of such Person.

(c) Financial Model; Financial Statements; Capital Expenditures Plan and Budget.

(i) The Administrative Agent shall have received a certified copy of the Financial Model in form and substance reasonably satisfactory to the Administrative Agent.

(ii) The Administrative Agent shall have received audited consolidated balance sheets and income and cash flow statements of Borrower as of and for the years ended December 31, 2019, December 31, 2020 and December 31, 2021; *provided* that notwithstanding the foregoing, the obligations in this Section 4.01(c)(ii) may be satisfied so long as such information is publicly available on the SEC's EDGAR website.

(iii) The Administrative Agent shall have received a Capital Expenditures Plan and Budget in form and substance reasonably satisfactory to the Administrative Agent.

(d) Regulatory Information. Each Lender shall have received (i) all documentation and other written information required by bank regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act, reasonably requested by them at least five (5) Business Days prior to execution of this Agreement and (ii) the Beneficial Ownership Regulation (including a Beneficial Ownership Certification).

(e) Representations and Warranties. The representations and warranties of each of the Loan Parties set forth in the Financing Documents shall be true and correct in all material respects (except where already qualified by materiality or Material Adverse Effect, in which case, such representations and warranties shall be true and correct in all respects) on and as of the Closing Date (unless stated to relate solely to an earlier date, in which case such representations and warranties were true and correct as of such earlier date).

(f) No Default or Event of Default. No Default or Event of Default shall have occurred and be continuing on the Closing Date.

(g) Collateral Perfection Matters. The Collateral Agent shall have received:

(i) appropriately completed UCC financing statements (Form UCC-1), which have been duly authorized for filing by the appropriate Person, naming each Loan Party as debtor and Collateral Agent as secured party, in form appropriate for filing under the UCC of each jurisdiction as may be necessary to perfect the security interests purported to be created by the Security Documents, covering the applicable Collateral;

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(ii) copies of UCC, judgment lien, tax lien and litigation lien search reports, which reports will be dated a recent date reasonably acceptable to the Administrative Agent, listing all effective financing statements that name each Loan Party as debtor and that are filed in the jurisdictions in which the UCC-1 financing statements will be filed in respect of the Collateral, none of which shall cover the Collateral except to the extent evidencing Permitted Liens;

(iii) appropriately completed copies of all other recordings and filings of, or with respect to, the Security Documents, as may be reasonably requested by Collateral Agent and necessary to perfect the security interests purported to be created by the Security Documents;

(iv) certificates representing the Capital Stock of each of the Subsidiary Guarantors as of the Closing Date, together with a proxy and an undated stock power for each such certificate executed in blank by a duly Authorized Representative of the applicable Subsidiary Guarantor; and

(v) evidence that all other actions reasonably requested by Collateral Agent and necessary to perfect and protect the security interests purported to be created by the Security Documents entered into on or prior to the Closing Date have been taken immediately prior to the occurrence of the Closing Date.

(h) Security Documents. The security interests in and to the Collateral as of the Closing Date shall have been created in favor of the Collateral Agent for the benefit of the Secured Parties, are in full force and effect and the necessary notices, consents, acknowledgments, filings, registrations and recordings to preserve, protect and perfect the security interests in such Collateral have been made immediately prior to the occurrence of the Closing Date such that the security interests granted in favor of the Collateral

Agent for the benefit of the Secured Parties are filed, registered and recorded and will constitute (a) a first-priority Lien on the Term Loan Priority Collateral (subject to Permitted Liens) and (b) a second-priority Lien on the ABL Priority Collateral (subject to the Intercreditor Agreement) free and clear of any Liens, other than Permitted Liens, and all related recordation, registration and/or notarial fees of such Collateral have been paid to the extent required.

(i) Board Observer Rights Agreement. The Administrative Agent shall have received a duly executed copy of the Board Observer Rights Agreement.

(j) Registration Rights Agreement. The Administrative Agent shall have received a duly executed copy of the Registration Rights Agreement.

(k) Officer's Certificate. The Administrative Agent shall have received an Officer's Certificate of Borrower, dated as of the Closing Date, certifying that each of the conditions set forth in this Section 4.01 has been satisfied.

(l) Insurance Deliverables.

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(i) Borrower shall have obtained the insurance required to be in effect under Section 5.06 to the extent required as of the Closing Date and such insurance shall be in full force and effect.

(ii) The Administrative Agent shall have received reasonably satisfactory evidence that Borrower has in place insurance required to be in effect under Section 5.06.

(m) Opinions of Counsel. The Administrative Agent shall have received, in each case dated as of the Closing Date and addressed to the Administrative Agent, the Lenders and the Collateral Agent, in form and substance reasonably satisfactory to the Administrative Agent, a written opinion of Troutman Pepper Hamilton Sanders LLP, counsel to the Loan Parties.

(n) Material Contracts: ABL Loan Documents and ABL Amendment No. 6. The Administrative Agent shall have received a duly executed copy of the Material Contracts in effect as of the Closing Date, the ABL Loan Documents, ABL Amendment No. 6 and any other amendments, modifications or supplements to the ABL Loan Documents, in form and substance satisfactory to the Administrative Agent.

Section 4.02 Conditions to the Initial Funding Date. The occurrence of the Initial Funding Date and the obligations of the Agents and each Lender hereunder with respect to the funding of the Initial Term Loans are subject to the receipt by the Administrative Agent (except as set forth otherwise below) of each of the following documents, and the satisfaction of the conditions precedent set forth below, each of which must be satisfied to the reasonable satisfaction of the Administrative Agent and each Lender (unless waived in accordance with Section 10.02):

(a) Execution of Financing Documents. The Financing Documents (including but not limited to Control Agreements to be entered into with respect to the Marketing Affiliates Accounts held at Wells Fargo Bank, National Association) contemplated to be entered into as of the Initial Funding Date, shall have been duly executed and delivered by the Persons intended to be parties thereto and shall be in full force and effect.

(b) Representations and Warranties. The representations and warranties of each of the Loan Parties set forth in the Financing Documents shall be true and correct in all material respects (except where already qualified by materiality or Material Adverse Effect, in which case, such representations and warranties shall be true and correct in all respects) on and as of the Initial Funding Date (unless stated to relate solely to an earlier date, in which case such representations and warranties were true and correct as of such earlier date).

(c) No Default or Event of Default. No Default or Event of Default shall have occurred and be continuing on the Initial Funding Date.

(d) Solvency Certificate. The Lenders shall have received a solvency certificate of an Authorized Representative of Borrower, certifying that the Loan Parties, on a consolidated basis, immediately after giving effect to the incurrence of all Indebtedness on the Initial Funding Date, will be, Solvent.

(e) Initial Participation Shares. The Administrative Agent shall have received evidence reasonably satisfactory to the Administrative Agent of the issuance of the Initial Participation Shares in accordance with Section 2.14(a) and in the name of the applicable Lenders by book-entry on the books and records of the Borrower.

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(f) Fees and Expenses. Borrower has arranged for non-refundable payment on the Initial Funding Date (including through the application of Loans on the Initial Funding Date) of all reasonable and documented out-of-pocket fees and expenses then due and payable pursuant to the Financing Documents.

(g) Funds Flow Memorandum. The Administrative Agent shall have received the Funds Flow Memorandum, in form and substance reasonably satisfactory to the Administrative Agent.

(h) Insurance Deliverables. Borrower shall have furnished the Administrative Agent with certificates signed by the insurer or an agent authorized to bind the insurer, together with the loss payee endorsements in favor of the Collateral Agent, evidencing such insurance, identifying underwriters, the type of insurance, the insurance limits and the policy terms, and stating that such insurance (x) is, in each case, in full force and effect and (y) complies with Section 5.06 and that all premiums then due and payable on such insurance have been paid.

(i) Borrowing Request. The Administrative Agent shall have received a Borrowing Request in accordance with Section 2.01.

(j) Parent Assistance Agreement. The Administrative Agent shall have received a duly executed copy of the parent assistance agreement, to be dated as of the Initial Funding Date, by and among the Administrative Agent, Kinergy Marketing LLC, Alto Nutrients, LLC and Alto Ingredients, Inc., in form and substance satisfactory to the Administrative Agent.

(k) Officer's Certificate. The Administrative Agent shall have received an Officer's Certificate of Borrower, dated as of the Initial Funding Date, certifying that each of the conditions set forth in this Section 4.02 has been satisfied.

Section 4.03 Conditions to Borrowings of Specified CapEx Loans. The occurrence of any Borrowing of Specified CapEx Loans after the Closing Date is subject to the receipt by the Administrative Agent (except as set forth otherwise below) of each of the following documents, and the satisfaction of the conditions precedent set forth below, each of which must be satisfied to the reasonable satisfaction of the Administrative Agent and each Lender (unless waived in accordance with Section 10.02):

(a) Use of Proceeds. The Administrative Agent shall have received a certificate duly signed by an Authorized Representative of the Borrower, dated as of the applicable Funding Date, certifying that: (i) the proceeds of the Initial Term Loans have been fully utilized for purposes permitted under this Agreement; (ii) the Growth Project Milestones scheduled to have been achieved by the applicable Funding Date have been so achieved; (iii) the Growth Project to be funded with the proceeds of such Specified CapEx Borrowing is reasonably likely to achieve each other Growth Project Milestone on or prior to the date set forth in the Capital Expenditures Plan and Budget delivered pursuant to Section 4.03(b); (iii) the Loan Parties are in compliance with the Capital Expenditures Plan and Budget delivered pursuant to Section 4.03(b); and (iv) the Borrowing will be applied in accordance with the Capital Expenditures Plan and Budget delivered pursuant to Section 4.03(b), which certificate shall be confirmed and countersigned by the Lenders' independent engineer.

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(b) Capital Expenditures Plan and Budget. The Administrative Agent shall have received an updated Capital Expenditures Plan and Budget that is effective as of the applicable Funding Date, reflects the Capital Expenditures to be funded with the applicable Specified CapEx Borrowing, and is reasonably acceptable to the Administrative Agent.

(c) Representations and Warranties. The representations and warranties of each Loan Parties set forth in the Financing Documents shall be true and correct in all material respects (except where already qualified by materiality or Material Adverse Effect, in which case, such representations and warranties shall be true and correct in all respects) on and as of such Funding Date (unless stated to relate solely to an earlier date, in which case such representations and warranties were true and correct as of such earlier date).

(d) No Default or Event of Default. No Default or Event of Default shall have occurred and be continuing on the applicable Funding Date.

(e) Borrowing Request. The Administrative Agent shall have received a Borrowing Request in accordance with Section 2.01.

(f) Officer's Certificate. The Administrative Agent shall have received a certificate duly signed by an Authorized Representative of Borrower, dated as of the applicable Funding Date, certifying that each of the conditions set forth in this Section 4.03 has been satisfied.

(g) Additional Participation Shares. The Administrative Agent shall have received evidence reasonably satisfactory to the Administrative Agent of the issuance of the applicable Additional Participation Shares in accordance with Section 2.14(b) and in the name of the applicable Lenders by book-entry on the books and records of the Borrower.

Section 4.04 Conditions to Borrowings of Incremental Loans. The occurrence of any Borrowing of Incremental Loans after the Closing Date is subject to the receipt by the Administrative Agent (except as set forth otherwise below) of each of the following documents, and the satisfaction of the conditions precedent set forth below, each of which must be satisfied to the reasonable satisfaction of the Administrative Agent and each Lender (unless waived in accordance with Section 10.02):

(a) Representations and Warranties. The representations and warranties of each Loan Parties set forth in the Financing Documents shall be true and correct in all material respects (except where already qualified by materiality or Material Adverse Effect, in which case, such representations and warranties shall be true and correct in all respects) on and as of such Funding Date (unless stated to relate solely to an earlier date, in which case such representations and warranties were true and correct as of such earlier date).

(b) No Default or Event of Default. No Default or Event of Default shall have occurred and be continuing on the applicable Funding Date.

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(c) Borrowing Request. The Administrative Agent shall have received a Borrowing Request in accordance with Section 2.01.

(d) Officer's Certificate. The Administrative Agent shall have received an Officer's Certificate of Borrower, dated as of the applicable Funding Date, certifying that (i) each of the conditions set forth in Section 2.13 and this Section 4.04 has been satisfied and (ii) the funds being requested for the applicable Borrowing are in accordance with uses permitted under Section 2.13(a).

ARTICLE V

AFFIRMATIVE COVENANTS

Each Loan Party hereby agrees that from the Closing Date and thereafter, in all respects:

Section 5.01 Corporate Existence; Etc. Each Loan Party shall at all times preserve and maintain in full force and effect (a) (i) with respect to Borrower, its existence as a corporation and (ii) with respect to each other Loan Party, its existence as a corporation, a limited partnership or a limited liability company, as applicable, in each case, in good standing under the laws of the jurisdiction of its organization and (b) except as would not reasonably be expected to cause a Material Adverse Effect, its qualification to do business and its good standing in each jurisdiction in which the character of properties owned by it or in which the transaction of its business as conducted or proposed to be conducted makes such qualification necessary, other than, in each case, for any transaction permitted pursuant to Section 6.08.

Section 5.02 Conduct of Business. Each Loan Party shall operate, maintain and preserve or cause to be operated, maintained and preserved, the Production Facility and the leased premises for each of the Production Facility in accordance in all material respects with the requirements of the Material Contracts to which it is a party and in compliance, in all material respects, with Applicable Laws and Authorizations by Governmental Authorities and the terms of its insurance policies.

Section 5.03 Compliance with Laws and Obligations.

(a) Each Loan Party shall comply with all Applicable Laws and Authorizations (including applicable Environmental Laws), except where failure to do so could not reasonably be expected to have a Material Adverse Effect.

(b) Each Loan Party shall comply with and perform its respective contractual obligations, and enforce against other parties their respective contractual obligations under each Material Contract, except where failure to do so could not reasonably be expected to have a Material Adverse Effect. Each Loan Party shall (i) comply with and not violate applicable Sanctions, Anti-Money Laundering Laws, the FCPA or any other applicable Anti-Corruption Laws and (ii) not undertake or cause to be undertaken any Anti-Corruption Prohibited Activity.

(c) The Loan Parties shall maintain policies and procedures sufficient to provide reasonable assurances of compliance with Sanctions, Anti-Corruption Laws, and Anti-Money Laundering Laws.

Section 5.04 Governmental Authorizations. Each Loan Party shall: (a) obtain and maintain in full force and effect (or where appropriate, promptly renew in a timely manner), or cause to be obtained and maintained in full force and effect (or, where appropriate, promptly renewed in a timely manner) all Authorizations required under any Applicable Law (including all Authorizations required by Environmental Law) for the Production Facility and the Business, in each case, at or before the time the relevant Authorization becomes necessary for such purposes, (b) obtain and maintain in full force and effect (or where appropriate, promptly renew in a timely manner), or cause to be obtained and maintained in full force and effect (or, where appropriate, promptly renewed in a timely manner) all Authorizations required under any Applicable Law for each Loan Party's business and operations generally, in each case, at or before the time the relevant Authorization becomes necessary for such purposes and (c) preserve and maintain all other Authorizations required for the Business and the Production Facilities, except, in each case, where failure to do so could not reasonably be expected to have a Material Adverse Effect.

Section 5.05 Maintenance of Title. Each Loan Party shall maintain (a) good title to the material property owned by such Loan Party free and clear of Liens, other than Permitted Liens; (b) legal and valid and subsisting leasehold interests to the material properties (including surface leases or rights-of-way necessary to the operation of the Production Facilities) leased or otherwise held by such Loan Party, free and clear of Liens, other than Permitted Liens, and each Loan Party shall (i) make all payments and otherwise perform all obligations in respect of all such leases or rights-of-way, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect, (ii) keep such leases or rights-of-way in full force and effect, (iii) take any actions reasonably necessary so as to prevent such leases or rights-of-way from lapsing or terminating, or any rights of renewal in respect of such leases or rights-of-way from being forfeited or cancelled, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect, and (iv) notify the Administrative Agent of any default by any party with respect to such leases that could reasonably be expected to have a Material Adverse Effect and cooperate with the Administrative Agent in all respects to cure any such default; and (c) legal and valid possessory rights to the material properties possessed and not otherwise held in fee or leased by such Loan Party.

Section 5.06 Insurance.

(a) Maintain with financially sound and reputable insurance companies, insurance with respect to each Loan Party, its Properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons engaged in the same or similar businesses as the Loan Parties) as are customarily carried under similar circumstances by such other Persons.

(b) All such insurance shall (i) to the extent the applicable insurer will agree based on the commercially reasonable efforts of the Borrower, provide that no cancellation thereof shall be effective until at least ten (10) days (or, to the extent reasonably available, thirty (30) days) after receipt by the Collateral Agent of written notice thereof (the Borrower shall deliver a copy of the policy (and to the extent any such policy is cancelled or renewed, a renewal or replacement policy), insurance certificate with respect thereto or other evidence thereof to the Administrative Agent and Collateral Agent) and (ii) name the Collateral Agent as loss payee (in the case of property insurance) or additional insured on behalf of the Secured Parties (in the case of liability insurance) (it being understood that, absent an Event of Default, any proceeds of any such property insurance shall be delivered by the insurer(s) to the Loan Parties and applied in accordance with this Agreement), as applicable.

(c) If any improvement or mobile home situated on any Mortgaged Property is at any time located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a special flood hazard area with respect to which flood insurance has been made available under the Flood Insurance Laws, then the applicable Loan Party shall, or shall cause each Loan Party to (i) maintain, or cause to be maintained, with a financially sound and reputable insurer, flood insurance in an amount and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and (ii) deliver to the Administrative Agent evidence of such compliance in form and substance reasonably acceptable to the Administrative Agent.

Section 5.07 Keeping of Books.

(a) Each Loan Party shall keep proper books of record and account, in which entries that are full, true and correct in all material respects and are in conformity with GAAP consistently applied and which reflect all material financial transactions and matters involving the material assets and business of such Loan Party.

(b) The Loan Parties shall make available to Administrative Agent and any Lender, without expense to Administrative Agent or such Lender, the Loan Parties and their officers, employees and any of their books and records, to the extent that Administrative Agent or such Lender may deem them necessary, appropriate or helpful to prosecute or defend any third-party suit, claim, investigation, audit or proceeding instituted by or against Administrative Agent or any Lender with respect to any Collateral or relating to the Loan Parties; *provided, however*, nothing herein shall obligate the Loan Parties to provide Administrative Agent or any Lender any privileged information or attorney work product.

Section 5.08 Access to Records. Each Loan Party shall permit (i) officers and designated representatives of the Administrative Agent to visit and inspect each of its properties and (ii) officers and designated representatives of the Administrative Agent to examine and make copies of the books of record and accounts of such Loan Party (*provided* that such Loan Party shall have the right to be present) and discuss the affairs, finances and accounts of such Loan Party with the chief financial officer, the chief operating officer and the chief executive officer of such Loan Party (subject to reasonable requirements of safety and confidentiality, including requirements imposed by Applicable Law or by contract, *provided* the Loan Parties will use reasonable efforts to obtain relief from any contractual confidentiality restrictions that prohibit the Administrative Agent or any Lender from obtaining information), in each case, upon reasonable advance notice, and at the expense of, such Loan Party; *provided* that (i) such Loan Party shall not be required to reimburse the Administrative Agent for more than one (1) inspection per year for each of its properties as long as no Event of Default has occurred and is continuing and (ii) such visits by officers and designated representatives of the Administrative Agent shall not occur more frequently than twice per year for each of its properties as long as no Event of Default has occurred and is continuing.

Section 5.09 Payment of Taxes, Etc. Each Loan Party shall pay and discharge, before the same shall become delinquent: (i) all material Taxes, assessments and governmental charges or levies imposed upon it or upon its property and (ii) all lawful claims that, if unpaid, might become a Lien (other than a Permitted Lien of the type described in Section 6.03(a)(i)(A)) upon its property; *provided* that such Loan Party shall not be required to pay or discharge any such Tax, assessment, charge or claim for so long as such Loan Party satisfies the Permitted Contest Conditions in relation to such Tax, assessment, charge or claim.

(a) as soon as available and in any event within one hundred twenty (120) days after the end of each fiscal year, a consolidated balance sheet and related consolidated statements of income, stockholders' equity and cash flows showing the financial position of the Borrower and its Subsidiaries as of the close of such fiscal year and the consolidated results of their operations during such year and setting forth in comparative form the corresponding figures for the prior fiscal year, which consolidated balance sheet and related statements of income, stockholders' equity and cash flows shall be accompanied by customary management's discussion and analysis and audited by the Independent Auditor and accompanied by an opinion of the Independent Auditor (which opinion shall not be qualified as to scope of audit or as to the status of the Borrower or any Subsidiary as a going concern on a consolidated basis, other than with respect to, or resulting from, an upcoming maturity date under any series of indebtedness) to the effect that such consolidated financial statements fairly present, in all material respects, the financial position and results of operations of the Borrower and its Subsidiaries on a consolidated basis in accordance with GAAP (it being understood that the delivery by the Borrower of annual reports on Form 10-K (or any successor or comparable form) of the Borrower and its consolidated Subsidiaries shall satisfy the requirements of this Section 5.10(a) to the extent such annual reports include the information specified herein);

(b) as soon as available and in any event within forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year, a consolidated balance sheet and related consolidated statements of income and cash flows showing the financial position of the Borrower and its Subsidiaries as of the close of such fiscal quarter and the consolidated results of their operations during such fiscal quarter and the then-elapsed portion of the fiscal year and setting forth in comparative form the corresponding figures for the corresponding periods of the prior fiscal year, all of which shall be in reasonable detail, which consolidated balance sheet and related consolidated statements of income and cash flows shall be accompanied by customary management's discussion and analysis and shall be certified by the chief financial officer, treasurer, or controller of the Borrower on behalf of the Borrower as fairly presenting, in all material respects, the financial position and results of operations of the Borrower and its Subsidiaries on a consolidated basis in accordance with GAAP (subject to normal year-end audit adjustments and the absence of footnotes) (it being understood that the delivery by the Borrower of quarterly reports on Form 10-Q (or any successor or comparable form) of the Borrower and its consolidated Subsidiaries shall satisfy the requirements of this Section 5.10(b) to the extent such quarterly reports include the information specified herein);

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(c) promptly after the same are sent (beginning with the first full calendar month after the Closing Date), copies of any monthly reports and financial statements that the Borrower delivers to its Board of Directors, and including (i) an environmental, social and governance report in respect of the applicable fiscal quarter in the form attached hereto as Exhibit D, (ii) a detailed summary of the status of Growth Projects that includes a comparison of actual status of Growth Projects against the applicable Capital Expenditures Plan and Budget, (iii) to the extent included in the monthly report Borrower delivers to its Board of Directors for such month, (x) a comparison of actual financial results, on a monthly basis, against the most recently delivered budget pursuant to Section 4.01(c) or Section 5.10(h), as applicable, and (y) an operating report substantially in the form attached as Exhibit H in respect of the Production Facilities;

(d) at the time of the delivery of the financial statements of the Borrower under Section 5.10(a) and Section 5.10(b) above, a certificate of an Authorized Representative of the Borrower (i) certifying to the Administrative Agent and the Lenders that (A) such financial statements fairly present in all material respects the consolidated financial condition and results of operations of the Borrower and its Subsidiaries on the dates and for the periods indicated in accordance with GAAP, subject, in the case of interim financial statements, to the absence of footnotes and normally recurring year-end adjustments and (B) no Default or Event of Default has occurred and is continuing, or if a Default or Event of Default has occurred and is continuing, a statement as to the nature thereof, and (ii) setting forth the Leverage Ratio (including any calculations thereof) as of the most recently ended fiscal quarter;

(e) [reserved];

(f) within thirty (30) days after each annual policy renewal date, a certificate of an Authorized Representative of the Borrower certifying that the insurance requirements of Section 5.06 have been implemented and are being complied with by the Loan Parties and on or prior to the expiration of each policy required to be maintained pursuant to Section 5.06, certificates of insurance with respect to each renewal policy and each other insurance policy required to be in effect under this Agreement that has not previously been furnished to the Administrative Agent under this Agreement. If at any time requested by the Administrative Agent (acting reasonably), the Borrower shall deliver to the Administrative Agent a duplicate of any policy of insurance required to be in effect under this Agreement;

(g) (i) simultaneously with its delivery to or on behalf of any lender or agent under the ABL Credit Agreement, any reports, certificates, notices, or other information that such Loan Party delivers to or on behalf of such lender or agent (other than immaterial administrative reports and notices); and (ii) within five (5) Business Days after receipt, copies of any reports, certificates, notices, or other information delivered to any Loan Party by or on behalf of any lender or agent under the ABL Credit Agreement (other than immaterial administrative reports and notices);

(h) unless otherwise prohibited by confidentiality obligations, promptly, copies of an annual budget, divided by calendar month, approved by a Loan Party Board of Directors, and any material approved amendments, supplements or modifications to an annual budget that are approved by a Loan Party Board of Directors, in each case, provided in respect of a Loan Party under any Organizational Document;

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(i) promptly after the same are publicly available, copies of all annual, regular, periodic and special reports and registration statements which the Borrower or any Subsidiary Guarantor files with the SEC or with any Governmental Authority that may be substituted therefor (other than amendments to any registration statement (to the extent such registration statement, in the form it became effective, is delivered), exhibits to any registration statement and, if applicable, any registration statement on Form S-8) and in any case not otherwise required to be delivered to the Administrative Agent pursuant hereto; *provided* that notwithstanding the foregoing, the obligations in this Section 5.10(i) may be satisfied so long as such information is publicly available on the SEC's EDGAR website; and

Section 5.11 Notices. The Loan Parties shall promptly (and in any event within five (5) Business Days) upon an Authorized Representative of any Loan Party obtaining knowledge thereof, give notice to the Administrative Agent of:

(a) details of any change of Applicable Law that would reasonably be expected to have a Material Adverse Effect;

(b) notice received by it with respect to the cancellation of, material adverse change in, or default under, any insurance policy required to be maintained in accordance with Section 5.06;

(c) the filing or commencement of any litigation, investigation, action or proceeding of or before any court, arbitrator or Governmental Authority against or affecting any Loan Party or any of its properties or assets that could reasonably be expected to result in liability to any Loan Party in an aggregate amount exceeding \$2,000,000 or be materially adverse to the interests of the Loan Parties;

(d) notice of the occurrence (including correct and complete copies of any written notices received or delivered) of any of the following to the extent such circumstance or event could reasonably be expected to be material and adverse to the Business, taken as a whole, the Pekin Production Facility, the ICP Facility or the Eagle Distribution

Center (i) default or event of default under a Material Contract, (ii) event of force majeure, or unplanned shutdown of any Production Facility for more than 72 hours due to anything other than a recurring maintenance requirement, (iv) indemnity claim, (v) dispute, (vi) early termination of a Material Contract, or (vii) amendment of any Material Contract;

(e) any Loan Party entering into an Additional Material Contract (including a correct and complete copy of the applicable fully executed Additional Material Contract);

(f) any Environmental Claim by any Person against, or with respect to the activities of, the Loan Parties or any of their properties, any alleged violation of or non-compliance with any Environmental Laws or any Authorizations required by Environmental Laws applicable to any Loan Party or any of their properties, any Release or threatened Release of Hazardous Materials, or any invalidation or recapture of any Environmental Attributes that, in each case, could reasonably be expected to have a Material Adverse Effect;

(g) the expiration, revocation, rescission, non-renewal, or material modification of any Authorization and the occurrence of any inspections or audits in respect of the Business or the Production Facilities that could reasonably be expected to materially and adversely affect the Business, taken as a whole, the Pekin Production Facility, the ICP Facility or the Eagle Distribution Center;

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(h) [Reserved];

(i) the sale, lease, transfer or other Disposition of, in one transaction or a series of transactions, all or any part of its property in excess of \$750,000 per individual Disposition or \$3,000,000 in the aggregate per annum in the aggregate per annum for all such Dispositions and/or Events of Loss;

(j) the occurrence of any ERISA Event in excess of \$500,000, together with a written notice setting forth the nature thereof and the action, if any, that such Loan Party or ERISA Affiliate proposes to take with respect thereto;

(k) the occurrence of a Bankruptcy of any Loan Party;

(l) notice of any Condemnation that could reasonably be expected to materially and adversely affect the Business, taken as a whole, or with respect to the Pekin Production Facility, the ICP Facility or the Eagle Distribution Center;

(m) the occurrence of a Default or Event of Default;

(n) any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with any Loan Party's information system operations, data or networks that could reasonably be expected to result in a Material Adverse Effect (a "Cyber-security Incident") and in connection with any such Cyber-security Incident Borrower shall promptly provide any information reasonably requested by the Administrative Agent, including copies of any notices relating to such Cyber-security Incident provided to customers, employees, Governmental Authorities, or any other Person and any notice, request, claim, complaint, correspondence or other communication received from any Governmental Authority or other Person relating to such Cyber-security Incident;

(o) promptly after Administrative Agent's request therefor, such other information regarding the business, assets, operations or financial condition of the Loan Parties as the Administrative Agent may reasonably request; and

(p) any amendment, restatement, waiver, or other modification of the terms of the Series B Units (or any other forms of membership interests and/or units, profit-sharing, or participation interests, or other equity interests) or the Series B Certificate of Designations or any request by any Loan Party or any holder of Series B Units for any amendment, restatement, waiver, or other modification of the terms of the Series B Units (or any other forms of membership interests and/or units, profit-sharing, or participation interests, or other equity interests) or the Series B Certificate of Designations.

Section 5.12 Scheduled Calls and Meetings. Upon the request of the Administrative Agent or the Required Lenders (which request, so long as no Event of Default shall have occurred and be continuing, shall not be made more than once during each calendar month), Borrower shall arrange to have a telephonic conference call with the Administrative Agent and Lenders to discuss the matters contained in the various financial statements and reports delivered pursuant to Section 5.10, including the status of the Loan Parties and the affairs, finances and accounts of the Loan Parties, in each case, which telephonic conference call shall be coordinated with the Administrative Agent during normal business hours upon reasonable prior notice to the Lenders.

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Section 5.13 Use of Proceeds.

(a) Borrower shall apply the proceeds of the Initial Term Loans in accordance with the Funds Flow Memorandum.

(b) Borrower shall apply the proceeds of any Specified CapEx Loans (i) to fund the Transaction Expenses in connection with such Borrowing, and (ii) to fund Capital Expenditures pursuant to the Capital Expenditures Plan and Budget delivered to the Administrative Agent in connection with such Borrowing.

(c) Borrower shall apply the proceeds of any Incremental Loans (i) to fund the Transaction Expenses in connection with such Borrowing, and (ii) for other permitted uses and arrangements approved pursuant to Section 2.13(a).

(d) The proceeds of the Loans will not be used in violation of Anti-Corruption Laws or applicable Anti-Money Laundering Laws.

Section 5.14 [Reserved].

Section 5.15 Further Assurances. Promptly upon the reasonable request of the Administrative Agent and the Collateral Agent, at the Loan Parties' expense, the Loan Parties shall execute, acknowledge and deliver documents or instruments reasonably necessary or appropriate to (i) carry out the intent and purpose of the Financing Documents (including filings, recordings or registrations required to be filed in respect of any Security Document or assignment thereto) necessary to maintain, to the extent permitted by Applicable Law, the Collateral Agent's perfected security interest in the Collateral to the extent and in the priority required pursuant to the Security Documents, and (ii) preserve and maintain the security interests granted under the Security Documents and undertake all actions which are necessary or appropriate to: (a) subject to Permitted Liens, maintain the Collateral Agent's security interest in the Collateral in full force and effect at all times (including the priority thereof) to the extent required pursuant to the Collateral and Guarantee Requirement, and (b) subject to Permitted Liens, preserve and protect the Collateral and protect and enforce the Loan Parties' rights and title and the rights of the Collateral Agent and the other Secured Parties to the Collateral, including the making or delivery of all filings and recordings, Mortgages, the payment of all fees

Section 5.16 Additional Collateral: Additional Subsidiary Guarantors. At the Borrower's expense, the Loan Parties shall take all action necessary or reasonably requested by the Administrative Agent or the Collateral Agent to ensure that the Collateral and Guarantee Requirement continues to be satisfied, including:

(a) Upon the formation or acquisition of any new wholly owned direct or indirect Subsidiary (including, without limitation, upon the formation of any Subsidiary) of the Borrower:

(i) within sixty (60) days after such formation or acquisition, or such longer period as the Administrative Agent may agree in writing in its discretion, notify the Administrative Agent thereof (including whether such Subsidiary owns, leases or otherwise holds an interest in any Material Real Property) and:

(ii) cause each such Subsidiary to duly execute and deliver to the Administrative Agent or the Collateral Agent (as appropriate) a joinder to this Agreement (or supplement thereto, as applicable), Security Agreement supplements, Mortgages, the Intercreditor Agreement and other security agreements and documents (including, with respect to such Mortgages, the documents listed in clause (f) of the definition of "Collateral and Guarantee Requirement"), as reasonably requested by and in form and substance reasonably satisfactory to the Administrative Agent (consistent with the, Security Agreement and other security agreements in effect on the Closing Date), in each case granting Liens required by the Collateral and Guarantee Requirement;

(iii) cause each such Subsidiary (and the parent of each such Subsidiary) to deliver any and all certificates representing Capital Stock (to the extent certificated) and intercompany notes (to the extent certificated) that are required to be pledged pursuant to the Collateral and Guarantee Requirement, accompanied by undated stock powers or other appropriate instruments of transfer executed in blank;

(iv) take and cause such Subsidiary and each direct or indirect parent of such Subsidiary to take whatever action (including the recording of Mortgages, the filing of Uniform Commercial Code financing statements and delivery of stock and membership interest certificates (to the extent certificated)) as may be necessary in the reasonable opinion of the Administrative Agent to vest in the Collateral Agent (or in any representative of the Collateral Agent designated by it) valid and perfected Liens to the extent required by the Collateral and Guarantee Requirement, and to otherwise comply with the requirements of the Collateral and Guarantee Requirement;

(v) if reasonably requested by the Administrative Agent or the Collateral Agent, within sixty (60) days after such request (or such longer period as the Administrative Agent may agree in writing in its discretion), deliver to the Administrative Agent a signed copy of an opinion, addressed to the Administrative Agent, Collateral Agent and the Lenders, of counsel for the Loan Parties reasonably acceptable to the Administrative Agent as to such matters set forth in this Section 5.16(a) as the Administrative Agent may reasonably request;

(vi) as promptly as practicable after the request therefor by the Administrative Agent or Collateral Agent, deliver to the Collateral Agent with respect to each Material Real Property owned, leased or otherwise held by such Subsidiary, any existing title reports, title abstracts, surveys, appraisals or non-privileged Phase I environmental site assessment reports, to the extent available and in the possession of the Loan Parties; *provided, however*, that there shall be no obligation to deliver to the Administrative Agent any existing Phase I environmental site assessment report or appraisal whose disclosure to the Administrative Agent would require the consent of a Person other than the Loan Parties or one of their respective Subsidiaries, where, despite the commercially reasonable efforts of the Loan Parties or their respective Subsidiaries to obtain such consent, such consent cannot be obtained; and

(vii) if reasonably requested by the Administrative Agent or the Collateral Agent, within sixty (60) days after such request (or such longer period as the Administrative Agent may agree in writing in its discretion), deliver to the Collateral Agent any other items necessary from time to time to satisfy the Collateral and Guarantee Requirement with respect to perfection and existence of security interests with respect to property of any Guarantor acquired after the Closing Date and subject to the Collateral and Guarantee Requirement, but not specifically covered by the preceding clauses (i), (ii), (iii) or (iv) or clause (b) below.

(b) (i) Not later than ninety (90) days (or such longer period as the Administrative Agent may agree in writing in its reasonable discretion) after the acquisition by any Loan Party of any Material Real Property as determined by the Borrower (acting reasonably and in good faith) that is required to be provided as Collateral pursuant to the Collateral and Guarantee Requirement, cause such property to be subject to a Lien and Mortgage in favor of the Collateral Agent for the benefit of the Secured Parties and take, or cause the relevant Loan Party to take, such actions as shall be necessary or reasonably requested by the Administrative Agent to grant and perfect or record such Lien, in each case to the extent required by, and subject to the limitations and exceptions of, the Collateral and Guarantee Requirement and to otherwise comply with the requirements of the Collateral and Guarantee Requirement; and (ii) as promptly as practicable after the reasonable request therefor by the Administrative Agent or Collateral Agent, deliver to the Collateral Agent with respect to each such acquired Material Real Property, any existing title reports, title abstracts, surveys, appraisals or non-privileged Phase I environmental site assessment reports, to the extent available to and in the possession of the Loan Parties or their respective Subsidiaries; *provided, however*, that there shall be no obligation to deliver to the Administrative Agent any existing Phase I environmental site assessment report or appraisal whose disclosure to the Administrative Agent would require the consent of a Person other than the Loan Parties or one of their respective Subsidiaries, where, despite the commercially reasonable efforts of the Loan Parties or their respective Subsidiaries to obtain such consent, such consent cannot be obtained.

Section 5.17 Material Contracts. Each Loan Party shall (i) duly and punctually perform, observe, and enforce all of its material covenants and obligations contained in each Material Contract to which it is a party and (ii) take all reasonable and necessary action to prevent the termination or cancellation of any Material Contract in accordance with the terms of such Material Contract or otherwise (except for the expiration or termination of any Material Contract in accordance with its terms and not as a result of a breach or default thereunder).

Section 5.18 Intellectual Property.

(a) The Loan Parties shall own, or be licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property necessary for the development, construction, start-up, completion, operation and maintenance of the Production Facilities and the Business, in each case, as to which the failure of such Loan Party to so own or be licensed could reasonably be expected to have a Material Adverse Effect, and the use thereof by such Loan Party shall not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(b) The Loan Parties shall (i) protect, defend and maintain the validity and enforceability of its intellectual property unless Borrower determines in its good faith reasonable business judgment that the protection, defense and maintenance is not in the best interests of Borrower; (ii) promptly advise Administrative Agent in writing of material infringements of Borrower's intellectual property; and (iii) not allow any intellectual property material to Borrower's business to be abandoned, forfeited or dedicated to the public without Administrative Agent's prior written consent, unless Borrower determines in its good faith reasonable business judgment that the intellectual property to be abandoned, forfeited or dedicated is not in the best interests of Borrower.

Section 5.19 [Reserved.]

Section 5.20 Certain Post-Closing Obligations.

(a) No later than ninety (90) days after the Closing Date (or such later date as the Administrative Agent shall agree to), the Borrower shall have delivered to the Administrative Agent fully executed copies of amendments to the Intercompany Agreements that are in form and substance reasonably acceptable to the Administrative Agent.

(b) Borrower shall deliver to the Administrative Agent within sixty (60) days following the Closing Date (or such later date as the Administrative Agent shall agree to), the following Direct Agreements, each in form and substance satisfactory to the Administrative Agent:

(i) (A) a Direct Agreement among Alto Magic Valley, LLC, Harvesting Technology, LLC and Administrative Agent with regard to the Engineering, Licensing, and Support Services Agreement, dated September 8, 2021 by and among Alto Magic Valley, LLC and Harvesting Technology, LLC (the "Harvesting Technology Licensing Agreement");

(ii) a Direct Agreement among 6301 N. Broadway LLC, Eagle Alcohol Company LLC and Administrative Agent with regard to the Second Amended and Restated Standard Office/Warehouse Lease, dated December 11, 2020 by and among 6301 N. Broadway LLC and Eagle Alcohol Company LLC (the "Eagle Lease"); and

(iii) a Direct Agreement among Port of Morrow, Pacific Ethanol Columbia, LLC and Administrative Agent with regard to the Port of Morrow Lease, dated April 20, 2006, by and among Port of Morrow and Pacific Ethanol Columbia, LLC (the "Columbia Lease").

(c) Borrower shall deliver to the Administrative Agent within forty-five (45) days following the Closing Date (or such later date as the Administrative Agent shall agree to), Control Agreements with respect to the Collateral Accounts (other than the Marketing Affiliates Accounts held at Wells Fargo Bank, National Association, which, for the avoidance of doubt, shall be delivered to the Administrative Agent on or prior to the Initial Funding Date), each in form and substance satisfactory to the Administrative Agent.

(d) Borrower shall deliver to the Administrative Agent within ninety (90) days following the Closing Date (or such later date as the Administrative Agent shall agree to), Mortgages and the documents listed in clause (f) of the definition of "Collateral and Guarantee Requirement" with respect to any Material Real Property owned or leased as of the Closing Date.

Section 5.21 Environmental Matters. The Loan Parties shall, (a) in each case to the extent required by Environmental Laws, conduct any investigation, remedial or other corrective action required by Environmental Laws to address Hazardous Materials it or any other Person has Released at, on, under or from any location in accordance with Environmental Laws, except as could not have a Material Adverse Effect; (b) conduct their operations in a manner that will minimize the threat of a Release, except as could not have a Material Adverse Effect; and (c) establish and implement such procedures as may be necessary to continuously determine and assure that the obligations of the Loan Parties under Sections 5.03, 5.04, 5.11 and this Section 5.21 are timely and fully satisfied.

Section 5.22 [Reserved].

Section 5.23 Growth Project Construction.

(a) The Loan Parties will construct, or cause the construction of each Growth Project to be, in all material respects, in accordance with the Capital Expenditures Plan and Budget, Prudent Industry Practices, each Material Contract (to the extent applicable), and Legal Requirements.

(b) The Loan Parties shall cause each Growth Project Milestone to be achieved no later than the date for achieving each Growth Project Milestone set forth in the Capital Expenditures Plan and Budget (or such later date agreed by the Administrative Agent).

Section 5.24 Subsidiary Distributions. Promptly following any event triggering a mandatory prepayment hereunder and otherwise no later than the last Business Day of each calendar month, each Loan Party (other than Borrower) shall distribute to Borrower, an amount equal to (a) all cash and Cash Equivalents held by such Subsidiary that is available to be distributed pursuant to Applicable Law, the Organizational Documents of such Subsidiary and, with respect to the Marketing Affiliates only, the ABL Loan Documents *less* (b) the aggregate amount of operational expenses reasonably expected to be payable during the immediately succeeding calendar month by such Subsidiary as set forth in the then-current Capital Expenditures Plan and Budget or Board of Director's approved operating budget for any such Subsidiary.

ARTICLE VI
NEGATIVE COVENANTS

Each Loan Party hereby agrees that from the Closing Date and thereafter, in all respects:

Section 6.01 Subsidiaries: Capital Stock Issuances. No Loan Party shall (a) form or have any Subsidiary (other than those Subsidiaries existing on the Closing Date, the Subsidiary Guarantors, Subsidiaries formed or acquired after the Closing Date and required to join this Agreement as a Subsidiary Guarantor pursuant to Section 5.16 within the time limits set forth therein), (b) own, directly or indirectly, or otherwise Control any Capital Rights or Capital Stock, of any other Person (other than those Subsidiaries existing on the Closing Date, the Subsidiary Guarantors, Subsidiaries formed or acquired after the Closing Date and required to join this Agreement as a Subsidiary Guarantor pursuant to Section 5.16 within the time limits set forth therein), (c) after the Closing Date, issue or otherwise amend, supplement, exchange or reclassify (including by contract) any Capital Rights or Capital Stock, other than issuance of shares of common stock that is pledged to the Administrative Agent as Collateral upon issuance thereof (excluding, for purposes of this clause (c), (i) Capital Rights or Capital Stock of Borrower that is issued to employees, officers and directors of Borrower and its Subsidiaries pursuant to an equity incentive plan approved by the Board and (ii) the issuance or amendment of other Capital Rights or Capital Stock of Borrower, *provided that*, in each case of clauses (i) and (ii), such Capital Rights or Capital Stock (at issuance or by any such amendment, supplement, exchange or reclassification) (x) are not subject to mandatory redemption, redemption at the option of the holder thereof or any other payment or distribution prior to the date that is 91 days after the Maturity Date, (y) do not provide for payments of dividends in cash (scheduled or otherwise) and (z) is not or does not become convertible into or exchangeable for Indebtedness or Capital Rights or Capital Stock described in the foregoing clauses (x) and (y)); provided, nothing herein shall prohibit or limit the issuance of Common Stock of Borrower. No Marketing Affiliate shall form or have any Subsidiary other than, with respect to Kinergy Marketing LLC, Alto Nutrients, LLC and Alto Specialty Products, LLC.

Section 6.02 Indebtedness. No Loan Party shall create, incur, assume or suffer to exist any Indebtedness, other than (without duplication) (each of the following, “Permitted Indebtedness”):

(a) Indebtedness incurred under the Financing Documents;

(b) [Reserved];

(c) (i) current accounts payable not more than ninety (90) days past due or which are being contested in accordance with the Permitted Contest Conditions, interest thereon, regulatory bonds, surety obligations and accrued expenses incurred, in the ordinary course of business and (ii) accounts payable more than ninety (90) days past due in an amount not to exceed \$1,000,000 at any one time in the aggregate for all Loan Parties;

(d) Indebtedness between the Loan Parties other than the Marketing Affiliates; *provided* that all such Indebtedness shall be fully subordinated in priority and payment to the Obligations on terms that are reasonably acceptable to the Required Lenders; *provided further* that all such Indebtedness shall be pledged to the Collateral Agent as Pledged Debt pursuant to the terms of the Security Agreement;

(e) other Indebtedness that does not constitute debt for borrowed money not to exceed \$2,000,000 in the aggregate at any time outstanding for all Loan Parties;

(f) (i) Indebtedness associated with bonds or other surety obligations required by Governmental Authorities in connection with the operation of the business of Loan Parties in the ordinary course of business and (ii) reimbursement obligations with respect to letters of credit issued to support such Indebtedness, such reimbursement obligations, in each case not to exceed \$2,000,000 in the aggregate;

(g) obligations in respect of rights-of-way, easements and servitudes, in each case, to the extent permitted hereunder;

(h) Indebtedness incurred by the Marketing Affiliates (and guarantees by Loan Parties of such Indebtedness) under and in accordance with the ABL Credit Agreement (as in effect on the Closing Date) or any Permitted Refinancing thereof; *provided* that such Indebtedness shall not exceed \$100,000,000 in the aggregate at any time outstanding; *provided further*, that no such Indebtedness or any Permitted Refinancing thereof shall be held by a lender that is not a national bank or federal savings association that is chartered and regulated by the Office of the Comptroller of the Currency;

(i) Indebtedness incurred by any Loan Party (other than the Marketing Affiliates) in connection with an Investment or any Disposition expressly permitted hereunder, in each case, constituting indemnification obligations or obligations in respect of purchase price (including earn outs) or other similar adjustments in an aggregate amount not to exceed \$5,000,000 at any one time;

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

(k) Indebtedness listed on Schedule 6.02;

(l) Indebtedness incurred in respect of credit cards, credit card processing services, debit cards, stored value cards, purchase cards or other similar cash management services, in each case, incurred in the ordinary course of business;

(m) Indebtedness in an amount not to exceed \$25,000,000 in the aggregate consisting of (i) any operating leases that would not constitute capital leases for purposes of GAAP as in effect prior to the implementation of ASC 842, and any replacements thereof, and (ii) any Capital Lease Obligations relating to capital leases (or similar arrangement conveying the right to use) that would have been treated as a capital lease for purposes of GAAP as in effect prior to the implementation of ASC 842, provided that such Capital Lease Obligations do not exceed \$10,000,000 in the aggregate; and

(n) Swap Obligations incurred in connection with commodity hedging transactions permitted by Section 6.14.

Section 6.03 Liens, Etc. No Loan Party shall create, incur, assume or suffer to exist any Lien upon or with respect to any of its properties of any character (including accounts receivables) whether now owned or hereafter acquired, or assign any accounts or other right to receive income, other than (without duplication) (each of the following, a “Permitted Lien” and collectively, the “Permitted Liens”):

(a) with respect to any property (other than Capital Stock), any of the following:

(i) Liens arising by reason of:

(A) taxes, assessments or governmental charges either secured by a bond or which are not yet due or payable, or which are being contested pursuant to the Permitted Contest Conditions;

(B) security, pledges or deposits in the ordinary course of business for payment of workmen’s compensation or unemployment insurance or other types of social security benefits;

(C) licenses of trademarks, tradenames, copyrights, patents and other intellectual property granted in the ordinary course of business; and

(D) good faith deposits or pledges incurred or created in connection with or to secure the performance of bids, tenders, contracts (other than contracts for the payment of money), or leases entered into in the ordinary course of business or under Applicable Law.

(ii) Liens of mechanics, carriers, landlords, warehousemen, materialmen, laborers, repairmen’s, employees or suppliers or any similar Liens arising by operation

of law incurred in the ordinary course of business with respect to obligations which are not due or, which are adequately bonded, and which are being contested pursuant to the Permitted Contest Conditions;

(iii) Liens arising out of judgments, orders or awards that have been adequately bonded, are fully covered by insurance (subject to a customary deductible) or with respect to which a stay of execution has been obtained pending an appeal or proceeding for review pursuant to the Permitted Contest Conditions;

(iv) Liens arising with respect to zoning restrictions, easements, leases, subleases, licenses, sublicenses, reservations, covenants, rights-of-way, utility easements, building restrictions and other similar charges or encumbrances on the use of real property which, individually or in the aggregate, do not materially detract from the value of the affected property and do not materially interfere with the ordinary conduct of the business of such Loan Party and any interest or title (and all encumbrances and other matters affecting such interest or title) of a lessee, licensee, sublessee or sublicensee thereunder;

(v) Liens or the interests of lessors to secure Capital Lease Obligations permitted under Section 6.01(m)(ii); *provided* that such Lien encumbers only the specific goods or equipment so purchased or financed and proceeds thereof;

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(vi) Liens arising under ERISA and Liens arising under the Code with respect to an employee pension benefit plan (as defined in Section 3(2) of ERISA) that do not constitute an Event of Default under Section 7.01(i);

(vii) Liens created under the Security Documents;

(viii) Liens or pledges of deposits of cash, in an amount not to exceed \$2,000,000 in the aggregate, securing (A) bonds or other surety obligations entered into in the ordinary course of business or under Applicable Law and (B) reimbursement obligations with respect to letters of credit to the extent permitted under Section 6.02(f);

(ix) Liens on brokerage accounts, commodities accounts, or pledges of deposit of cash or cash equivalents securing commodity hedging transactions permitted by Section 6.14; *provided*, that the aggregate value of collateral securing such Swap Obligations shall not exceed (x) the amount of any margin requirements necessary to maintain such hedging transactions permitted by Section 6.14, plus (y) \$5,000,000;

(x) (A) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights and remedies and burdening only deposit accounts or other funds maintained with a creditor depository institution, in each case, granted in the ordinary course of business in favor of such creditor depository institution, provided that no such deposit account is a dedicated cash collateral account or is subject to restrictions against access by the depositor in excess of those set forth by regulations promulgated by the Board and no such deposit account is intended by Borrower to provide collateral to the depository institution and (B) Liens in favor of a banking or other financial institution arising as a matter of law or in the ordinary course of business under customary general terms and conditions encumbering deposits or other funds maintained with a financial institution (including the right of setoff) and that are within the general parameters customary in the banking industry or arising pursuant to such banking institution's general terms and conditions;

(xi) Liens or pledges of deposits of cash securing deductibles, self-insurance, co-payment, co-insurance, retentions or similar obligations to providers or property, casualty or liability insurance in the ordinary course of business;

(xii) Liens not otherwise permitted hereunder so long as the aggregate outstanding principal amount of obligations of the Loan Parties secured thereby does not exceed \$2,000,000 at any one time;

(xiii) subject to the Intercreditor Agreement, Liens on the ABL Collateral arising under the ABL Security Documents so long as the aggregate outstanding obligations secured under such ABL Security Documents does not exceed the amount permitted pursuant to Section 6.02(h);

(xiv) Liens granted in the ordinary course of business to any Person providing property, casualty, liability, or other insurance to any Loan Party or any of its Subsidiaries, to the extent the financing is permitted under Section 6.02 and so long as the amount of such Indebtedness is not in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the year in which such Indebtedness is incurred and such Indebtedness is outstanding only during such year;

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(xv) Liens that extend, renew or replace in whole or in part a Lien referred to above; and

(xvi) Liens listed on Schedule 6.03; and

(b) with respect to any Capital Stock, any of the following:

(i) Liens arising from the Organizational Documents of the issuer thereof;

(ii) restrictions on transfer, sale, disposition, pledge or hypothecation under applicable securities laws;

(iii) Liens arising under the Security Documents; and

(iv) subject to the Intercreditor Agreement, Liens on the ABL Collateral arising under the ABL Security Documents so long as the aggregate outstanding obligations secured under such ABL Security Documents does not exceed the amount permitted pursuant to Section 6.02(h);

Section 6.04 Investments, Advances, Loans. Each Loan Party shall not make any advance, loan or extension of credit to, or make any acquisitions of or Investments (whether by way of transfers of property, contributions to capital, acquisitions of stock, securities, evidences of Indebtedness or otherwise) in, or purchase any stock, bonds, notes, debentures or other securities of, any other Person, other than:

(a) Investments in any other Loan Party (other than the Marketing Affiliates);

(b) (i) Cash Equivalents and (ii) the investments, if any, made by, or with the consent of, the Administrative Agent under, and in accordance with, any Control Agreement with respect to the amounts on deposit in the applicable Collateral Account subject to such Control Agreement;

(c) extensions of trade credit in the ordinary course of business to Persons other than Loan Parties to the extent otherwise permitted under the Financing Documents;

(d) with respect to any Loan Parties (other than the Marketing Affiliates), any acquisition of all or substantially all the assets of a Person, or any Capital Stock in a Person that becomes a Subsidiary Guarantor (provided such Person becomes a Subsidiary Guarantor within the time limits set forth in Section 5.16 to the extent required thereunder), in a single transaction or series of related transactions, if immediately after giving effect thereto: (a) no Event of Default shall have occurred and be continuing prior to or as a result of such acquisition, (b) any acquired or newly formed Subsidiary Guarantor shall not be liable for any Indebtedness, (c) to the extent required by the Collateral and Guarantee Requirement, (i) the property, assets and businesses acquired in such purchase or other acquisition shall constitute Collateral, (ii) any such newly created or acquired Subsidiary shall become a Guarantor, in each case, in accordance with Section 5.16 and (iii) such acquisition is funded by (i) Retained Excess Cash Flow, (ii) the proceeds of any cash equity contribution to the common equity of Borrower, or (iii) Capital Stock of the Borrower;

(e) Investments received in connection with the bankruptcy or reorganization of suppliers and customers or in settlement of delinquent obligations of, or other disputes with, customers and suppliers arising in the ordinary course of business or upon the foreclosure with respect to any secured Investment or other transfer of title with respect to any secured Investment;

(f) Guarantees by any Loan Parties (other than the Marketing Affiliates) of leases (other than Capital Lease Obligations) or of other obligations that do not constitute Indebtedness, in each case entered into in the ordinary course of business;

(g) Investments of any Loan Party (other than the Marketing Affiliates) consisting of Capital Expenditures expressly permitted under Section 6.16;

(h) Investments of any Loan Party (other than the Marketing Affiliates) in respect of lease, utility and other similar deposits in the ordinary course of business;

(i) Investments of any Loan Party consisting of hedging transactions as permitted by Section 6.14;

(j) Investments listed on Schedule 6.04;

(k) any other Investment in an aggregate amount not to exceed \$2,000,000 at any time outstanding; and

(l) Investments funded solely with Retained Excess Cash Flow; provided that no Investments made pursuant to this Section 6.04(l) shall create obligations or alter any Loan Party's operations in a manner that could reasonably be expected to materially impair or interfere with the Business; provided, further that Investments funded solely with Retained Excess Cash Flow for purposes of Capital Expenditures at a Marketing Affiliate shall not exceed \$5,000,000 in the aggregate.

Section 6.05 Principal Place of Business; Business Activities.

(a) Each Loan Party shall not change its principal place of business and shall not maintain any place of business outside of the state in which it maintains any place of business on the date hereof unless it has given at least thirty (30) days' prior notice thereof to the Administrative Agent and the Collateral Agent, and each Loan Party has taken all steps then required pursuant to the Security Documents to ensure the maintenance and perfection of the security interests created or purported to be created thereby. Each Loan Party shall maintain at its principal place of business originals or copies of its principal books and records.

(b) Each Loan Party shall not engage at any time in any business or business activity other than any business or business activity conducted by it on the Closing Date and any business or business activities incidental or related thereto, or any business or activity that is reasonably similar thereto or a reasonable extension, development or expansion thereof or ancillary thereto.

Section 6.06 Restricted Payments. None of the Loan Parties shall declare or make, directly or indirectly, any Restricted Payment, except:

(a) each Loan Party may make Restricted Payments to the Borrower, and other Loan Parties (other than the Marketing Affiliates);

(b) each Marketing Affiliate may make Restricted Payments to any other Marketing Affiliate and to the Borrower, to the extent permitted under the ABL Credit Agreement;

(c) any Restricted Payment (other than to any of the Marketing Affiliates); provided the Restricted Payment Conditions are satisfied;

(d) to the extent constituting Restricted Payments, the Loan Parties may enter into and consummate transactions expressly permitted by Section 6.08;

(e) each Loan Party may (a) pay cash in lieu of fractional Capital Stock in connection with any dividend, split or combination thereof or any acquisition permitted under Section 6.04 and (b) honor any conversion request by a holder of convertible Indebtedness and make cash payments in lieu of fractional shares in connection with any such conversion and may make payments on convertible Indebtedness in accordance with its terms; provided, however, that, for the avoidance of doubt, dividends and distributions to any holder of Series B Units (or any other forms of membership interests and/or units, profit sharing, or participation interests, or other equity interests held by any holder of Series B Units or any Affiliate thereof) under the Series B Certificate of Designations shall not be permitted pursuant to this Section 6.06(e);

(f) so long as the Restricted Payment Conditions are satisfied, Borrower may make quarterly dividend distributions on the Series B Units on each Quarterly Date after paying amounts due under this Agreement on such date in full, in an aggregate amount not to exceed \$1,250,000 in any fiscal year; and

(g) so long as no Event of Default exists or would result therefrom, repurchases of Borrower's Capital Stock in an amount not to exceed \$4,000,000 in the aggregate after the Closing Date.

Section 6.07 Use of Proceeds. Each Loan Party shall not use or transfer any part of the proceeds of the Loans, directly or indirectly (i) to or for the benefit of any Sanctioned Person, (ii) in violation of the Anti-Corruption Laws, Anti-Money Laundering Laws or Sanctions, or (iii) to offer or make payments or to take any other action that would constitute a violation, or implicate any Lender, Administrative Agent, Collateral Agent or their respective Affiliates in a violation, of Anti-Corruption Laws, Sanctions, or Anti-Money Laundering Laws.

Section 6.08 Fundamental Changes. None of the Loan Parties shall reorganize into a new jurisdiction, merge, dissolve, liquidate, consolidate with or into another Person or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) (including, in each case, pursuant to a Delaware LLC Division (or any comparable event under a different jurisdiction's laws)) to or in favor of any Person, except that:

(a) any Subsidiary Guarantor may merge, amalgamate or consolidate with (i) the Borrower (but only to the extent that no Loan Party reorganizes into a new jurisdiction as the result of such merger, amalgamation, or consolidation); *provided* that the Borrower shall be the continuing or surviving Person and such merger does not result in the Borrower ceasing to be a corporation organized under the Laws of the United States, any state thereof or the District of Columbia or (ii) one or more other Loan Parties (other than the Marketing Affiliates);

(b) (i) any Subsidiary Guarantor may liquidate or dissolve or may change its legal form (x) if the Borrower determines in good faith that such action is in the best interest of the Loan Parties and if not materially disadvantageous to the Lenders and (y), any assets or business not otherwise disposed of or transferred in accordance with Section 6.09 or, in the case of any such business, discontinued, shall be transferred to otherwise owned or conducted by another Loan Party (other than any Marketing Affiliate) after giving effect to such liquidation or dissolution;

(c) any Subsidiary Guarantor may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or to another Loan Party (other than any Marketing Affiliate);

(d) so long as no Event of Default exists or would immediately result therefrom (in the case of a merger involving a Loan Party), any Subsidiary Guarantor may merge or consolidate with any other Person in order to effect an Investment permitted pursuant to Section 6.04; *provided* that the continuing or surviving Person shall be a Loan Party (other than any Marketing Affiliate), which together with each of its Subsidiaries, shall have complied with the requirements of Section 5.16; and

(e) any Subsidiary Guarantor may consummate a merger, dissolution, liquidation, consolidation or Disposition, the purpose of which is to effect a Disposition permitted pursuant to Section 6.09.

Section 6.09 Dispositions. The Loan Parties shall not directly or indirectly, make any Disposition, except:

(a) Dispositions of property that is obsolete or no longer used or useful in the conduct of the business of the Loan Parties;

(b) Dispositions of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) all of the proceeds of such Disposition are promptly applied to the purchase price of such replacement property, in each case, provided that such replacement property is of reasonably comparable value or usefulness to the business of the Loan Parties as a whole, as determined in good faith by the Borrower;

(c) Dispositions of property to the Borrower or any Loan Party (other than any Marketing Affiliate) and Dispositions required to comply with the Intercompany Agreements;

(d) to the extent constituting Dispositions, transactions permitted by Section 6.03, Section 6.04, Section 6.06, and Section 6.08;

(e) Dispositions, liquidations or use of Cash Equivalents;

(f) leases or subleases, in each case in the ordinary course of business;

(g) with respect to any Loan Parties other than the Marketing Affiliates, Dispositions of property not to exceed \$5,000,000 individually and \$25,000,000 during the term of this Agreement; *provided* that (i) at the time of such Disposition, no Default or Event of Default shall exist or would immediately result from such Disposition and (ii) the Loan Parties shall receive not less than 75% of such consideration in the form of cash or Cash Equivalents; and

(h) Dispositions or discounts without recourse of accounts receivable in connection with the compromise or collection thereof in the ordinary course of business.

provided that any Disposition of any property pursuant to Section 6.09(b) and (g) shall be for no less than the fair market value of such property at the time of such Disposition as determined by the Borrower in good faith.

Section 6.10 Accounting Changes. Each Loan Party shall not change its fiscal year.

Section 6.11 Amendment or Termination of Material Contracts; Other Restrictions on Material Contracts. No Loan Party shall: (a) without the prior written consent of the Administrative Agent, directly or indirectly amend, modify, supplement or grant a consent, approval or waiver under, or permit or consent to the amendment, modification, supplement, consent, approval or waiver of any provision of any Material Contract unless, in the case of any amendment or modification, such amendment or modification is not material in nature (it being acknowledged and agreed that any amendment, waiver, or other modification to terms with respect to the amount, calculation or timing of payments, or the term, of any Intercompany Agreement shall be deemed to be material in nature); (b) directly or indirectly transfer, terminate, cancel or permit or consent to the transfer, termination or cancellation of any Intercompany Agreement (including by exercising any contractual option to terminate, or failing to exercise any contractual option to extend); (c) directly or indirectly transfer, terminate, cancel or permit or consent to the transfer, termination or cancellation of any Material Contract (including by exercising any contractual option to terminate, or failing to exercise any contractual option to extend), except, in each case, (i) in the event that the Loan Parties' obligations under such Material Contract have been fulfilled, or (ii) in the event that the term of such Material Contract has expired, terminated or not been extended in accordance with its terms; or (d) enter into an Additional Material Contract, unless, (i) with respect to any other Additional Material Contract, such Additional Material Contract could not reasonably be expected to be materially adverse to the Loan Parties, the Business, any Production Facility or the Lenders, and (ii) with respect to any Additional Material Contract entered into by a Marketing Affiliate, is in form and substance reasonably acceptable to the Administrative Agent.

Section 6.12 Transactions with Affiliates. No Loan Party shall, directly or indirectly, enter into any transaction of any kind with any Affiliate of the Borrower, whether or not in the ordinary course of business, other than (a) transactions among (i) the Loan Parties as of the Closing Date and set forth on Part A of Schedule 6.12 and (ii) the Loan Parties other than the Marketing Affiliates, (b) on terms substantially as favorable to such Loan Party as would be obtainable by such Loan Party at the time in a comparable arm's-length transaction with a Person other than an Affiliate, (c) Indebtedness permitted under Section 6.02(d), Restricted Payments permitted under Section 6.06, and Investments permitted under Section 6.04(a) or (f), (d) employment and severance arrangements between the Loan Parties and their respective officers and employees in the ordinary course of business and transactions pursuant to stock option plans, equity incentive plans and employee benefit plans and arrangements in the ordinary course of business, (e) the payment of customary fees and reasonable out of pocket costs to, and indemnities provided on behalf of, directors, managers, officers, employees and consultants of the Loan Parties in the ordinary course of business to the extent attributable to the ownership or operation of the Loan Parties and (f) transactions pursuant to agreements in existence on the Closing Date and set forth on Schedule 3.24 or any amendment thereto to the extent such an amendment is not adverse to the Lenders or any Agent and could not reasonably be expected to cause a Material Adverse Effect.

Section 6.13 Hazardous Materials. Each Loan Party will not cause any Releases of Hazardous Materials at, on, under or from any of the Production Facilities except to the extent such Release is in compliance in all respects with all Applicable Laws, including Environmental Laws, and applicable insurance policies, and could not reasonably be expected to have a Material Adverse Effect.

Section 6.14 No Speculative Transactions. No Loan Party shall engage in any transaction involving commodity options or futures contracts or any similar speculative transactions (including take-or-pay contracts), in each case except in accordance with Borrower's hedging program as approved by Borrower's Board of Directors and the Administrative Agent from time to time.

Section 6.15 Change of Auditors. No Loan Party shall, without the prior written consent of the Administrative Agent, change its Independent Auditor to an Independent Auditor other than an independent registered public accounting firm of nationally recognized standing.

Section 6.16 Capital Expenditures and Capital Expenditures Plan and Budget.

(a) The Loan Parties (other than the Marketing Affiliates) shall not incur any Capital Expenditures other than (i) Maintenance Capital Expenditures, (ii) Capital Expenditures for Growth Projects in accordance with the Capital Expenditures Plan and Budget, (iii) Capital Expenditures in an aggregate amount not to exceed \$5,000,000, (iv) Capital Expenditures funded with Retained Excess Cash Flow, and (v) any other Capital Expenditures related to repair or replacement of an asset following an Event of Loss. The Marketing Affiliates shall not incur any Capital Expenditures other than Capital Expenditures funded with Retained Excess Cash Flow not in excess of \$5,000,000 in the aggregate.

(b) If the Loan Parties wish to incur Capital Expenditures for any growth or expansion project that has not previously been approved as a "Growth Project", the Loan Parties shall deliver to the Administrative Agent a detailed description of such proposed project, together with an updated Capital Expenditures Plan and Budget taking into account such proposed project, and any other information reasonably requested by the Administrative Agent. The Loan Parties agree to consider in good faith any changes requested by the Administrative Agent (in consultation with the Lenders' independent engineer) to such proposed project and/or the related updates to the Capital Expenditures Plan and Budget. If the Administrative Agent consents in writing to such proposed project, it shall be deemed to be a "Growth Project" for all purposes under this Agreement and the Financing Documents and the updated Capital Expenditures Plan and Budget (as amended to reflect any requested changes) shall be deemed to be the "Capital Expenditures Plan and Budget" for all purposes under this Agreement and the Financing Documents.

(c) Except as otherwise permitted under Section 6.16(b), no Loan Party shall amend supplement or modify the Capital Expenditures Plan and Budget without the prior written consent of the Administrative Agent (not to be unreasonably withheld).

(d) No Loan Party shall incur Capital Expenditures for Growth Projects, or agree to any change orders or other amendments to Material Contracts that would cause Capital Expenditures for Growth Projects to be incurred, in excess of the amount budgeted therefor in the then-current Capital Expenditures Plan and Budget by more than fifteen percent (15%) in the aggregate with respect to any Growth Project or more than fifteen percent (15%) in the aggregate with respect to all Growth Projects.

Section 6.17 ERISA. No Loan Party or ERISA Affiliate shall (i) maintain or become obligated to contribute to any Pension Plan or Multiemployer Plan other than those disclosed on Schedule 3.18(a), (ii) engage in any material non-exempt "prohibited transaction" (as that term is defined in Section 406 of ERISA or Section 4975 of the Code), (iii) terminate any Pension Plan where such event could result in (x) any liability to any Loan Party or ERISA Affiliate or (y) the imposition of a Lien on the property of any Loan Party or ERISA Affiliate, (iv) incur any withdrawal liability to any Multiemployer Plan, (v) fail to promptly notify the Administrative Agent of the occurrence of any ERISA Event, (vi) fail to materially comply with the terms of, or the requirements of ERISA, the Code or other Applicable Laws with respect to any Plan or Multiemployer Plan, (vii) fail to meet or permit any Pension Plan to fail to meet any funding requirement under ERISA and the Code, without regard to any waivers or variances, or (viii) cause a representation or warranty in Section 3.18 to cease to be true and correct, except in each case to the extent that any such obligation or liability could not, individually or in the aggregate, reasonably be expected to result in liability in excess of \$2,000,000.

Section 6.18 Amendments of Organizational Documents: ABL Loan Documents.

(a) No Loan Party shall amend its certificate of formation or incorporation or bylaws or limited liability company agreement or other Organizational Documents other than amendments that could not be reasonably expected to (i) cause a Material Adverse Effect or (ii) materially and adversely impact the rights of the Lenders and the Agents under the Financing Documents. No Marketing Affiliate shall amend its certificate of formation or incorporation or bylaws or limited liability company agreement or other Organization Documents other than amendments that are permitted in accordance with the ABL Loan Documents.

(b) The Marketing Affiliates shall:

(i) not agree to any amendment, amendment and restatement, supplement or other modification to, or grant any consent or waiver under, any ABL Loan Documents in a manner that is adverse in any material respect to the Secured Parties without the prior written consent of the Administrative Agent; and

(ii) make all payments under any Intercompany Agreements on a timely basis in accordance with the terms thereof, on or before the date on which such payments are due.

Section 6.19 Accounts. No Loan Party shall open, maintain or instruct any other Person to open any bank accounts other than (a) with respect to the Marketing Affiliates only, the Marketing Affiliate Accounts and (b) with respect to any other Loan Parties (i) Collateral Accounts and (ii) Excluded Accounts.

ARTICLE VII

EVENTS OF DEFAULT

Section 7.01 Events of Default. If any of the following events (each, an "Event of Default, and collectively, the "Events of Default") shall occur:

(a) Borrower shall fail to pay any principal or premium (including the Prepayment Premium, if any) of any Loan when and as the same shall become due and payable,

whether at the due date thereof or, in the case of payments of principal due pursuant to Section 2.05(b), at a date fixed for prepayment thereof;

(b) Borrower shall fail to pay, when the same shall be due and payable, (i) any interest on any Loan and such failure is not cured within five (5) Business Days or (ii) any fee or any other amount (other than an amount referred to in clause (a) or (b)(i) of this Section) payable under this Agreement or under any other Financing Document when and as the same shall become due and payable, and such failure shall continue unremedied for a period of five (5) Business Days;

(c) any representation or warranty made by or deemed made by any Loan Party in this Agreement or any other Financing Document, or in any certificate or other document furnished to any Secured Party by or on behalf of such Loan Party in accordance with the terms hereof or thereof shall prove to have been incorrect in any material respect as of the time made or deemed made, confirmed or furnished;

(d) any Loan Party shall fail to observe or perform any covenant or agreement, as applicable, contained in:

(i) Section 5.01 (as to existence as set forth in clause (a) thereof), Section 5.11(m), Section 5.13, Article VI, or Article IX;

(ii) (A) Section 5.10(a), Section 5.10(b), or Section 5.23(b), and such failure has continued unremedied for a period of ten (10) Business Days, or (B) Section 5.06(a), and such failure has continued unremedied for a period of fifteen (15) Business Days; or

(iii) Section 5.10(f) and such failure has continued unremedied for thirty (30) days;

(e) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in this Agreement or any other Financing Document (other than those specified in clause (a), (b), (c) or (d) of this Section) and such failure shall continue unremedied for a period of thirty (30) days; *provided* that, if (A) such failure is not reasonably susceptible to cure within such thirty (30) days, (B) such Loan Party is proceeding with diligence and good faith to cure such Default and such Default is susceptible to cure and (C) the existence of such failure has not resulted in a Material Adverse Effect, such thirty (30) day period shall be extended as may be necessary to cure such failure, such extended period not to exceed sixty (60) days in the aggregate (inclusive of the original thirty (30) day period);

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(f) a Bankruptcy occurs with respect to any Loan Party;

(g) a final non-appealable judgment or order for the payment of money is entered against any Loan Party in an amount exceeding \$3,500,000 (exclusive of judgment amounts covered by insurance or bond where the insurer or bonding party has admitted liability in respect of such judgment), and such judgment remains unsatisfied without any procurement of a stay of execution for a period of sixty (60) days or more after the date of entry of judgment;

(h) (i) any Security Document (A) is revoked, terminated or otherwise ceases to be in full force and effect (except in connection with its expiration in accordance with its terms in the ordinary course (and not related to any default thereunder)), or the enforceability thereof shall be challenged in writing by any Loan Party, (B) ceases to provide (to the extent permitted by law and to the extent required by the Financing Documents) a first priority perfected Lien or second priority perfected Lien, as applicable on the assets purported to be covered thereby in favor of the Collateral Agent, free and clear of all other Liens (other than Permitted Liens), or (C) becomes unlawful or is declared void or (ii) any Financing Document (A) is revoked, terminated or otherwise ceases to be in full force and effect (except in connection with its expiration in accordance with its terms in the ordinary course (and not related to any default thereunder)), or (B) becomes unlawful or is declared void; or

(i) (i) an ERISA Event has occurred which, either individually or in the aggregate, could reasonably be expected to result in liabilities in excess of \$3,500,000; (ii) any Loan Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment, or series of installment payments, with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan, which has resulted or could reasonably be expected to result in liabilities in excess of \$3,500,000;

(j) a Change of Control has occurred;

(k) an uninsured Event of Loss, or a Condemnation, in each case in an amount exceeding \$3,500,000, shall occur;

(l) an Event of Abandonment shall occur with respect to the Pekin Production Facility, the Eagle Distribution Center or the ICP Facility;

(m) any Loan Party shall (i) default in making any payment of any principal, interest or premium of any Indebtedness (excluding the Loans and other Obligations) on the scheduled or original due date with respect thereto, in each case, beyond any grace periods applicable thereto; or (ii) default in the observance or performance of any other agreement or condition relating to any such Indebtedness (excluding the Obligations) or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, in each case, beyond any grace periods applicable thereto, the effect of which default or other event or condition is to cause, or to permit the holder or beneficiary of such Indebtedness (or a trustee or agent on behalf of such holder or beneficiary) to cause, with or without the giving of notice, the lapse of time or both, such Indebtedness to become due prior to its stated maturity or to become subject to a mandatory offer to purchase by the obligor thereunder or (in the case of any such Indebtedness constituting a Guarantee) to become payable; *provided* that a default, event or condition described in clause (i) or (ii) of this clause (m) shall not at any time constitute an Event of Default unless, at such time, one or more defaults, events or conditions of the type described in clauses (i) and (ii) of this clause (m) shall have occurred and be continuing with respect to Indebtedness the outstanding principal amount of which exceeds in the aggregate \$3,500,000; *provided*, that clause (ii) of this clause (m) will not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property securing such Indebtedness if such sale or transfer is permitted hereunder;

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(n) any Loan Party shall default in the observance or performance of any agreement or condition relating to the Board Observer Rights Agreement or the Registration Rights Agreement beyond any grace periods applicable thereto; or

(o) any “Event of Default” shall have occurred under the ABL Credit Agreement (as such term is defined as of the Closing Date) and such Event of Default shall not have been waived by the requisite lenders under the ABL Credit Agreement necessary to waive such Event of Default;

then, and in every such event (other than an event with respect to a Loan Party described in clause (f) of this Section), and at any time thereafter during the continuance of such event, the Administrative Agent may by notice to Borrower, take any or all of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately; and (ii) declare the Loan and all other amounts due under the Financing Documents (including the Prepayment Premium (in each case, determined as if the Loans were paid in full at the time of such acceleration at the option of the Borrower)) then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loan so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of Borrower accrued hereunder or under the Financing Documents

(including the Prepayment Premium), shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Loan Parties; and in case of any event with respect to a Loan Party described in clause (f) of this Section, the Commitments shall automatically terminate and the principal of the Loan then outstanding, together with accrued interest thereon and all fees and other obligations of Borrower accrued hereunder and under the Financing Documents (including the Prepayment Premium (in each case, determined as if the Loans were paid in full at the time of such acceleration at the option of the Borrower)), shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Loan Parties. Upon the occurrence and during the continuance of any Event of Default, in addition to the exercise of remedies set forth in clause (i) and clause (ii) above, each Secured Party shall be, subject to the terms of the Security Documents, entitled to exercise the rights and remedies available to such Secured Party under and in accordance with the provisions of the other Financing Documents to which it is a party or any Applicable Law.

ARTICLE VIII

THE AGENTS

Section 8.01 Appointment and Authorization of the Agents.

(a) Each of the Lenders hereby irrevocably appoints each Agent to act on its behalf as its agent hereunder and under the other Financing Documents and authorizes each Agent in such capacity, to take such actions on its behalf and to exercise such powers as are delegated to it by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. Each Agent, by executing this Agreement, hereby accepts such appointment. The provisions of this Article are solely for the benefit of the Agents and the Lenders (other than the express rights of Borrower under Section 8.07), and none of the Loan Parties shall have rights as a third party beneficiary of any of such provisions.

(b) Each Agent is hereby authorized to execute, deliver and perform each of the Financing Documents to which such Agent is intended to be a party. Each Agent hereby agrees, and each Lender hereby authorizes such Agent, to enter into the amendments and other modifications of the Security Documents (subject to Section 10.02(b)). In addition, prior to the Payment in Full of the Term Loan Debt, without further written consent or authorization from the Lenders, the Collateral Agent may execute any documents or instruments necessary in connection with a sale or disposition of assets permitted by this Agreement and permitted by the applicable Security Documents, to release any Lien encumbering any item of Collateral that is the subject of such sale or other disposition of assets or to which the requisite Lenders have otherwise consented.

Section 8.02 Rights as a Lender. Each Agent 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 an Agent, and such Person and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with Borrower or any of Subsidiary or other Affiliate thereof as if it were not an Agent hereunder.

Section 8.03 Duties of Agent; Exculpatory Provisions. No Agent shall have any duties or obligations except those expressly set forth herein and in the other Financing Documents. All communications, notices, financial statements, projections, reports and other information received by any Agent in relation to Financing Documents must be provided to each Lender within one (1) Business Day after receipt. Without limiting the generality of the foregoing, no Agent (a) shall be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing, (b) shall 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 Financing Documents that such Agent is required to exercise, and (c) shall, except as expressly set forth herein and in the other Financing Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to Borrower or any of its Subsidiaries that is communicated to or obtained by the financial institution serving as an Agent or any of its Affiliates in any capacity. No Agent shall be liable for any action taken or not taken by it with the consent or at the request of the Lenders or in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final, non-appealable decision. No Agent shall be deemed to have knowledge of any Default or Event of Default unless and until written notice thereof is given to such Agent by Borrower or a Lender, and no Agent shall be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Financing 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, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Financing Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein or therein, other than to confirm receipt of items expressly required to be delivered to such Agent.

Section 8.04 Reliance by Agent. Each Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper Person. Each Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon. Each Agent may consult with legal counsel, 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 8.05 Delegation of Duties. Each Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-agents appointed by such Agent. Each Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions of Section 8.03 and Section 8.04 shall apply to any such sub-agent and to the Related Parties of each Agent and any such sub-agent, and shall apply to their respective activities as well as activities as each Agent.

Section 8.06 Withholding of Taxes by the Administrative Agent; Indemnification. To the extent required by any Applicable Law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Taxes. If any Governmental Authority asserts a claim that the Administrative Agent did not properly withhold Taxes from amounts paid to or for the account of any Lender because the appropriate form was not delivered or was not properly executed or because such Lender failed to notify the Administrative Agent of a change in circumstance which rendered the exemption from, or reduction of, withholding Taxes ineffective or for any other reason, or if the Administrative Agent reasonably determines that a payment was made to a Lender pursuant to this Agreement without deduction of applicable withholding tax from such payment, such Lender shall promptly indemnify the Administrative Agent fully for all amounts paid, directly or indirectly, by Administrative Agent as Taxes or otherwise, including any penalties or interest and together with all expenses (including legal expenses, allocated internal costs and out-of-pocket expenses) incurred. Each Lender shall severally indemnify the Administrative Agent, within ten days after demand therefor, for (i) any Indemnified Taxes attributable to such Person (but only to the extent that Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of Borrower to do so), (ii) any Taxes attributable to such Person's failure to comply with the provisions of Section 10.04(f) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Person, in each case, that are payable or paid by the Administrative Agent in connection with any Financing 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 Financing Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this Section 8.06.

Section 8.07 Resignation of Agent. Each Agent may resign at any time upon thirty days' notice by notifying the Lenders and Borrower, and any Agent may be removed at any time by the Required Lenders (with a prior written notice to Borrower). Upon any such resignation or removal, the Required Lenders shall have the right, with the consent of Borrower (such consent not to be unreasonably withheld), to appoint a successor Agent. If no successor shall have been so appointed by the Required Lenders and approved by Borrower and shall have accepted such appointment within thirty (30) days after the retiring Agent gives notice of its resignation or after the Administrative Agent's removal of the retiring Agent, then the retiring Agent may, on behalf of the Lenders, appoint a successor Agent, which shall be a Lender with an office in New York, New York, an Affiliate of a Lender or a financial institution with an office in New York, New York having a combined capital and surplus that is not less than \$250,000,000. Upon the acceptance of its appointment as Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring (or retired) Agent and the retiring Agent shall be discharged from its duties and obligations hereunder (if not already discharged therefrom as provided above in this Section 8.07). The fees payable by Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrower and such successor. After the Agent's resignation or removal hereunder, the provisions of this Article and Section 10.03 shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as Agent.

Section 8.08 Non-Reliance on Agent or Other Lenders. Each Lender acknowledges that it has, independently and without reliance upon any Agent, the Affiliates of any Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon any Agent, the Affiliates of any Agent or any other Lender and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Financing Document or any related agreement or any document furnished hereunder or thereunder.

Section 8.09 No Other Duties; Etc. The parties agree that neither the Administrative Agent nor the Collateral Agent shall have any obligations, liability or responsibility under or in connection with this Agreement and the other Financing Documents and that none of the Agents shall have any obligations, liabilities or responsibilities except for those expressly set forth herein and in the other Financing Documents. The Collateral Agent shall have all of the rights (including indemnification rights), powers, benefits, privileges, exculpations, protections and immunities granted to the Collateral Agent under the other Financing Documents, all of which are incorporated herein mutatis mutandis.

Section 8.10 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, the Collateral Agent and each of their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of 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 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more employee benefit plans (as defined in Section 3(2) of ERISA) in connection with the Loans or the Commitments;

(ii) the prohibited 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 so as to exempt from the prohibitions of ERISA Section 406 and Code Section 4975, such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement;

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement; or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless Section 8.10(a)(i) is true with respect to a Lender or such Lender has not provided another representation, warranty and covenant as provided in Section 8.10(a)(iv), 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, the Collateral Agent and each of their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of Borrower or any other Loan Party, that none of the Administrative Agent, the Collateral Agent or their respective Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Financing Document or any documents related to hereto or thereto).

ARTICLE IX

GUARANTEE

Section 9.01 Guarantee.

(a) Guarantee. Each Subsidiary Guarantor hereby unconditionally and irrevocable, jointly and severally with the other Subsidiary Guarantors guarantees, as a primary obligor and not merely as a surety to each Secured Party and their respective successors and assigns, the prompt payment in full when due (whether at stated maturity, by required prepayment, declaration, demand, by acceleration or otherwise) of the Obligations. The Subsidiary Guarantor hereby jointly and severally agree that if the Borrower or

other Subsidiary Guarantor shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Obligations, the Subsidiary Guarantor will promptly pay the same in cash, without any presentment, demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Obligations, the same will be promptly paid in full when due (whether at stated maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

(b) Obligations Unconditional. The obligations of the Subsidiary Guarantor under Section 9.01(a) shall constitute a guarantee of payment and to the fullest extent permitted by applicable Law, are absolute, irrevocable and unconditional, joint and several, irrespective of the value, genuineness, validity, regularity or enforceability of the Obligations of the Borrower or other Subsidiary Guarantor under the Financing Documents or any other agreement or instrument referred to herein or therein, or any substitution, release or exchange of any other guarantee of or security for any of the Obligations, and, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or Subsidiary Guarantor (except for the occurrence of the Payment in Full of Term Loan Debt). Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Subsidiary Guarantors hereunder which shall remain absolute, irrevocable and unconditional under any and all circumstances as described above:

(i) at any time or from time to time, without notice to the Subsidiary Guarantors, to the extent permitted by applicable Law, the time for any performance of or compliance with any of the Obligations shall be extended, or such performance or compliance shall be waived;

(ii) any of the acts mentioned in any of the provisions of any Financing Document, if any, or any other agreement or instrument referred to herein or therein shall be done or omitted (other than the occurrence of the Payment in Full of Term Loan Debt);

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(iii) the maturity of any of the Obligations shall be accelerated, or any of the Obligations shall be modified, supplemented or amended in any respect (including, without limitation, any increase in the Obligations resulting from the extension of additional credit to any Loan Party or otherwise), or any right under the Financing Documents or any other agreement or instrument referred to herein or therein shall be amended or waived in any respect or any other guarantee of any of the Obligations or except as permitted pursuant to Section 9.04 any security therefor shall be taken, held, enforced, waived, sold, released or exchanged in whole or in part or otherwise dealt with;

(iv) any Lien or security interest granted to, or in favor of, any Lender, Agent or other Secured Party as security for any of the Obligations shall fail to be perfected;

(v) any defense arising by reason of any disability or other defense of the Borrower or any other Subsidiary Guarantor (other than a defense of the occurrence of the Payment in Full of Term Loan Debt), or the cessation from any cause whatsoever (including any act or omission of any Secured Party) of the liability of the Borrower or any other Subsidiary Guarantor with respect to all or any part of the Obligations (other than Payment in Full of Term Loan Debt);

(vi) any defense based on any claim that such Subsidiary Guarantor's obligations exceed or are more burdensome than those of the Borrower or any other Subsidiary Guarantor;

(vii) the benefit of any statute of limitations affecting such Subsidiary Guarantor's liability hereunder;

(viii) any benefit of and any right to participate in any security now or hereafter held by any Secured Party;

(ix) the release of any other Subsidiary Guarantor pursuant to Section 9.04; or

(x) any other circumstance or any existence of or reliance on any representation by any Agent, any Secured Party or any other Person, that might otherwise constitute a defense to, or a legal or equitable discharge of, the Borrower, any other Subsidiary Guarantor or any other guarantor or surety (other than the occurrence of the Payment in Full of Term Loan Debt).

The Subsidiary Guarantors hereby expressly waive diligence, presentment, demand of payment, protest and, to the extent permitted by Law, all notices whatsoever, and any requirement that any Secured Party exhaust any right, power or remedy or proceed against the Borrower under Section 9.01(a) or any other agreement or instrument referred to herein or therein, or against any other person under any other guarantee of, or security for, any of the Obligations. The Subsidiary Guarantors waive, to the extent permitted by Law, any and all notice of the creation, renewal, extension, waiver, termination or accrual of any of the Obligations and notice of or proof of reliance by any Secured Party upon this Article IX or acceptance of this Article IX, and the Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred in reliance upon this Article IX, and all dealings between the Borrower and the Secured Parties shall likewise be conclusively presumed to have been had or consummated in reliance upon this Article IX. This Article IX shall be construed as a continuing, absolute, irrevocable and unconditional guarantee of payment without regard to any right of offset with respect to the Obligations at any time or from time to time held by Secured Parties, and the obligations and liabilities of the Subsidiary Guarantors hereunder shall not be conditioned or contingent upon the pursuit by the Secured Parties or any other person at any time of any right or remedy against the Borrower or against any other person which may be or become liable in respect of all or any part of the Obligations or against any collateral security or guarantee therefor or right of offset with respect thereto. This Article IX shall remain in full force and effect and be binding in accordance with and to the extent of its terms upon the Subsidiary Guarantors and the successors and assigns thereof, and shall inure to the benefit of the Lenders and their respective successors and assigns, notwithstanding that from time to time during the term of this Article IX there may be no Obligations outstanding.

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(c) Reinstatement. The obligations of the Subsidiary Guarantor under Section 9.01(a) shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Borrower or other Loan Party in respect of the Obligations is rescinded or must be otherwise restored by any holder of any of the Obligations, whether as a result of any proceedings in insolvency, bankruptcy or reorganization or otherwise.

(d) Subrogation. Upon payment by any Subsidiary Guarantor of any sums to the Administrative Agent as provided above, all rights of such Subsidiary Guarantor against the Borrower or any other Subsidiary Guarantor arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subject to Section 9.03; provided, however, that each Subsidiary Guarantor hereby agrees that until the Payment in Full of Term Loan Debt, it shall waive any claim and shall not exercise any right or remedy, direct or indirect, arising by reason of any performance by it of its guarantee in Section 9.01(a), whether by subrogation, contribution, reimbursement, indemnity or otherwise, against the Borrower or any other Subsidiary Guarantor of any of the Obligations or any security for any of the Obligations. Any Indebtedness of any Loan Party permitted pursuant to Section 6.02(d) shall be subordinated to such Loan Party's Obligations on terms that are reasonably acceptable to the Administrative Agent. If any amount shall be paid to any Subsidiary Guarantor on account of such rights of subrogation, contribution, reimbursement, indemnity or otherwise at any time prior to the Payment in Full of Term Loan Debt (subject to Section 9.01(c)), such amount shall be held in trust for the benefit of the Administrative Agent and the other Secured Parties and shall promptly be paid to the Administrative Agent to be credited and applied upon and against the Obligations, to the extent then matured, in accordance with the terms of the relevant Financing Documents or, to the extent not then matured or existing, be held by the Administrative Agent as

collateral security for such Obligations.

(e) Remedies. The Subsidiary Guarantor jointly and severally agree that, as between the Subsidiary Guarantors and the Lenders, the obligations of the Borrower under this Agreement and the Notes, if any, may be declared to be forthwith due and payable upon an Event of Default as provided in Section 7.01(f) (and shall be deemed to have become automatically due and payable in the circumstances provided in Section 7.01(f) for purposes of Section 9.01(a)), notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable)) as against any Subsidiary Guarantor and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not due and payable by any Subsidiary Guarantor) shall forthwith become due and payable by the Subsidiary Guarantors for purposes of Section 9.01(a).

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(f) Guarantee of Payment; Continuing Guarantee. Each Subsidiary Guarantor further agrees that its guarantee under this Article IX constitutes a guarantee of payment when due (whether or not any bankruptcy or similar proceeding shall have stayed the accrual of collection of any of the Obligations or operated as a discharge thereof) and not merely of collection, and waives any right to require that any resort be had by the Administrative Agent, the Collateral Agent or any other Secured Party to any security held for the payment of the Obligations or to any balance of any deposit account or credit on the books of the Administrative Agent, the Collateral Agent or any other Secured Party in favor of the Borrower, any other party, or any other Person. Subject to the provisions of this Article IX, each Subsidiary Guarantor agrees that its guarantee under this Article IX is a continuing guarantee and shall apply to all Obligations whenever arising.

(g) Instrument for the Payment of Money. Each Subsidiary Guarantor hereby acknowledges that the guarantee in its guarantee under this Article IX constitutes an instrument for the payment of money, and consents and agrees that any Lender or Agent, at its sole option, in the event of a dispute by such Subsidiary Guarantor in the payment of any moneys due hereunder, shall have the right to bring a motion-action under New York CPLR Section 3213.

(h) General Limitation on Obligations. In any action or proceeding involving any state corporate, limited partnership or limited liability company law, or any applicable state, federal or foreign bankruptcy, insolvency, reorganization or other Law affecting the rights of creditors generally, if the obligations of any Subsidiary Guarantor under Section 9.01(a) would otherwise be held or determined to be void, voidable, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under Section 9.01(a), then, notwithstanding any other provision to the contrary, the amount of such liability shall, without any further action by such Subsidiary Guarantor, any Loan Party or any other person, be automatically limited and reduced to the highest amount (after giving effect to the right of contribution established in Section 9.02(b)) that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

(i) Information. Each Subsidiary Guarantor assumes all responsibility for being and keeping itself informed of the Borrower's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Obligations and the nature, scope and extent of the risks that each Subsidiary Guarantor assumes and incurs under this Article IX, and agrees that none of any Agent or any Lender shall have any duty to advise any Subsidiary Guarantor of information known to it regarding those circumstances or risks.

Section 9.02 Indemnity, Subrogation and Subordination.

(a) Indemnity and Subrogation. In addition to all such rights of indemnity and subrogation as the Subsidiary Guarantors may have under applicable law (but subject to Section 10.03, the Borrower agrees that (i) in the event a payment in respect of any obligation shall be made by any Subsidiary Guarantor under this Agreement, the Borrower shall indemnify such Subsidiary Guarantor for the full amount of such payment and such Subsidiary Guarantor shall be subrogated to the rights of the Person to whom such payment shall have been made to the extent of such payment and (ii) in the event any assets or other property of any Subsidiary Guarantor shall be sold pursuant to any Financing Document to satisfy in whole or in part an Obligation owed to any Secured Party, the Borrower shall indemnify such Subsidiary Guarantor in an amount equal to the greater of the book value, the fair market value or other market valuation of the assets or other property so sold (which value shall be reasonably determined by the Borrower).

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(b) Contribution and Subrogation. Each Subsidiary Guarantor hereby agrees that to the extent that a Subsidiary Guarantor shall have paid more than its proportionate share of any payment made hereunder, such Subsidiary Guarantor shall be entitled to seek and receive contribution from and against any other Subsidiary Guarantor hereunder which has not paid its proportionate share of such payment. Each Subsidiary Guarantor's right of contribution shall be subject to the terms and conditions of this Section 9.02. The provisions of this Section 9.02(b) shall in no respect limit the obligations and liabilities of any Subsidiary Guarantor to the Administrative Agent, the Collateral Agent, the Lenders, and each Subsidiary Guarantor shall remain liable to the Administrative Agent, the Collateral Agent, and the Lenders for the full amount guaranteed by such Subsidiary Guarantor hereunder.

(c) Subordination.

(i) Notwithstanding any provision of this Agreement to the contrary, all rights of the Subsidiary Guarantors under clauses (a) and (b) above and all other rights of the Subsidiary Guarantors of indemnity, contribution or subrogation under applicable law or otherwise shall be fully subordinated to the payment of the Obligations until the Payment in Full of Term Loan Debt. No failure on the part of the Borrower or any other Subsidiary Guarantor to make the payments required by clauses (a) and (b) above (or any other payments required under applicable law or otherwise) shall in any respect limit the obligations and liabilities of any other Subsidiary Guarantor with respect to its obligations hereunder, and each Subsidiary Guarantor shall remain liable for the full amount of the obligations of such Subsidiary Guarantor under this Article IX.

(ii) Each Subsidiary Guarantor hereby agrees that all Indebtedness and other monetary obligations owed by it to, or to it by, any other Subsidiary Guarantor or any other Subsidiary shall be fully subordinated to the payment of the Obligations until the Payment in Full of Term Loan Debt; provided that, notwithstanding the foregoing, for avoidance of doubt, each Subsidiary Guarantor or any other Subsidiary that is an obligor of such Indebtedness shall be permitted to pay, and each Subsidiary Guarantor or any other Subsidiary that is an obligee of such Indebtedness shall be entitled to receive, any payment or prepayment of principal and interest in accordance with the terms of the agreement and/or instrument governing such Indebtedness and to the extent not prohibited hereunder.

Section 9.03 Administrative Agent Rights. Neither the Administrative Agent nor any other Secured Party shall be liable for any failure to collect or realize upon the Obligations or any collateral security or guarantee therefor, or any part thereof, or for any delay in so doing, nor shall the Administrative Agent or any other Secured Party be under any obligation to take any action whatsoever with regard thereto. The Administrative Agent may execute any of its duties hereunder by or through agents or employees or designees and shall be entitled to advice of counsel concerning all matters pertaining to its duties hereunder. Neither the Administrative Agent, nor any of its respective officers, directors, employees, agents or counsel shall be liable for any action lawfully taken or omitted to be taken by it or them hereunder or in connection herewith, except for its or their own gross negligence, bad faith or willful misconduct as finally determined by a court of competent jurisdiction.

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Section 9.04 Termination; Release of Certain Subsidiary Guarantors.

(a) If, in compliance with the terms and provisions of the Financing Documents, all or substantially all of the Capital Stock or property of any Subsidiary Guarantor are sold or otherwise transferred as permitted under this Agreement and the other Financing Documents, to a person or persons, none of which is a Loan Party, such Subsidiary Guarantor shall, upon the consummation of such sale or transfer, be automatically released from its obligations under this Credit Agreement (including under Section 9.01(a)) and its obligations to pledge and grant any Collateral owned by it pursuant to any Security Document and the pledge of such Capital Stock to the Collateral Agent pursuant to the Security Documents shall be automatically released, and, so long as the Borrower shall have provided the Agents such certifications or documents as any Agent shall reasonably request, the Administrative Agent and the Collateral Agent shall, at such Subsidiary Guarantor's expense, take such actions as are necessary to effect each release described in this Section 9.04(a) in accordance with the relevant provisions of the Security Documents.

(b) Subject to Section 9.01(c), and without limiting the provisions of Section 9.04(a), this Agreement and the guaranties hereunder shall terminate upon the occurrence of the Payment in Full of Term Loan Debt. Upon the occurrence of the Payment in Full of Term Loan Debt, the Administrative Agent, at the written request and expense of the Borrower, will promptly (i) declare this Agreement to be of no further force or effect and (ii) take such action and execute any such agreements, documents, certificates or other instruments as may be reasonably requested by the Borrower (or on behalf of any Subsidiary Guarantor) to evidence such Subsidiary Guarantor's release from this Agreement and the termination of such Subsidiary Guarantor's guaranties.

(c) The release of the obligations described in Section 9.05(a) shall in no event diminish the liabilities, obligations or responsibilities of any other Subsidiary Guarantor that remains a party hereto, or of the Borrower, in any case, in respect of the Financing Documents.

Section 9.05 Additional Subsidiary Guarantors.

(a) Pursuant to Section 5.16, each indirect or direct Subsidiary of the Borrower that was not in existence or not a direct or indirect Subsidiary of the Borrower on the date hereof is required to enter in this Agreement as a Subsidiary Guarantor promptly and in any event within sixty (60) days (or such later date as the Administrative Agent shall agree to in writing) after the acquisition thereof. Upon execution and delivery by the Administrative Agent and such Subsidiary of a joinder agreement, such Subsidiary shall become a Subsidiary Guarantor hereunder with the same force and effect as if originally named as a Subsidiary Guarantor herein, but effective as of the date of such joinder agreement. The execution and delivery of any joinder agreement shall not require the consent of any other Subsidiary Guarantor hereunder or any Secured Party. The rights and obligations of each Subsidiary Guarantor hereunder shall remain in full force and effect notwithstanding the addition of any new Subsidiary Guarantor as a party to this Agreement.

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Section 9.06 Cross-Guarantee and Keepwell.

(a) Each Qualified ECP Guarantor (as defined below) hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Specified Guarantor (as defined below) as may be needed by such Specified Guarantor from time to time to honor all of its obligations under its guarantee under this Article IX and the other Financing Documents in respect of any Swap Obligation (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section 9.06 for up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor's obligations and undertakings under this Section 9.06 voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations and undertakings of each Qualified ECP Guarantor under this Section 10.06 remain in full force and effect until the Obligations have been indefeasibly paid and performed in full and all Commitments have been terminated. Each Qualified ECP Guarantor intends that this Section 10.06 constitute, and this Section 9.06 shall be deemed to constitute, a "keepwell, support or other agreement" for the benefit of each Specified Guarantor for all purposes of the Commodity Exchange Act. For purposes hereof, "Qualified ECP Guarantor" means, in respect of any Swap Obligation, each Subsidiary Guarantor that, at the time the relevant guarantee under this Article IX (or grant of the relevant security interest, as applicable) becomes or would become effective with respect to such Swap Obligation, has total assets exceeding \$10,000,000 or otherwise constitutes an "eligible contract participant" under the Commodity Exchange Act and which may cause a Specified Guarantor to qualify as an "eligible contract participant" with respect to such Swap Obligation at such time by entering into a letter of credit or keepwell, support, or other agreement guaranteeing or supporting such Swap Obligation pursuant to the Commodity Exchange Act. For purposes hereof, "Specified Guarantor" means, any Subsidiary Guarantor that is not an "eligible contract participant" under the Commodity Exchange Act (determined prior to giving effect to this Section 9.06).

ARTICLE X

MISCELLANEOUS

Section 10.01 Notices. Except as otherwise expressly provided herein or in any Financing Document, all notices and other communications provided for hereunder or thereunder shall be (i) in writing (including facsimile and email) and (ii) sent by facsimile, email or overnight courier (if for inland delivery) or international courier (if for overseas delivery) to a party hereto at its address and contact number specified below, or at such other address and contact number as is designated by such party in a written notice to the other parties hereto:

(a) Borrower and Subsidiary Guarantors:

Alto Ingredients, Inc.
1300 South Second Street
Pekin, Illinois 61554
Attn: Auste Graham, General Counsel
Email: agraham@altoingredients.com

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

Troutman Pepper Hamilton Sanders LLP
5 Park Plaza, 14th Floor
Irvine, CA 92614
Attn: Larry A. Cerutti

(b) Administrative Agent and Collateral Agent:

OIC Investment Agent, LLC
292 Madison Avenue, Suite 2500
New York, NY 10017
Attention: Team_Cob@OIC.com; CLE@OIC.com

(c) If to a Lender, to it at its address (or facsimile number) set forth in its Administrative Questionnaire.

All notices and communications shall be effective when received by the addressee thereof during business hours on a Business Day in such Person's location as indicated by such Person's address in clauses (a) to (c) above, or at such other address as is designated by such Person in a written notice to the other parties hereto.

Section 10.02 Waivers; Amendments.

(a) No Deemed Waivers; Remedies Cumulative. No failure or delay on the part of any Agent or any Lender in exercising any right, power or privilege hereunder or under any other Financing Document and no course of dealing between any Loan Party, or any of Borrower's Affiliates, on the one hand, and any Agent or Lender on the other hand, shall impair any such right, power or privilege or operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or under any other Financing Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. The rights, powers and remedies herein or in any other Financing Document expressly provided are cumulative and not exclusive of any rights, powers or remedies which any party thereto would otherwise have. No notice to or demand on Borrower in any case shall entitle Borrower to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of any Agent or any Lender to any other or further action in any circumstances without notice or demand.

(b) Amendments. No amendment or waiver of any provision of this Agreement or any other Financing Document (other than the Agent Reimbursement Letter and any fee letter between one or more Loan Parties and a Lender, each of which may be waived, amended or modified by the parties thereto in accordance with the terms thereof), and no consent to any departure by any Loan Party shall be effective unless in writing signed by (i) the Administrative Agent (acting on behalf of the Required Lenders) or the Required Lenders and (ii) the Borrower; provided that (A) no amendment, waiver or consent shall, without the written consent of the relevant Agent, affect the rights or duties of such Agent under this Agreement or any other Financing Document and (B) any separate fee agreement between Borrower and the Administrative Agent in its capacity as such or between Borrower and the Collateral Agent in its capacity as such may be amended or modified by such parties.

Notwithstanding anything to the contrary in any Financing Document, Borrower, the Administrative Agent and the Collateral Agent may, without the need to obtain consent of any Lender, enter into an amendment to this Agreement and the other Financing Documents to (i) correct or cure any ambiguities, errors, omissions, mistakes, inconsistencies or defects jointly identified by Borrower and the Administrative Agent, (ii) to effect administrative changes of a technical or immaterial nature, (iii) to fix incorrect cross-references or similar inaccuracies in this Agreement or the applicable Financing Document or (iv) make any change that would provide additional rights or benefits to the Lenders.

Section 10.03 Expenses; Indemnity; Etc.

(a) Costs and Expenses. Borrower agrees to pay or reimburse each of the Agents and the Lenders for: (I) all reasonable and documented out-of-pocket costs and expenses of the Agents and the Lenders (including the reasonable fees and expenses of counsel and experts engaged by the Agents or the Lenders from time to time, including an independent engineer, market consultant, environmental consultant, insurance consultant and any other consultants) in connection with (A) the negotiation, preparation, execution, delivery and performance of this Agreement and the other Financing Documents and the extension of credit under this Agreement (whether or not the transaction contemplated hereby and thereby shall be consummated) or (B) any amendment, modification or waiver of any of the terms of this Agreement (or any other Financing Documents); provided that, in the case of the Lenders, the Lenders shall be limited to one primary counsel and one local counsel as reasonably necessary in each relevant jurisdiction material to the interests of the Lenders (and solely in the case of an actual conflict of interest, one additional counsel and (if necessary) one local counsel in each relevant jurisdiction material to the affected Lenders); (II) all reasonable costs and expenses of the Lenders (including payment of the fees provided for herein) and the Agents (including external counsels' fees and expenses and reasonable experts' fees and expenses) in connection with (A) any Default or Event of Default and any enforcement or collection proceedings resulting from such Default or Event of Default or in connection with the negotiation of any restructuring or "work-out" (whether or not consummated) of the obligations of the Loan Parties under this Agreement or any other Financing Document and (B) the enforcement of this Section 10.03 or the preservation of their respective rights; provided that, in the case of the Lenders, the Lenders shall be limited to one primary counsel and one local counsel as reasonably necessary in each relevant jurisdiction material to the interests of the Lenders (and solely in the case of an actual conflict of interest, one additional counsel and (if necessary) one local counsel in each relevant jurisdiction to the affected Lenders); and (III) all costs, expenses, Taxes, assessments and other charges incurred in connection with any filing, registration, recording or perfection of any security interest contemplated by any Security Document or any other document referred to therein (including all costs, expenses and other charges procured with respect to the Liens created pursuant to any Mortgage). Notwithstanding anything to the contrary in this Agreement, the costs and expenses reimbursable pursuant to this Section 10.03(a) shall be subject to the limitations set forth in the Agent Reimbursement Letter.

(b) Indemnification by Borrower. Each Loan Party agrees to indemnify and hold harmless each of the Agents and the Lenders and their affiliates and their respective directors, officers, employees, administrative agents, attorneys-in-fact and controlling persons (each, an "Indemnified Party") from and against any and all losses, claims, damages and liabilities, joint or several, to which such Indemnified Party may become subject related to or arising out of any transaction contemplated by the Financing Documents or the execution, delivery and performance of the Financing Documents or any other document in any way relating to the Financing Documents and the transactions contemplated by the Financing Documents (including, for avoidance of doubt, any liabilities arising under or in connection with Environmental Law) and will reimburse any Indemnified Party for all expenses, within ten (10) days after demand therefore, (including reasonable and documented out-of-pocket external counsel fees and expenses) as they are incurred in connection therewith. Borrower will not be liable under the foregoing indemnification provision to an Indemnified Party to the extent that any loss, claim, damage, liability or expense (x) is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's gross negligence or willful misconduct or (y) is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted from disputes among Indemnified Parties (other than any claims arising out of any act or omission on the part of any Loan Party or its respective Affiliates). Borrower also agrees that no Indemnified Party shall have any liability (whether direct or indirect, in contract or tort or otherwise) to it, or any of its security holders or creditors related to or arising out of the execution, delivery and performance of any Financing Document or any other document in any way relating to the Financing Documents or the other transactions contemplated by the Financing Documents, except to the extent that any loss, claim, damage or liability is found to have resulted from such Indemnified Party's gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final, non-appealable decision. To the extent permitted by Applicable Law, Borrower shall not assert and hereby waives, any claim against any Indemnified Party, 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 Financing Document or any agreement or instrument contemplated hereby, any Loan or the use of the proceeds thereof. Paragraph (b) of this Section shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Indemnification by Lenders. To the extent that Borrower fails to pay any amount required to be paid to any Agent, their affiliates or agents under Section 10.03(a) or 10.03(b), each Lender severally agrees to pay ratably in accordance with the aggregate principal amount of the Loan held by the Lender to such Agent, affiliate or agent such unpaid amount; *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 such Agent, affiliate or agent in its capacity as such.

(d) Settlements; Appearances in Actions. Borrower agrees that, without each Indemnified Party's prior written consent, it will not settle, compromise or consent to the entry of any judgment in any pending or threatened claim, action or proceeding in respect of which indemnification could be sought by or on behalf of such Indemnified Party under this Section (whether or not any Indemnified Party is an actual or potential party to such claim, action or proceeding), unless such settlement, compromise or consent includes an unconditional release of such Indemnified Party from all liability arising out of such claim, action or proceeding. In the event that an Indemnified Party is requested or required to appear as a witness in any action brought by or on behalf of or against Borrower or any Affiliate thereof in which such Indemnified Party is not named as a defendant, Borrower agrees to reimburse such Indemnified Party for all reasonable expenses incurred by it in connection with such Indemnified Party's appearing and preparing to appear as such a witness, including the reasonable and documented out-of-pocket fees and disbursements of its external legal counsel. In the case of any claim brought against an Indemnified Party for which Borrower may be responsible under this Section 10.03, the Agents and Lenders agree (at the expense of Borrower) to execute such instruments and documents and cooperate as reasonably requested by Borrower in connection with Borrower's defense, settlement or compromise of such claim, action or proceeding.

Section 10.04 Successors and Assigns.

(a) Assignments 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 (i) the Loan Parties may not assign or otherwise transfer, directly or indirectly, any of their respective rights or obligations hereunder or under any other Financing Document without the prior written consent of each Lender (and any attempted assignment or transfer by such Loan Party without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer, directly or indirectly, any of its rights or obligations hereunder except in accordance with this Section 10.04. 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 Section 10.04(f)) and, to the extent expressly contemplated hereby, the Indemnified Parties referred to in Section 10.03(b) and 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 assign to one or more Persons all or a portion of its rights and obligations under this Agreement (including all or a portion of its Loan at the time owing to it); *provided that*:

(i) except in the case of an assignment to a Lender or an Affiliate or Related Fund of a Lender, the amount of the Loan of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$500,000 unless Borrower and the Administrative Agent otherwise consent;

(ii) except in the case of an assignment to a Lender or an Affiliate or Related Fund of a Lender, each of the Administrative Agent and Borrower must give its prior written consent to such assignment, not to be unreasonably withheld, conditioned or delayed;

(iii) 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;

(iv) except in the case of an assignment to an Affiliate, 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;

(v) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire; and

(vi) no such assignment shall be made to any Disqualified Institution.

provided further that any consent of Borrower otherwise required under this clause (b) shall not be required if any Event of Default has occurred and is continuing and shall be deemed given if Borrower has not responded to a request for such consent within five (5) Business Days of the request. Upon acceptance and recording pursuant to Section 10.04(d), from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Section 2.09, Section 2.10 and 10.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 10.04(b) 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 Section 10.04(f). For the avoidance of doubt, the Participation Shares shall be freely transferable and nothing contained herein shall be construed to restrict the transfer thereof.

(c) Maintenance of Register by the Administrative Agent. The Administrative Agent, acting for this purpose as an agent of Borrower, shall maintain at one of its offices in New York City 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 Commitments of, and principal amounts (and stated interest) of 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 Borrower, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice. The Administrative Agent shall give to any Lender promptly upon request therefor, a complete and correct copy of the names and addresses of all registered Lenders.

(d) Effectiveness of Assignments. Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in Section 10.04(b) and any written consent to such assignment required by Section 10.04(b), the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in Section 10.04(c) and this Section 10.04(d).

(e) Limitations on Rights of Assignees. An assignee Lender shall not be entitled to receive any greater payment under Section 2.09 or Section 2.10 than the assigning Lender would have been entitled to receive with respect to the interest assigned to such assignee (based on the circumstances existing at the time of the assignment), unless Borrower's prior written consent has been obtained therefor.

(f) Participations. Any Lender may, without the consent of Borrower or the Administrative Agent, sell participations to one or more banks or other entities (a “Participant”) in all or a portion of such Lender’s rights and obligations under this Agreement and the other Financing Documents (including all or a portion of the Loan owing to it); *provided* that (i) such Lender’s obligations under this Agreement and the other Financing Documents shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Loan Parties, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement and the other Financing Documents. 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 the other Financing Documents and to approve any amendment, modification or waiver of any provision of this Agreement or any other Financing Document; *provided* that, such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 10.02(b) that affects such Participant. Subject to Section 10.04(g), Borrower agrees that each Participant shall be entitled to the benefits of Section 2.09 and Section 2.10 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.04(b); *provided* that such Participant (A) agrees to be subject to the provisions of Section 2.11 as if it were an assignee under Section 10.04(b). Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant’s interest in the Loan or other obligations under the Financing Documents held by it (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 or its other obligations under any Financing Document) to any Person except to the extent that such disclosure is necessary to establish that such participation complies with this Section 10.04 and that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the U.S. Department of 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.

(g) Limitations on Rights of Participants. A Participant shall not be entitled to receive any greater payment under Section 2.09 or Section 2.10 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. A Participant shall not be entitled to the benefits of Section 2.09 unless the Participant agrees, for the benefit of Borrower, to comply with Section 2.09(e) as though it were a Lender (it being understood that the documentation required under Section 2.09(e) shall be delivered to the participating Lender).

(h) Certain Pledges.

(i) 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 any such pledge or assignment to a Federal Reserve Bank, the European Central Bank or any other central bank or similar monetary authority in the jurisdiction of such Lender, and this Section shall not apply to any such pledge or assignment of a security interest; *provided* that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto; and *provided further* that any payment in respect of such pledge or assignment made by any Loan Party to or for the account of the pledging or assigning Lender in accordance with the terms of this Agreement shall satisfy such Loan Party’s obligations hereunder in respect of such pledged or assigned Loan to the extent of such payment.

(ii) Notwithstanding any other provision of this Agreement, any Lender may, without informing, consulting with or obtaining the consent of any other party to the Financing Documents and without formality under any Financing Documents, assign by way of security, mortgage, charge or otherwise create security by any means over, its rights under any Financing Document to secure the obligations of that Lender to any Person that would be a permitted assignee (without the consent of Borrower or any Agent) pursuant to Section 10.04(b) including (A) to the benefit of any of its Affiliates and/or (B) within the framework of its, or its Affiliates, direct or indirect funding operations.

(iii) No Assignments to Borrower or Affiliates. Anything in this Section to the contrary notwithstanding, no Lender may assign or participate any interest in any Loan held by it hereunder to any Loan Party or any Affiliate of Borrower without the prior written consent of each other Lender.

Section 10.05 Survival. All covenants, agreements, representations and warranties made by the Loan Parties herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loan, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default or Event of Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid. The provisions of Section 2.08, 2.09, Section 2.10, 10.03, 10.05, 10.09, 10.12, 10.13, 10.14, 10.15 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loan, the expiration or termination of the Commitments or the termination of this Agreement or any provision hereof.

Section 10.06 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Financing Documents to which a Loan Party is party constitute the entire contract between and among the parties relating to the subject matter hereof and thereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Delivery of an executed counterpart of a signature page to this Agreement by telecopy or scanned electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 10.07 Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 10.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and any of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held, and any other indebtedness at any time owing, by such Lender or any such Affiliate to or for the credit or the account of Borrower against any of and all the obligations of Borrower now or hereafter existing under this Agreement held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations may be unmatured or denominated in a currency other than Dollars. The rights of each Lender or any such Affiliate under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

Section 10.09 Governing Law; Jurisdiction; Etc.

(a) Governing Law. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT AND ANY DISPUTE OF CLAIMS ARISING IN CONNECTION THEREWITH SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) Submission to Jurisdiction; Consent to Service of Process. Any legal action or proceeding with respect to this Agreement or any other Financing Document to which a Loan Party is a party shall, except as provided in clause (d) below, be brought in the courts of the State of New York, or of the United States District Court for the Southern District of New York, in each case, seated in the County of New York and, by execution and delivery of this Agreement, each party hereto hereby irrevocably accepts for itself and in respect of its property, generally and unconditionally, the exclusive jurisdiction of the aforesaid courts. Each party hereto agrees that a judgment, after exhaustion of all available appeals, in any such action or proceeding shall be conclusive and binding upon it, and may be enforced in any other jurisdiction, including by a suit upon such judgment, a certified copy of which shall be conclusive evidence of the judgment. Each party hereto hereby further irrevocably consents to the service of process in any action or proceeding in such courts by the mailing thereof by any parties thereto by registered or certified mail, postage prepaid, to such party at the address specified for such party in Section 10.01 and agrees that such service of process is sufficient to confer personal jurisdiction over such party in any such court, and otherwise constitutes effective and binding service in every respect.

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(c) Waiver of Venue. Each party hereto hereby irrevocably waives any objection that it may now have or hereafter have to the laying of the venue of any suit, action or proceeding arising out of or relating to the Production Facilities, the Business, this Agreement or any other Financing Document to which it is a party brought in the Supreme Court of the State of New York or in the United States District Court for the Southern District of New York, in each case, seated in the County of New York and hereby further irrevocably waives any right to stay or dismiss any such suit, action or proceeding brought in any such court on the basis of having been brought in an inconvenient forum.

(d) Rights of the Secured Parties. Nothing in this Section 10.09 shall limit the right of the Secured Parties to refer any claim to enforce a judgment under this Agreement against a Loan Party to any court of competent jurisdiction in any State where any Collateral is located, nor shall the taking of proceedings by any Secured Party before the courts in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

(e) WAIVER OF JURY TRIAL. EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ITS RESPECTIVE RIGHTS TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS AGREEMENT OR ANY OTHER FINANCING DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT OR ANY OTHER FINANCING DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. EACH PARTY TO THIS AGREEMENT ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS Section 10.09 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO OR ANY OF THE OTHER FINANCING DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOANS MADE HEREUNDER.

Section 10.10 Acknowledgment Regarding Any Supported QFCs. To the extent that the Financing Documents provide support, through a guarantee or otherwise, for Swap Agreements or any other agreement or instrument that is a QFC (such support, “QFC Credit Support” and each such QFC a “Supported QFC”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Financing 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).

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(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 Financing 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 Financing 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 10.10, the following terms have the following meanings:

- (i) “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.
- (ii) “Covered Entity” means any of the following:

(A) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. §252.82(b);

(B) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. §47.3(b); or

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

(iii) “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.

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(iv) “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).

Section 10.11 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

Section 10.12 Confidentiality. Each of the Agents and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to its and its Affiliates’ directors, officers, employees, board members (and members of committees thereof), managers, members, partners, equity holders, agents, consultants, Persons providing administration and settlement services and other professional advisors, including accountants, auditors, legal counsel, investment advisers or managers (to the extent providing investment advice relating to the transactions contemplated by this Agreement) and other advisors with a need to know (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), (ii) to the extent requested by any applicable regulatory or supervisory body or authority (including, without limitation, the National Association of Insurance Commissioners, the SVO or any similar organization, and any nationally recognized rating agency that requires access to information about any Lender’s investment portfolio), by Applicable Laws or regulations or by any subpoena, oral question posed at any deposition, interrogatory or similar legal process (including, for the avoidance of doubt, to the extent requested in connection with any pledge or assignment pursuant to Section 10.04(f)); *provided* that the party from whom disclosure is being required shall give notice thereof to Borrower as soon as practicable (unless restricted from doing so and except where disclosure is to be made to a regulatory or supervisory body or authority during the ordinary course of its supervisory or regulatory function), (iii) to any other party to this Agreement, (iv) subject to an agreement containing provisions substantially the same as those of this Section 10.12, to any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement, (v) with the consent of Borrower, (vi) to the extent such Information (A) becomes publicly available other than as a result of a breach of this Section 10.12 or (B) becomes available to any Agent or any Lender on a non-confidential basis from a source other than Borrower other than as a result of a breach of this Section 10.12 or (vii) to any Person with whom Borrower, an Agent or a Lender has entered into (or potentially may enter into), whether directly or indirectly, any transaction under which payments are to be made or may be made by reference to, one or more Financing Documents and/or Borrower or to any of such Person’s Affiliates, representatives, agents or professional advisors. For the purposes of this Section 10.12, “Information” means all information received from the Loan Parties relating to such Loan Party’s business or otherwise furnished pursuant to this Agreement or any other Financing Document, other than any such information that is available to the Agents or any Lender on a non-confidential basis prior to disclosure by Borrower. 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 10.13 [Reserved].

Section 10.14 No Third Party Beneficiaries. The agreement of the Lenders to make the Loan to Borrower on the terms and conditions set forth in this Agreement, is solely for the benefit of the Loan Parties, the Agents and the Lenders, and no other Person shall have any rights under this Agreement or under any other Financing Document as against the Agent or any Lender or with respect to any extension of credit contemplated by this Agreement.

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Section 10.15 Reinstatement. The obligations of Borrower under this Agreement shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of Borrower in respect of the Obligations is rescinded or must be otherwise restored by any holder of any of the Obligations, whether as a result of any proceedings in Bankruptcy or reorganization or otherwise, and Borrower agrees that it will indemnify each Secured Party on demand for all reasonable costs and expenses (including fees of external counsel) incurred by such Secured Party in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any Bankruptcy, insolvency or similar law.

Section 10.16 Release of Collateral.

(a) Notwithstanding anything to the contrary contained herein or in any other Financing Document, upon the Payment in Full of Term Loan Debt, upon request of Borrower, the Collateral Agent and Administrative Agent shall (without notice to, or vote or consent of, any Lender) each take such actions as shall be required to release its security interest in all Collateral, and to release all guarantee obligations provided for in any Financing Document. Any such release of guarantee obligations shall be deemed subject to the provision that such guarantee obligations shall be reinstated if after such release any portion of any payment in respect of the Obligations guaranteed thereby shall be rescinded or must otherwise be restored or returned upon any proceedings in Bankruptcy or reorganization or otherwise, all as though such payment had not been made.

(b) Notwithstanding anything to the contrary contained herein or any other Financing Document, in connection with a sale or disposition of property permitted by this Agreement, upon request of Borrower, the Collateral Agent and Administrative Agent shall each (without notice to, or vote or consent of, any Lender) take such actions as shall be required to release its security interest in such property.

(c) If, in compliance with the terms and provisions of the Financing Documents, all or substantially all of the Capital Stock or property of any Subsidiary Guarantor are sold or otherwise transferred as permitted under this Agreement and the other Financing Documents, to a person or persons, none of which is a Loan Party, such Subsidiary Guarantor shall, upon the consummation of such sale or transfer, be automatically released from its obligations under this Credit Agreement and its obligations to pledge and grant any Collateral owned by it pursuant to any Security Document and the pledge of such Capital Stock to the Collateral Agent pursuant to the Security Documents shall be automatically released, and, so long as the Borrower shall have provided the Agents such certifications or documents as any Agent shall reasonably request, the Administrative Agent and the Collateral Agent shall, at such Subsidiary Guarantor’s expense, take such actions as are necessary to effect each release described in this Section 10.16 in accordance with the relevant provisions of the Security Documents.

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(d) The release of the obligations described in this Section 10.16 shall in no event diminish the liabilities, obligations or responsibilities of any other Guarantor that remains a party hereto, or of the Borrower, in any case, in respect of the Financing Documents.

Section 10.17 USA PATRIOT Act. Each Lender hereby notifies the Loan Parties that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “USA PATRIOT Act”), it is required to obtain, verify and record information that identifies such Loan Party, which information includes the name and address of such Loan Party and other information that will allow such Lender to identify such Loan Party in accordance with the USA PATRIOT Act.

Section 10.18 Electronic Execution of Assignments and Certain Other Documents. The words “execution,” “execute,” “signed,” “signature,” and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including without limitation Assignment and Assumptions, amendments or other Borrowing Requests, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, 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.

Section 10.19 Usury Savings. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any of the Obligations, together with all fees, charges, and other amounts that are treated as interest on such Obligations under Applicable Law (collectively the “Charges”), shall exceed the maximum lawful rate (the “Highest Lawful Rate”) that may be contracted for, charged, taken, received or reserved by the Lender holding such Obligations in accordance with Applicable Law, the rate of interest payable in respect of such Obligations hereunder, together with all Charges payable in respect thereof, shall be limited to the Highest Lawful Rate, and to the extent lawful, the interest and Charges that would have been payable in respect of such Obligations, but were not payable as a result of the operation of this Section 10.19 shall be cumulated and the interest and Charges payable to such Lender in respect of other Obligations or periods shall be increased (but not above the Highest Lawful Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender. In determining whether the Charges contracted for, charged, or received by Administrative Agent or a Lender exceed the highest Lawful Rate, such Person may, to the extent permitted by Applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate and spread in equal or unequal parts the total amount of the Charges throughout the contemplated term of the Obligations hereunder.

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Section 10.20 Arm's Length Transactions. All parties to this Agreement expressly agree that with respect to all the terms and provisions hereunder, including (without limitation) the choice of law provision set forth in Section 10.09: (i) such terms and provisions are reasonable and the product of an arm's length transaction between sophisticated business parties, ably represented by counsel; (ii) there has been a course of conduct between the parties hereto giving specific consideration in this transaction for the terms and provisions contained in this Agreement; and (iii) the parties to this Agreement shall be estopped hereafter from claiming differently than as agreed to in this paragraph.

Section 10.21 Erroneous Payments.

(a) If the Administrative Agent (x) notifies a Lender or any Person who has received funds on behalf of a Lender (any such Lender or other recipient (and each of their respective successors and assigns), a “Payment Recipient”) that the Administrative Agent has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds (as set forth in such notice from the Administrative Agent) received by such Payment Recipient from the Administrative Agent or any of its Affiliates were erroneously or mistakenly transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender or other Payment Recipient on its behalf) (any such funds, whether transmitted or received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an “Erroneous Payment”) and (y) demands in writing the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Administrative Agent pending its return or repayment as contemplated below in this Section 10.21 and held in trust for the benefit of the Administrative Agent, and such Lender shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two (2) Business Days thereafter (or such later date as the Administrative Agent may, in its sole discretion, specify in writing), return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon (except to the extent waived in writing by the Administrative Agent) in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent in same day funds at a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Administrative Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

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(b) Without limiting immediately preceding clause (a), each Lender or any Person who has received funds on behalf of a Lender (and each of their respective successors and assigns), agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in this Agreement or in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates), or (z) that such Lender, or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), then in each such case:

(i) it acknowledges and agrees that (A) in the case of immediately preceding clauses (x) or (y), an error and mistake shall be presumed to have been made (absent written confirmation from the Administrative Agent to the contrary) or (B) an error and mistake has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and

(ii) such Lender shall (and shall cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one (1) Business Day of its knowledge of the occurrence of any of the circumstances described in immediately preceding clauses (x), (y) and (z)) notify the Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent pursuant to this Section 10.21(b).

For the avoidance of doubt, the failure to deliver a notice to the Administrative Agent pursuant to this Section 10.21(b) shall not have any effect on a Payment Recipient's obligations pursuant to Section 10.21(a) or on whether or not an Erroneous Payment has been made.

(c) Each Lender hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Lender under any Loan Document with respect to any payment of principal, interest, fees or other amounts, against any amount that the Administrative Agent has demanded to be returned under immediately preceding clause (a).

(d) (i) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor in accordance with immediately preceding clause (a), from any Lender that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an “Erroneous Payment Return Deficiency”), upon the Administrative Agent’s notice to such Lender at any time, then effective immediately (with the consideration therefor being acknowledged by the parties hereto), (A) such Lender shall be deemed to have assigned its Loans (but not its Commitments) of the relevant Class with respect to which such Erroneous Payment was made (the “Erroneous Payment Impacted Class”) in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of the Loans (but not Commitments) of the Erroneous Payment Impacted Class, the “Erroneous Payment Deficiency Assignment”) (on a cashless basis and such amount calculated at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Administrative Agent in such instance)), and is hereby (together with the Borrower) deemed to execute and deliver an Assignment and Assumption with respect to such Erroneous Payment Deficiency Assignment, and such Lender shall deliver any Notes evidencing such Loans to the Borrower or the Administrative Agent (but the failure of such Person to deliver any such Notes shall not affect the effectiveness of the foregoing assignment), (B) the Administrative Agent as the assignee Lender shall be deemed to have acquired the Erroneous Payment Deficiency Assignment, (C) upon such deemed acquisition, the Administrative Agent as the assignee Lender shall become a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender shall cease to be a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and its applicable Commitments which shall survive as to such assigning Lender, (D) the Administrative Agent and the Borrower shall each be deemed to have waived any consents required under this Agreement to any such Erroneous Payment Deficiency Assignment, and (E) the Administrative Agent will reflect in the Register its ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment. For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Commitments of any Lender and such Commitments shall remain available in accordance with the terms of this Agreement.

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(ii) Subject to Section 10.04 (but excluding, in all events, any assignment consent or approval requirements (whether from the Borrower or otherwise)), the Administrative Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and the Administrative Agent shall retain all other rights, remedies and claims against such Lender (and/or against any recipient that receives funds on its respective behalf). In addition, an Erroneous Payment Return Deficiency owing by the applicable Lender (x) shall be reduced by the proceeds of prepayments or repayments of principal and interest, or other distribution in respect of principal and interest, received by the Administrative Agent on or with respect to any such Loans acquired from such Lender pursuant to an Erroneous Payment Deficiency Assignment (to the extent that any such Loans are then owned by the Administrative Agent) and (y) may, in the sole discretion of the Administrative Agent, be reduced by any amount specified by the Administrative Agent in writing to the applicable Lender from time to time.

(e) The parties hereto agree that (x) irrespective of whether the Administrative Agent may be equitably subrogated, in the event that an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights and interests of such Payment Recipient (and, in the case of any Payment Recipient who has received funds on behalf of a Lender to the rights and interests of such Lender, as the case may be) under the Loan Documents with respect to such amount (the “Erroneous Payment Subrogation Rights”) (provided that the Loan Parties’ Obligations under the Loan Documents in respect of the Erroneous Payment Subrogation Rights shall not be duplicative of such Obligations in respect of Loans that have been assigned to the Administrative Agent under an Erroneous Payment Deficiency Assignment) and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Loan Party; *provided that this Section 10.21 shall not be interpreted to increase (or accelerate the due date for), or have the effect of increasing (or accelerating the due date for), the Obligations of the Borrower relative to the amount (and/or timing for payment) of the Obligations that would have been payable had such Erroneous Payment not been made by the Administrative Agent; provided, further, that for the avoidance of doubt, immediately preceding clauses (x) and (y) shall not apply to the extent any such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower for the purpose of making such Erroneous Payment.*

(f) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment received, including, without limitation, any defense based on “discharge for value” or any similar doctrine.

(g) Each party’s obligations, agreements and waivers under this Section 10.21 shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Commitments and/or the Payment in Full of Term Loan Debt.

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

ALTO INGREDIENTS, INC., as Borrower

By: /s/ Bryon T. McGregor

Name: Bryon T. McGregor

Title: Chief Financial Officer, Vice President and Assistant Secretary

[Signature Page to Credit Agreement]

ALTO CENTRAL, LLC
EAGLE ALCOHOL COMPANY LLC
KINERGY MARKETING LLC
ALTO NUTRIENTS, LLC

ALTO OP CO.
ALTO SPECIALTY PRODUCTS, LLC
ALTO WEST, LLC
ALTO PEKIN, LLC
ALTO ICP, LLC
ALTO CANTON, LLC
ALTO MAGIC VALLEY, LLC
PACIFIC ETHANOL STOCKTON LLC
ALTO COLUMBIA, LLC
PACIFIC ETHANOL MADERA LLC, as Subsidiary Guarantors

By: /s/ Bryon T. McGregor
Name: Bryon T. McGregor
Title: Chief Financial Officer, Vice President and Assistant Secretary

[Signature Page to Credit Agreement]

OIC INVESTMENT AGENT, LLC,
as Administrative Agent and Collateral Agent

By: /s/ Nazar Massouh
Name: Nazar Massouh
Title: CEO and Managing Partner

[Signature Page to Credit Agreement]

ORION ENERGY CREDIT OPPORTUNITIES FUND III LP
ORION ENERGY CREDIT OPPORTUNITIES FUND III PV LP
ORION ENERGY CREDIT OPPORTUNITIES FUND III GPFA LP
ORION ENERGY CREDIT OPPORTUNITIES FUND III GPFA PV LP,
as Lender

By: /s/ Nazar Massouh
Name: Nazar Massouh
Title: CEO and Managing Partner

[Signature Page to Credit Agreement]

CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY [***], HAS BEEN OMITTED BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE AND CONFIDENTIAL

AMENDMENT NO. 6
TO
SECOND AMENDED AND RESTATED CREDIT AGREEMENT

This AMENDMENT NO. 6 TO SECOND AMENDED AND RESTATED CREDIT AGREEMENT (this “**Amendment**”) is entered into as of November 7, 2022, by and among WELLS FARGO BANK, NATIONAL ASSOCIATION, in its capacity as administrative agent (in such capacity, “**Agent**”) for each member of the Lender Group and the Bank Product Provider (as each such term is defined in the Credit Agreement referred to below), KINERGY MARKETING LLC (“**Kinergy**”), and ALTO NUTRIENTS, LLC, formerly known as Pacific AG. Products, LLC (“**Alto**” and together with Kinergy, each individually, a “**Borrower**” and collectively, the “**Borrowers**”).

WHEREAS, Borrowers, Agent and Lenders (as defined below) have entered into certain financing arrangements as set forth in (a) the Second Amended and Restated Credit Agreement, dated as of August 2, 2017, by and among Agent, the financial institutions from time to time party thereto as lenders (collectively, the “**Lenders**”) and Borrowers (as amended, restated, renewed, extended, supplemented, substituted and otherwise modified from time to time, the “**Credit Agreement**”) and (b) the Loan Documents (as defined in the Credit Agreement); and

WHEREAS, Borrowers, Agent and Lenders have agreed to amend and modify certain provisions of Credit Agreement, in each case subject to the terms and conditions of this Amendment.

NOW, THEREFORE, upon the mutual agreements and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions. Capitalized terms used and not defined in this Amendment shall have the respective meanings given them in the Credit Agreement.

2. Amendments. Effective as of the date hereof, the Credit Agreement is hereby amended to read in its entirety as set forth in Exhibit A hereto (the “**Amended Credit Agreement**”). All schedules and exhibits to the Credit Agreement, as in effect immediately prior to the Amendment No. 6 Effective Date, shall constitute schedules and exhibits to the Amended Credit Agreement except, that, those schedules and exhibits which are attached to Exhibit B hereto shall constitute those respective schedules to the Amended Credit Agreement after the Amendment No. 6 Effective Date. Each reference in the Credit Agreement to “this Agreement,” “hereunder,” “hereof,” “herein” or words of similar import, and each reference in the other Loan Documents to the “Credit Agreement” (including, without limitation, by means of words such as “thereunder” or “thereof” and words of similar import), shall mean and be a reference to the Credit Agreement as amended herein as reflected by the Amended Credit Agreement. The Agent, the Lenders signatory hereto, the Borrowers and the Guarantors each consent to the amendment of the Credit Agreement pursuant to this Amendment No. 6.

3. Termination of the Parent Guarantee. Effective as of the date hereof, the Agent (on behalf of each member of the Lender Group and the Bank Product Provider), Parent and the ABL Borrowers acknowledge and confirm that that certain Second Amended and Restated Guarantee, dated August 2, 2017, by Pacific Ethanol, Inc., in favor of Agent, is terminated and the Parent’s obligations thereunder are forever satisfied, released and discharged without further action.

4. Post-Closing. Borrowers agree that they shall, within thirty (30) days of the date hereof (as such date may be extended by Agent in its discretion), deliver to Agent Control Agreements, in form and substance satisfactory to Agent, in respect of each Loan Party’s Deposit Accounts (other than Excluded Accounts (as defined in the Security Agreement)). Upon receipt of such Control Agreements, the Agent (on behalf of each member of the Lender Group and the Bank Product Provider) (i) authorizes the Borrowers (or any person or entity designated by a Borrower as its delegate or representative for this purpose) to terminate that certain Deposit Account Control Agreement, dated August 2, 2017, among Kinergy, Alto, Agent and Wells Fargo National Bank in its capacity as depository bank, with respect to Accounts No. [***] and [***] and (ii) agrees that to provide acknowledgement of the termination upon request.

5. Amendment and Extension Fee. In addition to all other fees, costs and expenses payable by Borrowers to Agent and Lenders under the Loan Documents, Borrowers shall pay to Agent an amendment and extension fee in the amount of \$400,000 (the “**Amendment and Extension Fee**”), which Amendment and Extension Fee shall be fully earned, due and payable on the date hereof and shall not be subject to refund or rebate for any reason.

6. Additional Representation.

(a) In addition to the continuing representations, warranties and covenants at any time made by Borrowers to Agent and Lenders pursuant to the Credit Agreement, and the other Loan Documents, Borrowers hereby jointly and severally represent, warrant and covenant with and to Agent and Lenders that, as of the date of this Amendment and after giving effect hereto, no known Default or Event of Default exists or has occurred and is continuing.

(b) Borrowers hereby further represent to Agent that the lenders and their agents party to any Term Loan Documents are not and shall not be Affiliates of any Loan Party as a result of the issuance of any Participation Shares (as defined in the Term Loan Credit Agreement as in effect on the Amendment No. 6 Effective Date) under and under accordance with the Term Loan Credit Agreement as of the Amendment No. 6 Effective Date.

7. Release. In consideration of the agreements of Agent and Lenders contained herein and the making of loans by or on behalf of Agent and Lenders to Borrowers pursuant to the Credit Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each Borrower on behalf of itself and its successors, assigns, and other legal representatives (the “**Releasing Parties**”), hereby, jointly and severally, absolutely, unconditionally and irrevocably releases, remises and forever discharges Agent and each Lender, and their present and former shareholders, affiliates, subsidiaries, divisions, predecessors, directors, officers, attorneys, employees, agents and other representatives and their respective successors and assigns (Agent, each Lender and all such other parties being hereinafter referred to collectively as the “**Releasees**” and individually as a “**Releasee**”), of and from all demands, actions, causes of action, suits, covenants, contracts, controversies, agreements, promises, sums of money, accounts, bills, reckonings, damages and any and all other claims, counterclaims, defenses, rights of set-off, demands and liabilities whatsoever (individually, a “**Claim**” and collectively, “**Claims**”) of every name and nature, known or unknown, suspected or unsuspected, both at law and in equity, whether liquidated or unliquidated, matured or unmatured, asserted or unasserted, fixed or contingent, foreseen or unforeseen and anticipated or unanticipated, which any Releasing Party may now or hereafter own, hold, have or claim to have against the Releasees or any of them for, upon, or by reason of any nature, cause or thing whatsoever which arises at any time on or prior to the day and date of this Amendment, in relation to, or in any way in connection with the Credit Agreement, as amended and supplemented through the date hereof, this Amendment and the other Loan Documents. Each Releasing Party understands, acknowledges and agrees that the release set forth above may be pleaded as a full and complete defense and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of such release.

It is the intention of the Releasing Parties that the above release shall be effective as a full and final release of each and every matter specifically and generally referred to above clause (a). Each Releasing Party acknowledges and represents that it has been advised by independent legal counsel with respect to the agreements contained herein and with respect to the provisions of California Civil Code Section 1542, which provides as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR OR RELEASEE." Each Releasing Party, being aware of said code section, expressly waives on its own behalf and on behalf of those for which such Releasing Party is giving the release, any and all rights either may have thereunder, as well as under any other statute or common law principle of similar effect, with respect to any of the matters released herein. This release shall act as a release of all included claims, rights and causes of action, whether such claims are currently known, unknown, foreseen or unforeseen and regardless of any present lack of knowledge as to such claims. Each Releasing Party understands and acknowledges the significance and consequence of this waiver of California Civil Code Section 1542, and hereby assumes full responsibility for any injuries, damages, losses or liabilities released herein.

8. Conditions to Effectiveness. The effectiveness of this Amendment shall be subject to the receipt by Agent of:

- (a) an original (or electronic copy) of this Amendment (and all exhibits hereto) duly authorized, executed and delivered by Borrowers and Lenders;
- (b) a Joinder and Amendment No. 1 to the Guaranty and Security Agreement, dated as of the date hereof, by and among Parent and the Subsidiaries of Parent (other than the Borrowers) which are guarantors under the Term Loan Agreement (together with Parent, each a "**New Grantor**"), and Agent;
- (c) The Term Loan Agreement (as defined in the Credit Agreement, as amended hereby) and all other Term Loan Documents (as defined in the Credit Agreement, as amended hereby), in form and substance satisfactory to Agent;
- (d) an intercreditor agreement, in form and substance satisfactory to Agent, duly executed and delivered by Term Loan Agent (as defined in the Credit Agreement, as amended hereby), and acknowledged by the Loan Parties and Parent;
- (e) appropriate financing statement to be filed in the office of the applicable Secretary of State against each New Grantor to perfect the Agent's Liens in and to the Collateral of such New Grantor, which Agent is authorized to file with such Secretary of State;
- (f) a certificate from the Secretary of each New Grantor, dated as of the date hereof, (i) attesting to the resolutions of such New Grantor's Board of Directors or Managers, as applicable, authorizing its execution, delivery, and performance of the Joinder and Amendment No. 1 to Guaranty and Security Agreement, (ii) authorizing officers of such New Grantor to execute the same, and (iii) attesting to the incumbency and signatures of such specific officers of such New Grantor;
- (g) a certificate of status with respect to each New Grantor, dated as of a recent date, such certificate to be issued by the appropriate officer of the jurisdiction of organization of such New Grantor, which certificate shall indicate that such New Grantor is in good standing in such jurisdiction;

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(h) certificates of status with respect to each New Grantor, if any, dated as of a recent date, such certificates to be issued by the appropriate officer of the jurisdictions (other than the jurisdiction of organization of New Grantor) in which the failure to be duly qualified or licensed would constitute a Material Adverse Effect, which certificates shall indicate that such New Grantor is in good standing in such jurisdictions;

(i) copies of each New Grantor's governing documents, as amended, modified or supplemented to the date hereof, certified by the Secretary of such New Grantor; and

(j) the Amendment and Extension Fee.

9. Effect of this Amendment. Except as modified pursuant hereto, no other changes or modifications to the Credit Agreement are intended or implied and in all other respects the Credit Agreement is hereby specifically ratified, restated and confirmed by all parties hereto as of the date hereof. To the extent of conflict between the terms of this Amendment, on the one hand, and Credit Agreement, on the other hand, the terms of this Amendment shall control.

10. Further Assurances. Borrowers shall execute and deliver such additional documents and take such additional action as may be reasonably requested by Agent to effectuate the provisions and purposes of this Amendment.

11. Binding Effect. This Amendment shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

12. Governing Law. The rights and obligations hereunder of each of the parties hereto shall be governed by and interpreted and determined in accordance with the internal laws of the State of California (without giving effect to principles of conflict of laws).

13. Counterparts. This Amendment and any notices delivered under this Amendment, may be executed by means of (a) an electronic signature that complies with the federal Electronic Signatures in Global and National Commerce Act, state enactments of the Uniform Electronic Transactions Act, or any other relevant and applicable electronic signatures law; (b) an original manual signature; or (c) a faxed, scanned, or photocopied manual signature. Each electronic signature or faxed, scanned, or photocopied manual signature shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. Agent reserves the right, in its sole discretion, to accept, deny, or condition acceptance of any electronic signature on this Amendment or on any notice delivered to Agent under this Amendment. This Amendment and any notices delivered under this Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, but such counterparts shall, together, constitute only one instrument. Delivery of an executed counterpart of a signature page of this Amendment and any notices as set forth herein will be as effective as delivery of a manually executed counterpart of this Amendment or notice.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

BORROWERS:

KINERGY MARKETING LLC,

as a Borrower

By: /s/ Bryon T. McGregor
Name: Bryon T. McGregor
Title: Chief Financial Officer, Vice President
and Assistant Secretary

ALTO NUTRIENTS, LLC,
as a Borrower

By: /s/ Bryon T. McGregor
Name: Bryon T. McGregor
Title: Chief Financial Officer, Vice President
and Assistant Secretary

ACKNOWLEDGED:

ALTO INGREDIENTS, INC.
ALTO CENTRAL, LLC
EAGLE ALCOHOL COMPANY LLC
ALTO OP CO.
ALTO SPECIALTY PRODUCTS, LLC
ALTO WEST, LLC
ALTO PEKIN, LLC
ALTO ICP, LLC
ALTO CANTON, LLC
ALTO MAGIC VALLEY, LLC
PACIFIC ETHANOL STOCKTON LLC
ALTO COLUMBIA, LLC
PACIFIC ETHANOL MADERA LLC

By: /s/ Bryon T. McGregor
Name: Bryon T. McGregor
Title: Chief Financial Officer, Vice President and
Assistant Secretary

[Signature Page to Amendment No. 6. To Credit Agreement]

AGENT AND LENDER:

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Agent and sole Lender

By: /s/ Carlos Valles
Name: Carlos Valles
Title: Authorized Signatory

[Signature Page to Amendment No. 6. To Credit Agreement]

**Exhibit A
to
Amendment No. 6 to Credit Agreement**

Amended Credit Agreement

See attached.

EXHIBIT A
TO
AMENDMENT NO. 6 TO SECOND AMENDED AND RESTATED CREDIT AGREEMENT

SECOND AMENDED AND RESTATED



CREDIT AGREEMENT

by and among

WELLS FARGO BANK, NATIONAL ASSOCIATION,

as Administrative Agent, Sole Lead Arranger, Book Runner, Syndication Agent, and Documentation Agent,

THE LENDERS THAT ARE PARTIES HERETO

as the Lenders, and

KINERGY MARKETING LLC and

ALTO NUTRIENTS, LLC

as Borrowers

Dated as of August 2, 2017

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SECOND AMENDED AND RESTATED CREDIT AGREEMENT

THIS SECOND AMENDED AND RESTATED CREDIT AGREEMENT, is entered into as of August 2, 2017 by and among the lenders identified on the signature pages hereof (each of such lenders, together with its successors and permitted assigns, is referred to hereinafter as a “Lender”, as that term is hereinafter further defined), **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association, as administrative agent for each member of the Lender Group and the Bank Product Provider (in such capacity, together with its successors and assigns in such capacity, “Agent”), as sole Lead Arranger (in such capacity, together with its successors and assigns in such capacity, the “Lead Arranger”), Book Runner (in such capacity, together with its successors and assigns in such capacity, the “Book Runner”), syndication agent (in such capacity, together with its successors and assigns in such capacity, the “Syndication Agent”), and Documentation Agent (in such capacity, together with its successors and assigns in such capacity, the “Documentation Agent”), **KINERGY MARKETING LLC**, an Oregon limited liability company (“Kinergy”), **ALTO NUTRIENTS, LLC**, a California limited liability company (“Alto Nutrients”) and those additional entities that hereafter become parties hereto as Borrowers in accordance with the terms hereof by executing the form of Joinder attached hereto as Exhibit J-1 (each, a “Borrower” and individually and collectively, jointly and severally, the “Borrowers”).

The parties agree as follows:

1. DEFINITIONS AND CONSTRUCTION.

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

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

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

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

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

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

“Additional Payment Conditions” means, with respect to any cash dividend or distribution by a Borrower to Parent, that (a) the amount of such cash dividend or distribution does not exceed seventy-five (75%) percent of Excess Cash Flow (calculated, for the avoidance of doubt, net of all dividends and distributions) of Borrowers and their Subsidiaries for the trailing twelve (12) month period most recently then ended, as reflected in unaudited consolidated financial statements for such trailing twelve (12) months of Borrowers and their respective Subsidiaries required to be delivered under this Agreement (the “TTM Financial Statements”), (b) Agent shall receive no less than five (5) days prior written notice from Administrative Borrower setting forth the intended date and amount of such distribution, together with the TTM Financial Statements, (c) no Event of Default exists and is continuing or would arise after giving effect to such dividend or distribution, (d) such dividend or distribution shall be paid with funds legally available therefor, (e) such dividend or distribution shall not violate any law or regulation or the terms of any indenture, agreement or undertaking to which any Borrower is a party or by which any Borrower or its property are bound, (f) as of the date of such dividend or distribution, Excess Availability for the thirty (30) consecutive day period immediately prior to the date of any such distribution, calculated on a pro forma basis as if such dividend or distribution had occurred on each day during such thirty (30) day period, shall not be less than 15% of the Maximum Revolver Amount, and (g) as of the date of such dividend or distribution and after giving effect to such distribution, Excess Availability shall be not less than 15% of the Maximum Revolver Amount.

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

“Adjusted Daily Simple SOFR” means, with respect to any day (a “Reference Day”), a rate per annum equal to the sum of (i) SOFR for the date that is (a “SOFR Rate Date”) two (2) U.S. Government Securities Business Days prior to (x) if such Reference Day is a U.S. Government Securities Business Day, such Reference Day or (y) if such Reference Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such Reference Day, in each case, as such rate appears on the SOFR Administrator’s Website at approximately 3:00 p.m. (New York City time) on the U.S. Government Securities Business Day immediately following such SOFR Rate Date, plus (ii) the Daily Simple SOFR Adjustment; provided, however, that if Daily Simple SOFR determined as provided above would be less than zero, then Daily Simple SOFR shall be deemed to be zero.

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

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

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

“Affiliate” means, as applied to any Person, any other Person who controls, is controlled by, or is under common control with, such Person; ~~provided~~ that for all purposes under the Loan Documents, the lenders and their agents party to any Term Loan Documents shall be deemed not to be Affiliates of the Borrowers or any of their Subsidiaries solely as a result of the pledge of the Equity Interests of the Loan Parties and their Subsidiaries pursuant to the terms of the Term Loan Documents or the issuance of Participation Shares (as defined in the Term Loan Credit Agreement as in effect on the Amendment No. 6 Effective Date) under and in accordance with the Term Loan Credit Agreement as of the Amendment No. 6 Effective Date. For purposes of this definition, “control” means the possession, directly or indirectly through one or more intermediaries, of the power to direct the management and policies of a Person, whether through the ownership of Equity Interests, by contract, or otherwise; provided, that for purposes of the definition of Eligible Accounts and Section 6.10 of this Agreement: (a) any Person which owns directly or indirectly 10% or more of the Equity Interests having ordinary voting power for the election of directors or other members of the governing body of a Person or 10% or more of the partnership or other ownership interests of a Person (other than as a limited partner of such Person) shall be deemed an Affiliate of such Person, (b) each director (or comparable manager) of a Person shall be deemed to be an Affiliate of such Person, and (c) each partnership in which a Person is a general partner shall be deemed an Affiliate of such Person.

“Affiliate Company Agreement” shall mean that certain Affiliated Company Agreement, effective as of July 1, 2015, by and among the Borrowers party thereto, certain of the Pacific Ethanol Affiliates, and Parent pursuant to which Parent will provide certain services to Borrowers as more particularly set forth therein, as amended, restated, modified or supplemented from time to time.

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

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

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

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

“Agreement” means this Second Amended and Restated Credit Agreement, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“Amendment No. 1 Effective Date” shall mean March 27, 2019.

“Amendment No. 2 Effective Date” shall mean July 31, 2019.

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“Amendment No. 3 Effective Date” shall mean November 19, 2019.

“Amendment No. 5 Effective Date” means June 16, 2021.

“Amendment No. 6 Effective Date” means November 7, 2022.

“Alto Nutrients” has the meaning specified therefor in the preamble to this Agreement.

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

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

“Applicable Margin” means, as of any date of determination, the applicable margin set forth in the following table that corresponds to the Average Excess Availability of Borrowers for the most recently completed quarter:

Level	Average Excess Availability	Applicable Margin
I	≥ 50% of the Maximum Revolver Amount	1.25 percentage points
II	< 50% of the Maximum Revolver Amount and ≥ 25% of the Maximum Revolver Amount	1.50 percentage points
III	< 25% of the Maximum Revolver Amount	1.75 percentage points

The Applicable Margin shall be re-determined as of the first day of each quarter. Notwithstanding anything to the contrary herein, the Applicable Margin shall be the highest percentage set forth above plus two (2%) percent per annum, at Agent’s option, without notice, (i) either (A) for the period on and after the date of termination or non-renewal hereof until such time as all Obligations are indefeasibly paid and satisfied in full in immediately available funds, or (B) for the period from and after the date of the occurrence of any Event of Default, and for so long as such Event of Default is continuing as determined by Agent and (ii) on the Revolving Loans to Borrowers at any time outstanding in excess of the Borrowing Base (whether or not such excess(es) arise or are made with or without Agent’s or any Lender’s knowledge or consent and whether made before or after an Event of Default). The Applicable Margin as of the Amendment No. 5 Effective Date shall be the Applicable Margin shall be set at the margin in the row styled “Level III”.

“Applicable Unused Line Fee Percentage” means, as of any date of determination, the applicable percentage set forth in the following table that corresponds to the Average Revolver Usage of Borrowers for the most recently completed quarter as determined by Agent in its Permitted Discretion; provided further, that any time an Event of Default has occurred and is continuing, the Applicable Unused Line Fee Percentage shall be set at the margin in the row styled “Level II”:

Level	Average Revolver Usage	Applicable Unused Line Fee Percentage
I	≥ 50% of the Maximum Revolver Amount	0.25 percentage points
II	< 50% of the Maximum Revolver Amount	0.375 percentage points

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

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

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

“Assignment and Acceptance” means an Assignment and Acceptance Agreement substantially in the form of Exhibit A-1 to this Agreement.

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

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

“Average Excess Availability” means, with respect to any period, the sum of the aggregate amount of Excess Availability for each day in such period (as calculated by Agent as of the end of each respective day) divided by the number of days in such period.

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

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

“Bail-In Legislation” means, 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 for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

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

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

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

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

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

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

“Base Rate” means the greatest of (a) the Federal Funds Rate plus ½%, and (b) the rate of interest announced, from time to time, within Wells Fargo at its principal office in San Francisco as its “prime rate”, with the understanding that the “prime rate” is one of Wells Fargo’s base rates (not necessarily the lowest of such rates) and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto and is evidenced by the recording thereof after its announcement in such internal publications as Wells Fargo may designate (and, if any such announced rate is below zero, then the rate determined pursuant to this clause (b) shall be deemed to be zero).

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

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

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

“Book Runner” has the meaning set forth in the preamble to this Agreement.

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

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

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

“Borrowing Base” shall mean, at any time, the amount equal to:

(a) the sum of:

(i) eighty-five percent (85%) of the Eligible Accounts of Borrowers; plus

(ii) the lesser of (A) \$50,000,000, (B) seventy percent (70%) multiplied by the Value of the Eligible Inventory and Eligible In-Transit Inventory of Borrowers, or (C) eighty-five percent (85%) of the Net Recovery Percentage multiplied by the Value of Eligible Inventory and Eligible In-Transit Inventory of Borrowers; minus

(b) Reserves.

In no event shall the amount determined under the foregoing clauses (a)(ii)(B) or (a)(ii)(C) include more than (i) \$20,000,000 in respect of fuel or alcohol products, (ii) \$15,000,000 in respect of Eligible In Transit Inventory, (iii) \$30,000,000 in respect of co products, or (iv) \$40,000,000 in respect of corn products (including wet milling byproducts and dry milling byproducts).

“Borrowing Base Certificate” means a certificate in the form of Exhibit B-1 to this Agreement.

“Business Day” means any day that is not a Saturday, Sunday, or other day on which banks are authorized or required to close in the state of California or North Carolina.

“Capital Expenditures” means, with respect to any Person for any period, the amount of all expenditures by such Person and its Subsidiaries during such period that are capital expenditures as determined in accordance with GAAP, whether such expenditures are paid in cash or financed, but excluding, without duplication (a) with

respect to the purchase price of assets that are purchased substantially contemporaneously with the trade-in of existing assets during such period, the amount that the gross amount of such purchase price is reduced by the credit granted by the seller of such assets for the assets being traded in at such time, and (b) expenditures during such period that, pursuant to a written agreement, are reimbursed by a third Person (excluding any Loan Party or any of its Affiliates).

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

“Capital Lease” means a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP.

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

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

“CFC” means a controlled foreign corporation (as that term is defined in the IRC) in which any Loan Party is a “United States shareholder” within the meaning of Section 951(b) of the IRC.

“Change of Control” shall mean (a) the transfer (in one transaction or a series of transactions) of all or substantially all of the assets of any Borrower or any Loan Party (including Parent) to any Person or group (as such term is used in Section 13(d)(3) of the Exchange Act), other than as permitted in Section 6.4 hereof; (b) the liquidation or dissolution of any Borrower or Parent or the adoption of a plan by the stockholders of any Borrower or Parent relating to the dissolution or liquidation of any Borrower or Parent, other than as permitted in Section 6.4 hereof; (c) the acquisition by any Person or group (as such term is used in Section 13(d)(3) of the Exchange Act), except Parent, of beneficial ownership, directly or indirectly, of a majority of the voting power of the total outstanding Voting Stock of any Loan Party or the Board of Directors (or similar governing authority) of any Loan Party; (d) with respect to Parent only, the occupation at any time of a majority of the seats (other than vacant seats) on the board of directors of Parent by Persons who were not (i) directors of the Parent on the date of this Agreement, (ii) nominated or appointed by the board of directors of Parent, or (iii) approved by the board of directors of Parent as director candidates prior to their election, or any Person or two or more Persons acting in concert, shall have acquired beneficial ownership, directly or indirectly, of the voting power of the total outstanding Voting Stock of Parent with the ability to change the majority of seats (other than vacant seats) on the board of directors of Parent in the foregoing manner set forth in this clause (d), or (e) the failure of Parent to own directly or indirectly one hundred (100%) percent of the voting power of the total outstanding Voting Stock of any Borrower; (f) the failure of Kinergety to own directly or indirectly one hundred (100%) percent of the voting power of the total outstanding Voting Stock of Alto Nutrients; or (f) a “Change in Control” as defined in the Term Loan Agreement; provided that, notwithstanding anything to the contrary contained herein, the pledge of the Equity Interests of the Loan Parties and their Subsidiaries pursuant to the terms of the Term Loan Documents shall not constitute a Change of Control hereunder.

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

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

“Code” means the California Uniform Commercial Code, as in effect from time to time.

“Collateral” means all assets and interests in assets and proceeds thereof now owned or hereafter acquired by any Loan Party or its Subsidiaries in or upon which a Lien is granted by such Person in favor of Agent or the Lenders under any of the Loan Documents.

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

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

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

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

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

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

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

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

“Covered Entity” means any of the following:

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

“Covered Party” has the meaning specified therefor in Section 17.16 of this Agreement.

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

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

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

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

“Defaulting Lender Rate” means the Base Rate plus the Applicable Margin.

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

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

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

“Dilution” means, as of any date of determination, a percentage, based upon the experience of the immediately prior twelve months (or such shorter period as Agent may determine, in its Permitted Discretion), that is the result of dividing the Dollar amount of (a) bad debt write-downs, discounts, advertising allowances, credits, or other dilutive items with respect to Borrowers’ Accounts during such period, by (b) Borrowers’ billings with respect to Accounts during such period.

“Dilution Reserve” means, as of any date of determination, an amount sufficient to reduce the advance rate against Eligible Accounts by the extent to which Dilution is in excess of 5%.

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

“Disqualified Institution” means, on any date, (a) any Person designated by Administrative Borrower as a “Disqualified Institution” by written notice delivered to Agent prior to the date hereof, and (b) those Persons who are direct competitors of the Borrowers identified in writing by Administrative Borrower to Agent from time to time,

subject to the written consent of Agent; provided, that “Disqualified Institutions” shall exclude any Person that Administrative Borrower has designated as no longer being a “Disqualified Institution” by written notice delivered to Agent from time to time; provided further, that in connection with any assignment or participation, the Assignee or Participant with respect to such proposed assignment or participation that is an investment bank, a commercial bank, a finance company, a fund, or other Person which merely has an economic interest in any such direct competitor, and is not itself such a direct competitor of Borrower or its Subsidiaries, shall not be deemed to be a Disqualified Institution for the purposes of this definition.

“Documentation Agent” has the meaning set forth in the preamble to this Agreement.

“Dollars” or “\$” means United States dollars.

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

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

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

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

minus

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

(i) extraordinary gains,

(ii) interest income,

(iii) Management Fees for such period to the extent paid to Parent in such period but are attributable to any prior period (all to the extent deducted in the computation of consolidated net income or loss for such period), and

(iv) non-cash income for such period (all to the extent included in the computation of consolidated net income or loss for such period),

plus

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

(i) non-cash extraordinary losses,

(ii) Interest Expense (to the extent deducted in the computation of consolidated net income or loss for such period),

(iii) income taxes (to the extent deducted in the computation of consolidated net income or loss for such period),

(iv) depreciation and amortization, (including amortization of deferred financing fees), non-cash impairment charges, imputed interest and deferred compensation, non-cash inventory valuation adjustments, non-cash mark-to-market of derivative instruments and bank fees paid for such period (all to the extent deducted in the computation of consolidated net income or loss for such period), all in accordance with GAAP, and

(v) Management Fees for such period to the extent not paid to Parent.

“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 delegatee) having responsibility for the resolution of any EEA Financial Institution.

“Eligible Accounts” shall mean Accounts created by a Borrower that in each case satisfy the criteria set forth below as determined by Agent in good faith and in the exercise of its reasonable credit judgment. In general, Accounts shall be Eligible Accounts if:

(a) such Accounts arise from the actual and bona fide sale and delivery of goods by such Borrower or rendition of services by such Borrower in the ordinary course of its business which transactions are completed in accordance with the terms and provisions contained in any documents related thereto;

(b) [intentionally omitted];

(c) such Accounts comply with the terms and conditions contained in Section 4.2 of this Agreement;

(d) such Accounts do not arise from sales on consignment, guaranteed sale, sale and return, sale on approval, or similar terms under which payment by the account debtor may be conditional or contingent;

(e) the chief executive office of the account debtor with respect to such Accounts is located in the United States of America or Canada provided, that, at any time promptly upon Agent’s request, such Borrower shall execute and deliver, or cause to be executed and delivered, such other agreements, documents and instruments as may be reasonably required by Agent to perfect the security interests of Agent in those Accounts of an account debtor with its chief executive office or principal place of business in Canada in accordance with the applicable laws of the Province of Canada in which such chief executive office or principal place of business is located and take or cause to be taken such other and further actions as Agent may reasonably request to enable Agent as secured party with respect thereto to collect such Accounts under the applicable Federal or Provincial laws of Canada) or, at Agent’s option, if the chief executive office and principal place of business of the account debtor with respect to such Accounts is located other than in the United States of America or Canada, then if: the account debtor has delivered to such Borrower an irrevocable letter of credit issued or confirmed by a bank reasonably satisfactory to Agent and payable only in the United States of America and in U.S. dollars, sufficient to cover such Account, in form and substance reasonably

satisfactory to Agent and if required by Agent, the original of such letter of credit has been delivered to Agent or Agent's agent and the issuer thereof, and such Borrower has complied with the terms of Section 7(d) of the Guaranty and Security Agreement with respect to the assignment of the proceeds of such letter of credit to Agent or naming Agent as transferee beneficiary thereunder, as Agent may specify, or such Account is subject to credit insurance payable to Agent issued by an insurer and on terms and in an amount reasonably acceptable to Agent, or such Account is otherwise reasonably acceptable in all respects to Agent (subject to such lending formula with respect thereto as Agent may determine in good faith and in the exercise of its reasonable credit judgment);

(f) such Accounts do not consist of progress billings (such that the obligation of the account debtors with respect to such Accounts is conditioned upon such Borrower's satisfactory completion of any further performance under the agreement giving rise thereto), bill and hold invoices or retainage invoices, except as to bill and hold invoices, if Agent shall have received an agreement in writing from the account debtor, in form and substance reasonably satisfactory to Agent, confirming the unconditional obligation of the account debtor to take the goods related thereto and pay such invoice;

(g) the account debtor with respect to such Accounts has not asserted a counterclaim, defense or dispute and is not owed or does not claim to be owed any amounts that may give rise to any right of setoff or recoupment against such Accounts (but the portion of the Accounts of such account debtor in excess of the amount at any time and from time to time owed by such Borrower to such account debtor or claimed owed by such account debtor may be deemed Eligible Accounts);

(h) there are no facts, events or occurrences which would impair the validity, enforceability or collectability of such Accounts or reduce the amount payable or delay payment thereunder;

(i) such Accounts are subject to the first priority, valid and perfected security interest of Agent and any goods giving rise thereto are not, and were not at the time of the sale thereof, subject to any liens except those permitted in this Agreement that are subject to an intercreditor agreement in form and substance satisfactory to Agent between the holder of such security interest or lien and Agent;

(j) neither the account debtor nor any officer or employee of the account debtor with respect to such Accounts is an officer, employee, agent or other Affiliate of any Borrower or any Loan Party;

(k) the account debtors with respect to such Accounts are not any foreign government, the United States of America, any State, political subdivision, department, agency or instrumentality thereof, unless, if the account debtor is the United States of America, any State, political subdivision, department, agency or instrumentality thereof, upon Agent's request, the Federal Assignment of Claims Act of 1940, as amended or any similar State or local law, if applicable, has been complied with in a manner satisfactory to Agent in its Permitted Discretion;

(l) there are no proceedings or actions which are threatened or pending against the account debtors with respect to such Accounts which might result in any material adverse change in any such account debtor's financial condition (including, without limitation, any bankruptcy, dissolution, liquidation, reorganization or similar proceeding);

(m) the aggregate amount of such Accounts of the Borrowers owing by a single account debtor do not constitute more than twenty (20%) percent of the aggregate amount of all otherwise Eligible Accounts (but the portion of the Accounts not in excess of the applicable percentage set forth above may be deemed Eligible Accounts and such applicable percentage may from time to time be increased by Agent in the exercise of its Permitted Discretion at the request of Borrower, and may from time to time be reduced by Agent in the exercise of its sole discretion (and, with respect to any such reduction below such initial percentages, in accordance with and subject to the terms hereof));

(n) such Accounts are not unpaid more than (i) in the case of Accounts of Alto Nutrients, thirty (30) days after the original due date for such Accounts or ninety (90) days after the date of the original invoice for them; provided that, with respect to Accounts due from Proctor & Gamble, such ninety (90) day period shall be one hundred and fifty (150) days; and (ii) in the case of all other Accounts, thirty (30) days after the original due date for such Accounts or forty-five (45) days after the date of the original invoice for them; provided that, with respect to Accounts due from Proctor & Gamble, such forty-five (45) day period shall be one hundred and fifty (150) days;

(o) the account debtor is not located in a state requiring the filing of a Notice of Business Activities Report or similar report in order to permit such Borrower to seek judicial enforcement in such State of payment of such Account, unless such Borrower has qualified to do business in such state or has filed a Notice of Business Activities Report or equivalent report for the then current year or such failure to file and inability to seek judicial enforcement is capable of being remedied without any material delay or material cost;

(p) such Accounts are owed by account debtors whose total indebtedness to such Borrower does not exceed the credit limit with respect to such account debtors as determined by such Borrower from time to time, to the extent such credit limit as to any account debtor is established consistent with the current practices of such Borrower as of the date hereof and such credit limit is reasonably acceptable to Agent (but the portion of the Accounts not in excess of such credit limit may be deemed Eligible Accounts); and

(q) such Accounts are owed by account debtors deemed creditworthy at all times by Agent in good faith and in the exercise of its reasonable credit judgment;

(r) such Accounts are not owed by an account debtor who has fifty percent (50%) or more of its aggregate Accounts ineligible under clauses (b) or (n) of this definition; and

(s) such Accounts do not arise from the sale of Pacific Ethanol Acquired Inventory unless the Special Eligibility Conditions have been satisfied as reasonably determined by Agent in good faith; and

The criteria for Eligible Accounts set forth above may only be changed and any new criteria for Eligible Accounts may only be established by Agent in good faith and in the exercise of its reasonable credit judgment based on either: an event, condition or other circumstance arising after the date hereof, or an event, condition or other circumstance existing on the date hereof to the extent Agent has no written notice thereof from a Borrower prior to the date hereof, in either case under clause (i) or (ii) which adversely affects or could reasonably be expected to adversely affect the Accounts in the good faith determination of Agent based upon the exercise of its reasonable credit judgment. Any Accounts that are not Eligible Accounts shall nevertheless be part of the Collateral.

"Eligible Finished Goods Inventory" means Inventory that qualifies as Eligible Inventory and consists of first quality finished goods held for sale in the ordinary course of Borrowers' business.

"Eligible In-Transit Inventory" means shall mean, as to each Borrower, all finished goods Inventory of such Borrower (including ethanol, corn, co-products, dry

and wet distillers grain, corn oil, germ, and yeast) which is in transit to one of the Borrowers' facilities (as identified on Schedule 4.25), from one such facility to another or in transit to a customer of such Borrower and which Inventory (a) (i) has been paid for and is owned by such Borrower, or (ii) is subject to a Letter of Credit, (b) is fully insured, (c) is subject to a first priority security interest in and lien upon such goods in favor of Agent (except for any possessory lien upon such goods in the possession of a freight carrier or shipping company securing only the freight charges for the transportation of such goods to Borrowers), (d) to the extent requested by Agent, (i) is evidenced or deliverable pursuant to documents that have been delivered to Agent or an agent acting on its behalf or designating Agent as consignee or (ii) Agent shall have received a Collateral Access Agreement from the freight carrier or shipping company in possession of the goods, duly authorized, executed and delivered by such freight carrier or shipping company in favor of Agent, (e) is not Pacific Ethanol Acquired Inventory unless the Special Eligibility Conditions have been satisfied as reasonably determined by Agent in good faith and (f) is otherwise deemed to be "Eligible Inventory" hereunder.

"Eligible Inventory" means, as to each Borrower, Inventory of such Borrower (excluding any Swap Inventory) consisting of (i) finished goods held for resale in the ordinary course of the business of such Borrower, (ii) raw materials consisting of corn and feed stock and (iii) certain other raw materials of the such Borrower deemed eligible by Agent in good faith and in the exercise of its reasonable credit judgment, that in each case satisfy the criteria set forth below as determined by Agent in good faith and in the exercise of its reasonable credit judgment. In general, Eligible Inventory shall not include: (a) (i) raw materials described in clause (iii) above, except to the extent deemed eligible by Agent in good faith and in the exercise of its reasonable credit judgment, and work in process, (ii) components which are not part of finished goods, (iii) spare parts for equipment, (iv) packaging and shipping materials, or (v) supplies used or consumed in such Borrower's business; (b) Inventory (i) at premises other than those owned or leased and controlled by a Borrower unless Agent has received a Collateral Access Agreement or (ii) constituting Pacific Ethanol Acquired Inventory commingled with assets of the Pacific Ethanol Affiliates or any other Person (besides a Borrower); therefor; (c) Inventory subject to a security interest or lien in favor of any Person other than Agent except those permitted in this Agreement and, if such security interest secures Indebtedness for borrowed money or could have priority over the security interest in favor of Agent, that are subject to an intercreditor agreement in form and substance satisfactory to Agent between the holder of such security interest or lien and Agent; (d) Inventory located at the premises of or in the possession of any Ethanol Holder that has become the subject of any Insolvency Proceeding or 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, (e) bill and hold goods; (f) unserviceable, obsolete or slow moving Inventory; (g) Inventory that is not subject to the first priority, valid and perfected security interest of Agent; (h) damaged and/or defective Inventory or returned Inventory to the extent that such returned Inventory remains subject to an Account deemed to be an Eligible Account hereunder; (i) Inventory purchased or sold on consignment; (j) in-transit inventory other than Eligible In-Transit Inventory and (k) Inventory located outside the United States of America (except, if approved in writing by Agent in its sole discretion, Canada).

The criteria for Eligible Inventory set forth above may only be changed and any new criteria for Eligible Inventory may only be established by Agent in good faith and in the exercise of its reasonable credit judgment based on either: (i) an event, condition or other circumstance arising after the date hereof, or (ii) an event, condition or other circumstance existing on the date hereof to the extent Agent has no written notice thereof from any Borrower (or Administrative Borrower on behalf of any Borrower) prior to the date hereof, in either case under clause (i) or (ii) which adversely affects or could reasonably be expected to adversely affect the Inventory in the good faith determination of Agent based upon the exercise of its reasonable credit judgment. Pacific Ethanol Acquired Inventory shall not constitute Eligible Inventory unless the Special Eligibility Conditions have been satisfied as reasonably determined by Agent in good faith and such Pacific Ethanol Acquired Inventory is otherwise deemed Eligible Inventory hereunder. Any Inventory that is not Eligible Inventory shall nevertheless be part of the Collateral.

"Eligible Transferee" means (a) any Lender (other than a Defaulting Lender), any Affiliate of any Lender and any Related Fund of any Lender; (b) (i) a commercial bank organized under the laws of the United States or any state thereof, and having total assets in excess of \$1,000,000,000; (ii) a savings and loan association or savings bank organized under the laws of the United States or any state thereof, and having total assets in excess of \$1,000,000,000; (iii) a commercial bank organized under the laws of any other country or a political subdivision thereof; provided, that (A) (x) such bank is acting through a branch or agency located in the United States, or (y) such bank is organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development or a political subdivision of such country, and (B) such bank has total assets in excess of \$1,000,000,000; (c) any other entity (other than a natural person) that is an "accredited investor" (as defined in Regulation D under the Securities Act) that extends credit or buys loans as one of its businesses including insurance companies, investment or mutual funds and lease financing companies, and having total assets in excess of \$1,000,000,000; and (d) during the continuation of an Event of Default, any other Person approved by Agent.

"Employee Benefit Plan" means an employee benefit plan within the meaning of Section 3(3) of ERISA, which is sponsored, maintained or contributed to by any Loan Party for the benefit of its respective employees.

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

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

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

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

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

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

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

"ERISA Affiliate" means (i) any Person subject to ERISA whose employees are treated as employed by the same employer as the employees of any Loan Party or its Subsidiaries under IRC Section 414(b), (ii) any trade or business subject to ERISA whose employees are treated as employed by the same employer as the employees of

any Loan Party or its Subsidiaries under IRC Section 414(c), (iii) any organization subject to ERISA that is a member of an affiliated service group of which any Loan Party or any of its Subsidiaries is a member under IRC Section 414(m), or (iv) any Person subject to ERISA that is a party to an arrangement with any Loan Party or any of its Subsidiaries and whose employees are aggregated with the employees of such Loan Party or its Subsidiaries under IRC Section 414(o).

“Ethanol Holder” means any Person that has possession of, or on whose premises is located, any Ethanol Products owned by any Loan Party or in which any Loan Party has or is deemed by law to have rights in or the power to convey rights in.

“Ethanol Products” mean, collectively, ethanol, ethanol co-products, corn, corn co-products, and co-products of the ethanol production process (which may include any of the following: Corn Gluten Meal, Corn Gluten Feed, Wet Distillers Grains, Dry Distillers Grains, Corn Condensed Distillers Solubles, Corn Germ, Distillers Grains with Solubles, Corn Oil, and Yeast).

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

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

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

“Excess Availability” means, as of any date of determination, the amount equal to Availability *minus* the sum of (a) the aggregate amount of all then outstanding and unpaid trade payables and other obligations of Borrowers which are past due as of the end of the immediately preceding month or at Agent’s option, as of a more recent date based on such reports as Agent may from time to time specify (other than trade payables or other obligations being contested or disputed by Borrowers in good faith), plus (b) without duplication, the amount of checks issued by Borrowers to pay trade payables and other obligations which are past due as of the end of the immediately preceding month or at Agent’s option, as of a more recent date based on such reports as Agent may from time to time specify (other than trade payables or other obligations being contested or disputed by Borrowers in good faith), but not yet sent.

“Excess Cash Flow” shall mean, without duplication, with respect to any fiscal period of Borrowers: (a) EBITDA for such fiscal period, less (b) the sum of (i) all cash Interest Expense during such fiscal period, plus (ii) unfinanced Capital Expenditures made or incurred by the Borrowers during such fiscal period, plus (iii) all regularly scheduled (as determined at the beginning of the respective fiscal period) principal payments of Indebtedness for borrowed money incurred, paid or assumed by the Borrowers and Indebtedness with respect to Capital Leases (and without duplicating items in (a)(i) and (iii) of this definition, the interest component with respect to Indebtedness under Capital Leases) incurred, paid or assumed by the Borrowers during such fiscal period, plus (c) taxes paid by the Borrowers during such fiscal period in cash.

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

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

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

“Existing Letters of Credit” means those letters of credit issued pursuant to the Existing Loan Agreement for the account of a Borrower or any Guarantor or for which such Borrower or Guarantor is otherwise liable listed on Schedule E-1 hereto, as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

“Existing Loan Agreement” shall mean the Amended and Restated Loan and Security Agreement, dated May 4, 2012, entered into and executed between Kinergy, Wells Fargo Bank, National Association, as Agent, and Wells Fargo Bank, National Association, as Sole Lead Arranger, Manager and Bookrunner.

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

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

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

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

“Federal Funds Rate” means, for any period, a fluctuating interest rate per annum equal to, for each day during such period, the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by Agent from three Federal funds brokers of recognized standing selected by it (and, if any such rate is below zero, then the rate determined pursuant to this definition shall be deemed to be zero).

“Fixed Charges” means, with respect to any fiscal period with respect to Borrowers determined on a consolidated basis in accordance with GAAP, the sum, without duplication, of (a) Interest Expense required to be paid by the Borrowers (other than interest paid-in-kind, amortization of financing fees, and other non-cash Interest Expense) during such period, plus (b) all principal payments in respect of Indebtedness made by the Borrowers during such period (excluding payments in respect of Loans which do not result in a permanent reduction of the Maximum Revolver Amount but including payments of Indebtedness with respect to Capital Leases), plus (c) all federal, state, and local income taxes required to be paid by the Borrowers during such period, and plus (d) all Restricted Payments paid during such period (and without duplicating items in (a), (b), (c) and (d) of this definition, the interest component with respect to Indebtedness under Capital Leases required to be paid by the Borrowers during such period).

“Fixed Charge Coverage Ratio” means, with respect to any fiscal period and with respect to Borrowers determined on a consolidated basis in accordance with GAAP, the ratio of (a) EBITDA for such period minus Unfinanced Capital Expenditures made (to the extent not already incurred in a prior period) or incurred during such period, minus the aggregate amount of consideration and other transaction expenses paid by Borrowers with respect to the Fuel Logistics Acquisition (net of the amount of any such consideration and transaction expenses provided by Parent on behalf of Borrowers), to (b) Fixed Charges of such Borrower and its Subsidiaries, on a consolidated basis, for such period.

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

“Fuel Logistics Acquisition” means that certain proposed transaction whereby a Loan Party or Subsidiary thereof shall acquire a majority Equity Interest in Fuel Logistics LLC, an Oregon limited liability company, or a newly formed entity, from Lane Forest Products, LLC, Inc. an Oregon corporation, for the purpose of transloading by direct connection via an offloading and pumping facility to the Kinder Morgan facility located on Prairie Road in Eugene, Oregon.

“Funded Indebtedness” means, as of any date of determination, all Indebtedness for borrowed money or letters of credit of Borrowers, determined on a consolidated basis in accordance with GAAP, including, in any event, but without duplication, with respect to the Loan Parties and their Subsidiaries, the Revolver Usage, and the amount of their Capitalized Lease Obligations.

“Funding Date” means the date on which a Borrowing occurs.

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

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

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

“Guarantor” means (a) Parent and any other Person that is a “Guarantor” under the Guaranty and Security Agreement, and (b) each other Person that becomes a guarantor after the Closing Date pursuant to Section 5.11 of this Agreement.

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

“Hazardous Materials” means (a) substances that are defined or listed in, or otherwise classified pursuant to, any applicable laws or regulations as “hazardous substances,” “hazardous materials,” “hazardous wastes,” “toxic substances,” or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, reproductive toxicity, or “EP toxicity”, (b) oil, petroleum, or petroleum derived substances, natural gas, natural gas liquids, synthetic gas, drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal resources, (c) any flammable substances or explosives or any radioactive materials, and (d) asbestos in any form or electrical equipment that contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of 50 parts per million.

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

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

“Hedge Provider” means Wells Fargo or any of its Affiliates.

“Increase” has the meaning specified therefor in Section 2.14 of this Agreement.

“Increase Date” has the meaning specified therefor in Section 2.14 of this Agreement.

“Increase Joinder” has the meaning specified therefor in Section 2.14 of this Agreement.

“Increased Reporting Event” means if at any time (a) Excess Availability is less than fifteen percent (15%) of the Maximum Revolver Amount or (b) a Default or Event of Default shall have occurred and be continuing.

“Increased Reporting Period” means the period commencing after the continuance of an Increased Reporting Event and continuing until the date when no Increased Reporting Event has occurred for 90 consecutive days.

“Indebtedness” as to any Person means (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes, or other similar instruments and all reimbursement or other obligations in respect of letters of credit, bankers acceptances, or other financial products, (c) all obligations of such Person as a lessee under Capital Leases, (d) all obligations or liabilities of others secured by a Lien on any asset of such Person, irrespective of whether such obligation or liability is assumed, (e) all obligations of such Person to pay the deferred purchase price of assets (other than trade payables incurred in the ordinary course of business and repayable in accordance with customary trade practices and, for the avoidance of doubt, other than royalty payments payable in the ordinary course of business in respect of non-exclusive licenses) and any earn-out or similar obligations, (f) all monetary obligations of such Person owing under Hedge Agreements (which amount shall be calculated based

on the amount that would be payable by such Person if the Hedge Agreement were terminated on the date of determination), (g) any Disqualified Equity Interests of such Person, and (h) any obligation of such Person guaranteeing or intended to guarantee (whether directly or indirectly guaranteed, endorsed, co-made, discounted, or sold with recourse) any obligation of any other Person that constitutes Indebtedness under any of clauses (a) through (g) above. For purposes of this definition, (i) the amount of any Indebtedness represented by a guaranty or other similar instrument shall be the lesser of the principal amount of the obligations guaranteed and still outstanding and the maximum amount for which the guaranteeing Person may be liable pursuant to the terms of the instrument embodying such Indebtedness, and (ii) the amount of any Indebtedness which is limited or is non-recourse to a Person or for which recourse is limited to an identified asset shall be valued at the lesser of (A) if applicable, the limited amount of such obligations, and (B) if applicable, the fair market value of such assets securing such obligation.

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

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

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

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

“Intercreditor Agreement” means the Intercreditor Agreement, dated on or about the date hereof, between Agent and Term Loan Agent, and acknowledged by the Loan Parties.

“Interest Expense” means, for any period, the aggregate of the interest expense of Borrowers for such period, determined on a consolidated basis in accordance with GAAP.

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

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

“IRC” means the Internal Revenue Code of 1986, as amended, and any successor statute thereto.

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

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

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

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

“Landlord Reserve” means, as to each location at which a Borrower has Inventory or books and records located and as to which a Collateral Access Agreement has not been received by Agent, a reserve in an amount equal to 3 months’ rent, storage charges, fees or other amounts under the lease or other applicable agreement relative to such location or, if greater and Agent so elects, the number of months’ rent, storage charges, fees or other amounts for which the landlord, bailee, warehouseman or other property owner will have, under applicable law, a Lien in the Inventory of such Borrower to secure the payment of such amounts under the lease or other applicable agreement relative to such location.

“Lead Arranger” has the meaning set forth in the preamble to this Agreement.

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

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

“Lender Group Expenses” means all (a) costs or expenses (including taxes and insurance premiums) required to be paid by any Loan Party or its Subsidiaries under any of the Loan Documents that are paid, advanced, or incurred by the Lender Group, (b) documented out-of-pocket fees or charges paid or incurred by Agent in connection with the Lender Group’s transactions with each Loan Party and its Subsidiaries under any of the Loan Documents, including, photocopying, notarization, couriers and messengers, telecommunication, public record searches, filing fees, recording fees, publication, real estate surveys, real estate title policies and endorsements, and environmental audits, (c) Agent’s customary fees and charges imposed or incurred in connection with any background checks or OFAC/PEP searches related to any Loan Party or its Subsidiaries, (d) Agent’s customary fees and charges (as adjusted from time to time) with respect to the disbursement of funds (or the receipt of funds) to or for the account of any Borrower (whether by wire transfer or otherwise), together with any out-of-pocket costs and expenses incurred in connection therewith, (e) customary charges imposed or incurred by Agent resulting from the dishonor of checks payable by or to any Loan Party, (f) reasonable, documented out-of-pocket costs and expenses paid or incurred by the Lender Group to correct any default or enforce any provision of the Loan Documents, or during the continuance of an Event of Default, in gaining possession of, maintaining, handling, preserving, storing, shipping, selling, preparing for sale, or advertising to sell the Collateral, or any portion thereof, irrespective of whether a sale is consummated, (g) field examination, appraisal, and valuation fees and expenses of Agent related to any field examinations, appraisals, or valuation to the extent of the fees and charges (and up to the amount of any limitation) provided in Section 2.10 of this Agreement, (h) Agent’s and Lenders’ reasonable, documented costs and expenses (including reasonable and documented attorneys’ fees and expenses) in defending any claims made or threatened against Agent or any Lender arising out of the transactions contemplated

hereby and under any other Loan Documents, except to the extent arising from any such Agent's or Lender's gross negligence or willful misconduct, (i) Agent's reasonable, documented costs and expenses (including reasonable and documented attorneys' fees and expenses) relative to any other lawsuit or adverse proceeding paid or incurred, whether in enforcing or defending the Loan Documents or otherwise in connection with the transactions contemplated by the Loan Documents, Agent's Liens in and to the Collateral, or the Lender Group's relationship with any Loan Party or any of its Subsidiaries, (i) Agent's reasonable and documented costs and expenses (including reasonable and documented attorneys' fees and due diligence expenses) incurred in advising, structuring, drafting, reviewing, administering (including travel, meals, and lodging), syndicating (including reasonable costs and expenses relative to the rating of CUSIP, DXSyndicate™, SyndTrak or other communication costs incurred in connection with a syndication of the loan facilities), or amending, waiving, or modifying the Loan Documents, and (j) Agent's reasonable and documented costs and expenses (including reasonable and documented attorneys, accountants, consultants, and other advisors fees and expenses) incurred in terminating, enforcing (including attorneys, accountants, consultants, and other advisors fees and expenses incurred in connection with a "workout," a "restructuring," or an Insolvency Proceeding concerning any Loan Party or any of its Subsidiaries or in exercising rights or remedies under the Loan Documents), or defending the Loan Documents, irrespective of whether a lawsuit or other adverse proceeding is brought, or in taking any enforcement action or any Remedial Action with respect to the Collateral.

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

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

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

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

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

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

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

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

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

"Letter of Credit Sublimit" means \$20,000,000.

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

"Lien" means any pledge, hypothecation, assignment, charge, deposit arrangement, encumbrance, easement, lien (statutory or other), security interest, or other security arrangement and any other preference, priority, or preferential arrangement of any kind or nature whatsoever, including any conditional sale contract or other title retention agreement, the interest of a lessor under a Capital Lease and any synthetic or other financing lease having substantially the same economic effect as any of the foregoing.

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

"Liquidity" means, as of any date of determination, any amount equal to the Excess Availability plus all Qualified Cash.

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

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

"Loan Documents" means this Agreement, the Control Agreements, the Copyright Security Agreement, any Borrowing Base Certificate, the Fee Letter, the Intercreditor Agreement, the Guaranty and Security Agreement, the Parental Assistance Agreement, any Issuer Documents, the Letters of Credit, the Loan Manager Side Letter, the Patent Security Agreement, the Trademark Security Agreement, any note or notes executed by Borrowers in connection with this Agreement and payable to any member of the Lender Group, and any other instrument or agreement entered into, now or in the future, by any Loan Party or any of its Subsidiaries and any member of the Lender Group in connection with this Agreement (but specifically excluding Bank Product Agreements).

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

"Loan Party" means any Borrower or any Guarantor.

"Management Fees" means payments for services rendered pursuant to the Affiliate Company Agreement.

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

“Marketing Agreements” shall mean the Marketing Agreements set forth on Schedule 4.29 attached hereto, as such schedule may be updated from time to time by Borrowers with prior notice to Agent, provided, that, (i) any additional Marketing Agreements listed in updates to such Schedule 4.29 shall be substantially similar to the other Marketing Agreements listed on such Schedule 4.29 and (ii) such updates shall be in form and substance satisfactory to Agent.

“Material Adverse Effect” means any condition, change, effect or circumstance that, individually or when taken together with all such conditions, changes, effects or circumstances, has or would reasonably be expected to have an adverse effect on the financial condition, assets, properties, business, operations or results of operations of any of the Borrowers which is material to such Borrower, excluding (a) any changes or effects that are not unique to such Borrower and do not adversely affect such Borrower disproportionately compared to its competitors, directly resulting from general changes in economic, financial or capital market, regulatory, political or national security conditions (including acts of war or terrorism), (b) any changes in conditions generally applicable to the industries in which such Borrower is involved, (c) any changes that result from the announcement or the consummation of the transactions contemplated hereby, (d) any “going concern” or similar qualification to the opinion of Borrowers’ or Parent’s independent certified public accountants with respect to the financial statements of Borrowers or Parent, unless such “going concern” or similar qualification to any such opinion relates solely to Borrowers (independent of Parent), and (e) any changes or effects that have been disclosed to Agent and Lenders as of the date hereof that has or could reasonably be expected to have a material adverse effect on the financial condition, assets, properties, business, operations or results of operations of any of the Borrowers (the foregoing exclusion in this clause (e) shall not apply to any changes or effects that have not been disclosed to Agent and Lenders as of the date hereof or any changes or affects arising after the date hereof).

“Material Contract” shall mean (a) any contract or agreement (other than the Financing Agreements and any ethanol purchase and sale contracts or agreements), written or oral, of any Borrower involving monetary liability of or to any Person in an amount in excess of \$750,000, (b) any ethanol purchase and sale contract or agreement with a stated term in excess of six (6) months and (c) any contract or other agreement (other than the Financing Agreements), whether written or oral, to which any Borrower is a party as to which the breach, nonperformance, cancellation or failure to renew by any party thereto would have a Material Adverse Effect.

“Maturity Date” means November [], 2027.

“Maximum Revolver Amount” means \$100,000,000, subject to increase in accordance with Section 2.14 of this Agreement, decreased by the amount of reductions in the Revolver Commitments made in accordance with Section 2.4(c) of this Agreement.

“Moody’s” has the meaning specified therefor in the definition of Cash Equivalents.

“Multiemployer Plan” means any multiemployer plan within the meaning of Section 3(37) or 4001(a)(3) of ERISA with respect to which any Loan Party or ERISA Affiliate has an obligation to contribute for the benefit of its respective employees or has any liability, contingent or otherwise or could be assessed Withdrawal Liability assuming a complete withdrawal from any such multiemployer plan.

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

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

“Non-Defaulting Lender” means each Lender other than a Defaulting Lender.

“Notification Event” means (a) the occurrence of a “reportable event” described in Section 4043 of ERISA for which the 30-day notice requirement has not been waived by applicable regulations issued by the PBGC, (b) the withdrawal of any Loan Party or ERISA Affiliate from a Pension Plan during a plan year in which it was a “substantial employer” as defined in Section 4001(a)(2) of ERISA, (c) the termination of a Pension Plan, the filing of a notice of intent to terminate a Pension Plan or the treatment of a Pension Plan amendment as a termination, under Section 4041 of ERISA, by any Loan Party or any of its Subsidiaries if the plan assets are not sufficient to pay all plan liabilities, (d) the institution of proceedings to terminate, or the appointment of a trustee with respect to, any Pension Plan by the PBGC or any Pension Plan or Multiemployer Plan administrator, (e) any Loan Party or any of its Subsidiaries become aware of any other event or condition that would constitute grounds under Section 4042(a) of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan, with respect to which the PBGC is reasonably likely to take such action in the reasonably-foreseeable future, (f) the imposition of a Lien pursuant to the IRC or ERISA in connection with any Pension Plan or any Loan Party or any of its Subsidiaries become aware of the existence of any facts or circumstances that is reasonably expected to result in the imposition of a Lien, (g) the partial or complete withdrawal of any Loan Party or any ERISA Affiliate from a Multiemployer Plan, (h) any Loan Party or any of its Subsidiaries receiving written notice of any event or condition that results in the reorganization or insolvency of a Multiemployer Plan under Sections of ERISA, (i) any Loan Party or any of its Subsidiaries receiving written notice of any event or condition that results in the termination of a Multiemployer Plan under Section 4041A of ERISA or the institution by the PBGC of proceedings to terminate or to appoint a trustee to administer a Multiemployer Plan under ERISA, (j) any Pension Plan being in “at risk status” within the meaning of IRC Section 430(i), (k) any Multiemployer Plan being in “endangered status” or “critical status” within the meaning of IRC Section 432(b) or the determination that any Multiemployer Plan is or is expected to be insolvent or in reorganization within the meaning of Title IV of ERISA, (l) with respect to any Pension Plan, any Loan Party or ERISA Affiliate incurring a substantial cessation of operations within the meaning of ERISA Section 4062(e), (m) the failure of any Pension Plan or Multiemployer Plan to meet the minimum funding standards within the meaning of the IRC or ERISA (including Section 412 of the IRC or Section 302 of ERISA), whether or not waived, (n) the filing of an application for a waiver of the minimum funding standards within the meaning of the IRC or ERISA (including Section 412 of the IRC or Section 302 of ERISA) with respect to any Pension Plan or Multiemployer Plan, (o) the failure by any Loan Party or any of its Subsidiaries to make by its due date a required payment or contribution with respect to any Pension Plan or Multiemployer Plan, (p) any event that results in or could reasonably be expected to result in a liability by a Loan Party pursuant to Title I of ERISA or the excise tax provisions of the IRC relating to Employee Benefit Plans or any event that results in or could reasonably be expected to result in a liability to any Loan Party or ERISA Affiliate pursuant to Title IV of ERISA or Section 401(a)(29) of the IRC, or (q) any of the foregoing is reasonably likely to occur in the following 30 days.

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

to any Insolvency Proceeding.

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

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

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

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

“Pacific Ethanol Acquired Inventory” means Inventory purchased or acquired by Borrowers from an Affiliate of Borrowers.

“Pacific Ethanol Affiliates” mean, collectively, (a) Alto Pekin, Inc., (b) Alto Magic Valley, LLC, (c) Alto ICP, LLC, (d) Alto Columbia LLC, and (e) such other Affiliates of Borrowers which may from time to time enter into Marketing Agreements with Borrowers, so long as Borrowers notify Agent of such additional Affiliate and deliver to Agent executed Marketing Agreements with such Affiliate, in each instance, together with its successors and assigns.

“Parent” means Alto Ingredients, Inc., a Delaware corporation.

“Parental Assistance Agreement” means that certain Third Amended and Restated Parent Assistance Agreement (as amended and/or supplemented) among Borrowers, Parent and Agent.

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

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

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

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

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

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

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

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

“Permitted Dispositions” means:

(a) sales, abandonment, or other dispositions of Equipment (including Equipment that is substantially worn, damaged, or obsolete or no longer used or useful in the ordinary course of business) so long as such sales or other dispositions do not involve Equipment having an aggregate fair market value in excess of \$500,000 for all such Equipment disposed of in any fiscal year of Borrowers or as Agent may otherwise agree and leases or subleases of Real Property not useful in the conduct of the business of the Borrowers and their Subsidiaries,

(b) sales of Inventory to buyers in the ordinary course of business,

(c) the use or transfer of money or Cash Equivalents in a manner that is not prohibited by the terms of this Agreement or the other Loan Documents,

(d) the licensing, on a non-exclusive basis, of patents, trademarks, copyrights, and other intellectual property rights in the ordinary course of business,

(e) the granting of Permitted Liens,

(f) the sale or discount, in each case without recourse, of accounts receivable (other than Eligible Accounts) arising in the ordinary course of business, but only in connection with the compromise or collection thereof,

(g) any involuntary loss, damage or destruction of property,

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

(i) the leasing or subleasing of assets of any Borrower or its Subsidiaries in the ordinary course of business,

(j) (i) the lapse of registered patents, trademarks, copyrights and other intellectual property of any Borrower or any of its Subsidiaries to the extent not economically desirable in the conduct of its business, or (ii) the abandonment of patents, trademarks, copyrights, or other intellectual property rights in the ordinary course of business so long as (in each case under clauses (i) and (ii)), (A) with respect to copyrights, such copyrights are not material revenue generating copyrights, and (B) such lapse is not materially adverse to the interests of the Lender Group,

(k) the making of Restricted Payments that are expressly permitted to be made pursuant to this Agreement,

(l) the making of Permitted Investments,

(m) so long as no Event of Default has occurred and is continuing or would immediately result therefrom, transfers of assets (i) from any Borrower or any of its Subsidiaries (other than any Borrower) to a Borrower, and (ii) from any Subsidiary of any Loan Party that is not a Loan Party to any other Subsidiary of any Loan Party,

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

(o) sales or dispositions of fixed assets (including intangible property related to such fixed assets) not otherwise permitted in clauses (a) through (o) above so long as made at fair market value and the aggregate fair market value of all assets disposed of in fiscal year (including the proposed disposition) would not exceed \$1,000,000.00,

(p) subject to the terms of the Intercreditor Agreement, the disposition of Equity Interests of any Loan Party so long as (x) such disposition does not result in a Change of Control and (y) the proceeds of such disposition are used to prepay the Term Loan Obligations to the extent permitted pursuant to Section 6.6(a)(i) herein.

“Permitted Indebtedness” means:

(a) Indebtedness in respect of the Obligations,

(b) Indebtedness as of the Closing Date as identified in Borrowers’ financial statements or fiscal quarter ending June 30, 2017 which have been previously delivered to Agent plus such additional Indebtedness as identified on Schedule 4.14,

(c) Permitted Purchase Money Indebtedness and any Refinancing Indebtedness in respect of such Indebtedness purchase money Indebtedness (including Capital Leases) arising after the date hereof to the extent secured by purchase money security interests in Equipment (including Capital Leases) and purchase money mortgages on Real Property, so long as such security interests and mortgages do not apply to any property of such Borrower or any Subsidiary other than the Equipment or Real Property so acquired, and the Indebtedness secured thereby does not exceed the cost of the Equipment or Real Property so acquired, as the case may be;

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(d) Indebtedness arising in connection with the endorsement of instruments or other payment items for deposit,

(e) Indebtedness consisting of (i) unsecured guarantees incurred in the ordinary course of business with respect to surety and appeal bonds, performance bonds, bid bonds, appeal bonds, completion guarantee and similar obligations; and (ii) unsecured guarantees arising with respect to customary indemnification obligations to purchasers in connection with Permitted Dispositions,

(f) the Term Loan Debt in an aggregate principal amount not to exceed \$125,000,000,

(g) [Reserved],

(h) Indebtedness incurred in the ordinary course of business under performance, surety, statutory, or appeal bonds,

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

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

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

(l) unsecured Indebtedness of any Borrower owing to employees, former employees, former officers, directors, or former directors (or any spouses, ex-spouses, or estates of any of the foregoing) incurred in connection with the repurchase or redemption by such Borrower of the Equity Interests of such Borrower that has been issued to such Persons, so long as (i) no Default or Event of Default has occurred and is continuing or would result from the incurrence of such Indebtedness, (ii) the aggregate amount of all such Indebtedness outstanding at any one time does not exceed \$50,000 in any calendar year, and (iii) such Indebtedness is subordinated in right of payment to the Obligations on terms and conditions reasonably acceptable to Agent,

(m) [Reserved],

(n) Indebtedness composing Permitted Investments,

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

(p) [Reserved],

(q) [Reserved],

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

(s) Subordinated Indebtedness, the aggregate outstanding amount of which does not exceed \$2,500,000, and

(t) In addition to and without limitation of any the categories of Permitted Indebtedness set forth above, any other unsecured Indebtedness incurred by any Borrower or any of its Subsidiaries in an aggregate outstanding amount not to exceed \$2,500,000 at any one time.

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“Permitted Investments” means:

- (a) Investments in cash and Cash Equivalents,
- (b) Investments in negotiable instruments deposited or to be deposited for collection in the ordinary course of business,
- (c) advances made in connection with purchases of goods or services in the ordinary course of business,
- (d) Investments received in settlement of amounts due to any Borrower or any of its Subsidiaries effected in the ordinary course of business or owing to any Borrower or any of its Subsidiaries as a result of Insolvency Proceedings involving an account debtor or upon the foreclosure or enforcement of any Lien in favor of a Borrower or its Subsidiaries,
- (e) Investments owned by any Borrower or any of its Subsidiaries on the Closing Date and set forth on Schedule P-1 to this Agreement, provided, that, except for Kinergy with respect to Alto Nutrients, no Borrower shall have any further obligations or liabilities to make any capital contributions or other additional investments or other payments to or in or for the benefit of any of such Subsidiaries,
- (f) guarantees permitted under the definition of Permitted Indebtedness,
- (g) [Reserved],
- (h) Equity Interests or other securities acquired in connection with the satisfaction or enforcement of Indebtedness or claims due or owing to a Loan Party or its Subsidiaries (in bankruptcy of customers or suppliers or otherwise outside the ordinary course of business) or as security for any such Indebtedness or claims,
- (i) deposits of cash made in the ordinary course of business to secure performance of operating leases,
- (j) loans and advances to employees and officers of a Borrower or any of its Subsidiaries in the ordinary course of business for any other business purpose and in an aggregate amount not to exceed \$250,000 at any one time for: (i) reasonably and necessary work-related travel or other ordinary business expenses to be incurred by such employee in connection with their work for such Borrower and (ii) reasonable and necessary relocation expenses of such employees (including home mortgage financing for relocated employees),
- (k) [Reserved],
- (l) Investments in the form of capital contributions and the acquisition of Equity Interests made by any Borrower or any of its Subsidiaries in any Borrower or Subsidiary thereof,
- (m) Investments resulting from entering into (i) Bank Product Agreements, or (ii) agreements relative to obligations permitted under clause (j) of the definition of Permitted Indebtedness; and
- (n) the Fuel Logistics Acquisition, provided, that, (a) the amount of consideration and other transaction expenses paid by Borrowers with respect to the Fuel Logistics Acquisition does not exceed \$7,500,000 in the aggregate, (b) no Event of Default exists and is continuing or would arise after giving effect to the Fuel Logistics Acquisition, (c) as of the date of the consummation of the Fuel Logistics Acquisition, Excess Availability for the thirty (30) consecutive day period immediately prior to the date of any such distribution, calculated on a pro forma basis as if such dividend or distribution had occurred on each day during such thirty (30) day period, shall not be less than 10% of the Maximum Revolver Amount, and (d) as of the date of the consummation of the Fuel Logistics Acquisition and after giving effect to the Fuel Logistics Acquisition, Excess Availability shall be not less than 10% of the Maximum Revolver Amount.

“Permitted Liens” means:

- (a) Liens granted to, or for the benefit of, Agent to secure the Obligations,
- (b) Liens for unpaid taxes, assessments, or other governmental charges or levies that either (i) are not yet delinquent, or (ii) do not have priority over Agent’s Liens and the underlying taxes, assessments, or charges or levies are the subject of Permitted Protests,

(c) judgment Liens arising solely as a result of the existence of judgments, orders, or awards that do not constitute an Event of Default under Section 8.3 of this Agreement,

(d) Liens set forth on Schedule P-2 to this Agreement; provided, that to qualify as a Permitted Lien, any such Lien described on Schedule P-2 to this Agreement shall only secure the Indebtedness that it secures on the Closing Date and any Refinancing Indebtedness in respect thereof,

(e) the interests of lessors under operating leases and non-exclusive licensors under license agreements,

(f) purchase money Liens on Real Property, and purchase money liens on other fixed assets or the interests of lessors under Capital Leases, to the extent that such Liens or interests secure Indebtedness that is Permitted Purchase Money Indebtedness and so long as (i) such Lien attaches only to the fixed asset purchased or acquired and the proceeds thereof, and (ii) such Lien only secures the Indebtedness that was incurred to acquire the Real Property or other fixed asset purchased or acquired or any Refinancing Indebtedness in respect thereof,

(g) Liens arising by operation of law in favor of warehousemen, landlords, carriers, mechanics, materialmen, laborers, or suppliers, incurred in the ordinary course of business and not in connection with the borrowing of money, and which Liens either (i) are for sums not yet delinquent, or (ii) are the subject of Permitted Protests,

(h) Liens on amounts deposited to secure any Borrower’s and its Subsidiaries’ obligations in connection with worker’s compensation or other unemployment insurance,

(i) Liens on amounts deposited to secure any Borrower’s and its Subsidiaries’ obligations in connection with the making or entering into of bids, tenders, leases, statutory obligations and similar obligations in the ordinary course of business, consistent with Borrowers’ current business practices, and not in connection with the borrowing of money,

(j) Liens on amounts deposited to secure any Borrower’s and its Subsidiaries’ reimbursement obligations with respect to surety or appeal bonds obtained in the ordinary course of business,

- (k) with respect to any Real Property, easements, rights of way, and zoning restrictions that do not materially interfere with or impair the use or operation thereof,
- (l) non-exclusive licenses of patents, trademarks, copyrights, and other intellectual property rights in the ordinary course of business,
- (m) Liens that are replacements of Permitted Liens to the extent that the original Indebtedness is the subject of permitted Refinancing Indebtedness and so long as the replacement Liens only encumber those assets that secured the original Indebtedness,
- (n) rights of setoff or bankers' liens upon deposits of funds in favor of banks or other depository institutions, solely to the extent incurred in connection with the maintenance of such Deposit Accounts in the ordinary course of business,
- (o) Liens granted in the ordinary course of business on the unearned portion of insurance premiums securing the financing of insurance premiums to the extent the financing is permitted under the definition of Permitted Indebtedness,
- (p) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods,
- (q) Liens securing the Term Loan Debt permitted pursuant to clause (f) of the definition of Permitted Indebtedness; provided, that, such Liens are subject to the Intercreditor Agreement, and
- (r) In addition to and without limitation of any the categories of Permitted Liens set forth above, 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 \$2,500,000.

“Permitted Protest” means the right of any Loan Party or any of its Subsidiaries to protest any Lien (other than any Lien that secures the Obligations), Tax (other than payroll taxes or taxes that are the subject of a United States federal tax lien), any rental payment or levy; provided, that either (1) such protest is being defended and otherwise handled by Borrowers' insurer at insurer's sole cost and risk (subject to any applicable deductibles and standard reservation of rights provisions) or (2) (a) a reserve with respect to such obligation is established on such Loan Party's or its Subsidiaries' books and records in such amount as is required under GAAP, if any, (b) any such protest is instituted promptly and prosecuted diligently by such Loan Party or its Subsidiary, as applicable, in good faith, and (c) Agent is satisfied that, while any such protest is pending, there will be no impairment of the enforceability, validity, or priority of any of Agent's Liens.

“Permitted Purchase Money Indebtedness” means, as of any date of determination, Indebtedness (other than the Obligations, but including Capitalized Lease Obligations (other than any obligations in respect of operating leases beginning after December 15, 2018, that would not have been

classified as Capitalized Lease Obligations prior to the new Financial Accounting Standards Board standard issued in 2016), incurred after the Closing Date and at the time of, or within 20 days after, the acquisition of any fixed assets or Real Property for the purpose of financing all or any part of the acquisition cost thereof, in an aggregate principal amount outstanding at any one time not in excess of \$4,000,000.

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

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

“Pro Rata Share” means, as of any date of determination:

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

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

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

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

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

“Qualified Cash” means, as of any date of determination, the amount of unrestricted cash and Cash Equivalents of the Loan Parties and their Subsidiaries that is in Deposit Accounts or in Securities Accounts, or any combination thereof, and which such Deposit Account or Securities Account is the subject of a Control Agreement and is maintained by a branch office of the bank or securities intermediary located within the United States.

“Qualified Equity Interests” means and refers to any Equity Interests issued by Borrowers (and not by one or more of their Subsidiaries (other than by Kinergy with respect to Alto Nutrients) that is not a Disqualified Equity Interest.

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

“QFC Credit Support” has the meaning specified therefor in Section 17.16 of this Agreement.

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

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

“Reference Period” has the meaning set forth in the definition of EBITDA.

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

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

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

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

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

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

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

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

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

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

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

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

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

“Reserves” shall mean as of any date of determination, such amounts as Agent may from time to time establish and revise in good faith and in the exercise of its reasonable credit judgment reducing the amount of Revolving Loans and Letters of Credit that would otherwise be available to Borrowers under the lending formula(s) provided for herein: (a) to reflect events, conditions, contingencies or risks which, as determined by Agent in good faith and in the exercise of its reasonable credit judgment, adversely affect, or would have a reasonable likelihood of adversely affecting, either the Collateral or any other property which is security for the Obligations or its value or the assets, business or prospects of any Borrower or any Loan Party or the security interests and other rights of Agent or any Lender in the Collateral (including the enforceability, perfection and priority thereof) or (b) to reflect Agent’s good faith belief that any collateral report or financial information furnished by or on behalf of any Loan Party (including Parent) to Agent is or may have been incomplete, inaccurate or misleading in any material respect or (c) to reflect outstanding Letter of Credit Obligations as provided in Section 2.10 hereof or (d) in respect of any state of facts which Agent determines in good faith and in the exercise of its reasonable credit judgment constitutes a Default or an Event of Default. Without limiting the generality of the foregoing, Reserves may, at Agent’s option, in good faith and in the exercise of its reasonable credit judgment, be established to reflect: (i) dilution with respect to the Accounts (based on the ratio of the aggregate amount of non-cash reductions in Accounts for any period to the aggregate dollar amount of the sales of Borrowers for such period) as calculated by Agent for any period is or is reasonably anticipated to be greater than five (5%) percent; (ii) returns, discounts, claims, credits and allowances of any nature that are not paid pursuant to the reduction of Accounts; (iii) sales, excise or similar taxes included in the amount of any Accounts reported to Agent; (iv) a change in the turnover, age or mix of the categories of Inventory that adversely affects the aggregate value of all Inventory; (v) amounts due or to become due to owners and lessors of premises where any Collateral is located, other than for those locations where Agent has received a Collateral Access Agreement that Agent has accepted in writing; (vi) amounts due or to become due to owners and licensors of trademarks and other Intellectual Property used by Borrowers and (vii) obligations, liabilities or indebtedness (contingent or otherwise) of any Borrower to Agent or any Bank Product Provider arising under or in connection with any Bank Products or as such Affiliate or Person may otherwise require in connection therewith to the extent that such obligations, liabilities or indebtedness constitute Obligations as such term is defined herein or otherwise receive the benefit of the security interest of Agent in any Collateral. The amount of any Reserve established by Agent shall have a reasonable relationship to the event, condition or other matter which is the basis for such reserve as determined by Agent in good faith and in the exercise of its reasonable credit judgment and to the extent that such Reserve is in respect of amounts that may be payable to third parties Agent may, at its option, deduct such Reserve from the Maximum Revolver Amount, at any time that such limit is less than the amount of the Borrowing Base.

“Restricted Payment” means (a) any declaration or payment of any dividend or the making of any other payment or distribution, directly or indirectly, on account of Equity Interests issued by a Borrower (including any payment in connection with any merger or consolidation involving Borrowers) or to the direct or indirect holders of Equity Interests issued by Borrowers in their capacity as such (other than dividends or distributions payable in Qualified Equity Interests issued by a Borrower, or (b) any purchase, redemption, making of any sinking fund or similar payment, or other acquisition or retirement for value (including in connection with any merger or consolidation involving a Borrower) any Equity Interests issued by Borrowers, (c) any making of any payment to retire, or to obtain the surrender of, any outstanding warrants, options, or other rights to acquire Equity Interests of Borrowers now or hereafter outstanding, or (d) reimbursement payments by a Borrower to Parent on account of any margin call due in connection with any hedging position created by Parent for or on behalf of such Borrower pursuant to the Affiliate Company Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“SOFR” means a rate per annum equal to the secured overnight financing rate published by the SOFR Administrator on the SOFR Administrator’s Website.

“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 Loans” means each portion of a Revolving Loan that bears interest at a rate determined by reference to Adjusted Daily Simple SOFR.

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

“Special Eligibility Conditions” means, with respect to any item of Pacific Ethanol Acquired Inventory, that (a) such Pacific Ethanol Acquired Inventory was purchased by a Borrower from a Pacific Ethanol Affiliate pursuant to a Marketing Agreement, (b) Agent has received an original (or electronic copy) of such Marketing Agreement executed by the parties thereto, (c) Agent has the first priority Lien in any such Pacific Ethanol Acquired Inventory and (d) Agent has received, in form and substance reasonably satisfactory to Agent, one or more agreements, consents, access and/or licenses including pursuant to the Intercreditor Agreement, providing for (i) Agent’s first priority Lien in such Pacific Ethanol Acquired Inventory and (ii) the right of Agent to access such Pacific Ethanol Acquired Inventory.

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

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

“Subordinated Indebtedness” means any Indebtedness of any Borrower or its Subsidiaries incurred from time to time that is subordinated in right of payment to the Obligations and is subject to a subordination agreement or contains terms and conditions of subordination that are acceptable to Agent.

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

“Supported QFC” has the meaning specified therefor in Section 17.16 of this Agreement.

“Swap Inventory” shall mean, as to each Borrower other than Alto Nutrients, Inventory of such Borrower consisting of ethanol finished goods with respect to which such Borrower has entered into a Hedge Agreement with Wells Fargo or an Affiliate thereof, providing for coverage with respect to such Eligible Inventory in an amount equal to, on any date of determination, at least 100% of the Value thereof.

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

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

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

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

“Syndication Agent” has the meaning set forth in the preamble to this Agreement.

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

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

“Term Loan Agent” means OIC Investment Agent, LLC, a Delaware limited liability company, in its capacity as administrative agent and collateral agent for the lenders under the Term Loan Agreement.

“Term Loan Agreement” means the Credit Agreement, dated as of November 7, 2022, Alto Ingredients, Inc., as borrower, the subsidiary guarantors party thereto from time to time, the lenders party thereto from time to time, and the Term Loan Agent, as amended, supplemented, modified, extended, renewed, restated or refinanced in a manner that is not in contravention of the Intercreditor Agreement.

“Term Loan Debt” shall mean the Indebtedness evidenced by the Term Loan Documents.

“Term Loan Documents” means the Term Loan Agreement and all documents, instruments and other agreements from time to time entered into by any Loan Party in connection therewith, as amended, supplemented, modified, extended, renewed, restated or refinanced in a manner that is not in contravention of the Intercreditor Agreement.

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

“TTM Financial Statements” has the meaning specified therefor in Section 6.10(f) of this Agreement.

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

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

“United States” means the United States of America.

“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, or any successor thereto, recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

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

“U.S. Special Resolution Regimes” has the meaning specified therefor in Section 17.16 of this Agreement.

“Value” shall mean, as determined by Agent in good faith and in the exercise of its reasonable credit judgment, with respect to Inventory, the lower of (a) cost computed on a first-in first-out basis in accordance with GAAP or (b) market value; provided, that, for purposes of the calculation of the Borrowing Base, (i) the Value of the Inventory shall not include: (A) the portion of the value of Inventory equal to the profit earned by any Affiliate on the sale thereof to any Borrower or (B) write-ups or write-downs in value with respect to currency exchange rates and, (ii) notwithstanding anything to the contrary contained herein, the cost of the Inventory shall be computed in the same manner and consistent with the most recent appraisal of the Inventory received and accepted by Agent prior to the date hereof, if any. For purposes of this definition, the “market value” of Inventory shall be determined based on published or reported mark to market commodity pricing created or distributed by the Los Angeles Oil Price Information Service (commonly known as OPIS) and/or the Chicago Board of Trade (commonly known as CBOT); provided, that, in the event that any change in market conditions shall, in the reasonable opinion of Agent, make it impractical for Agent to determine the market value of an item of Inventory based on such publications, or the mark to market commodity pricing of an item of Inventory is not reported or published by such publications, the Value of such Inventory shall be determined under clause (a) of this

definition.

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

“Voting Stock” shall mean with respect to any Person, one (1) or more classes of Equity Interests of such Person having general voting powers to elect at least a majority of the board of directors, managers or trustees of such Person, irrespective of whether at the time Equity Interests of any other class or classes have or might have voting power by reason of the happening of any contingency, and any Equity Interests of such Person convertible or exchangeable without restriction at the option of the holder thereof into Equity Interests of such Person described in clause (a) of this definition.

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

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

“Write-Down and Conversion Powers” means, 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.

1.2 Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with GAAP; provided, that if Administrative Borrower notifies Agent that Borrowers request an amendment to any provision hereof to eliminate the effect of any Accounting Change occurring after the Closing Date or in the application thereof on the operation of such provision (or if Agent notifies Administrative Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such Accounting Change or in the application thereof, then Agent and Borrowers agree that they will negotiate in good faith amendments to the provisions of this Agreement that are directly affected by such Accounting Change with the intent of having the respective positions of the Lenders and Borrowers after such Accounting Change conform as nearly as possible to their respective positions immediately before such Accounting Change took effect and, until any such amendments have been agreed upon and agreed to by the Required Lenders, the provisions in this Agreement shall be calculated as if no such Accounting Change had occurred. When used herein, the term “financial statements” shall include the notes and schedules thereto. Whenever the term “Borrowers” is used in respect of a financial covenant or a related definition, it shall be understood to mean the Borrowers and their Subsidiaries on a consolidated basis, unless the context clearly requires otherwise. Notwithstanding anything to the contrary contained herein, (a) all financial statements delivered hereunder shall be prepared, and all financial covenants contained herein shall be calculated, without giving effect to any election under the Statement of Financial Accounting Standards Board’s Accounting Standards Codification Topic 825 (or any similar accounting principle) permitting a Person to value its financial liabilities or Indebtedness at the fair value thereof, and (b) the term “unqualified opinion” as used herein to refer to opinions or reports provided by accountants shall mean an opinion or report that is (i) unqualified, and (ii) does not include any explanation, supplemental comment, or other comment concerning the ability of the applicable Person to continue as a going concern or concerning the scope of the audit (except for any such qualification pertaining to impending debt maturities of the Obligations or the Term Loan Obligations occurring within twelve (12) months of such audit or any breach of any financial covenant thereunder).

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

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

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

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

2. LOANS AND TERMS OF PAYMENT.

2.1 Revolving Loans.

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

- (i) such Lender’s Revolver Commitment, or

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

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

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

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

(c) Anything to the contrary in this Section 2.1 notwithstanding, Agent shall have the right (but not the obligation) at any time, in the exercise of its Permitted Discretion, to establish and increase or decrease Reserves and against the Borrowing Base or the Maximum Revolver Amount. The amount of any Reserve established by Agent, and any changes to the eligibility criteria set forth in the definitions of Eligible Accounts, Eligible Inventory, and Eligible In-Transit Inventory shall have a reasonable relationship to the event, condition, other circumstance, or fact that is the basis for such reserve or change in eligibility and shall not be duplicative of any other reserve established and currently maintained or eligibility criteria. Upon establishment or increase in Reserves, Agent agrees to make itself available to discuss the Reserve or increase, and Borrowers may take such action as may be required so that the event, condition, circumstance, or fact that is the basis for such reserve or increase no longer exists, in a manner and to the extent reasonably satisfactory to Agent in the exercise of its Permitted Discretion. In no event shall such opportunity limit the right of Agent to establish or change such Reserve, unless Agent shall have determined, in its Permitted Discretion, that the event, condition, other circumstance, or fact that was the basis for such Reserve or such change no longer exists or has otherwise been adequately addressed by Borrowers.

2.2 [Reserved]

2.3 Borrowing Procedures and Settlements.

(a) **Procedure for Borrowing Revolving Loans.** Each Borrowing shall be made by a written request by an Authorized Person delivered to Agent (which may be delivered through Agent's electronic platform or portal) and received by Agent no later than 11:00 a.m. (i) on the Business Day that is the requested Funding Date in the case of a request for a Swing Loan, and (ii) on the Business Day that is three Business Days prior to the requested Funding Date in the case of all other requests, specifying (A) the amount of such Borrowing, and (B) the requested Funding Date (which shall be a Business Day); provided, that Agent may, in its sole discretion, elect to accept as timely requests that are received later than 11:00 a.m. on the applicable Business Day. All Borrowing requests which are not made on-line via Agent's electronic platform or portal shall be subject to (and unless Agent elects otherwise in the exercise of its sole discretion, such Borrowings shall not be made until the completion of) Agent's authentication process (with results satisfactory to Agent) prior to the funding of any such requested Revolving Loan.

(b) **Making of Swing Loans.** In the case of a Revolving Loan and so long as any of (i) the aggregate amount of Swing Loans made since the last Settlement Date, *minus* all payments or other amounts applied to Swing Loans since the last Settlement Date, plus the amount of the requested Swing Loan does not exceed \$10,000,000, or (ii) Swing Lender, in its sole discretion, agrees to make a Swing Loan notwithstanding the foregoing limitation, Swing Lender shall make a Revolving Loan (any such Revolving Loan made by Swing Lender pursuant to this Section 2.3(b) being referred to as a "Swing Loan" and all such Revolving Loans being referred to as "Swing Loans") available to Borrowers on the Funding Date applicable thereto by transferring immediately available funds in the amount of such Borrowing to the Designated Account. Each Swing Loan shall be deemed to be a Revolving Loan hereunder and shall be subject to all the terms and conditions (including Section 3) applicable to other Revolving Loans, except that all payments (including interest) on any Swing Loan shall be payable to Swing Lender solely for its own account. Subject to the provisions of Section 2.3(d)(ii), Swing Lender shall not make and shall not be obligated to make any Swing Loan if Swing Lender has actual knowledge that (i) one or more of the applicable conditions precedent set forth in Section 3 will not be satisfied on the requested Funding Date for the applicable Borrowing, or (ii) the requested Borrowing would exceed the Availability on such Funding Date. Swing Lender shall not otherwise be required to determine whether the applicable conditions precedent set forth in Section 3 have been satisfied on the Funding Date applicable thereto prior to making any Swing Loan. The Swing Loans shall be secured by Agent's Liens, constitute Revolving Loans and Obligations, and bear interest at the rate applicable from time to time to all other Revolving Loans and Obligations.

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

(i) In the event that Swing Lender is not obligated to make a Swing Loan, then after receipt of a request for a Borrowing pursuant to Section 2.3(a)(i), Agent shall notify the Lenders by telecopy, telephone, email, or other electronic form of transmission, of the requested Borrowing; such notification to be sent on the Business Day that is at least one Business Day prior to the requested Funding Date. If Agent has notified the Lenders of a requested Borrowing on the Business Day that is one Business Day prior to the Funding Date, then each Lender shall make the amount of such Lender's Pro Rata Share of the requested Borrowing available to Agent in immediately available funds, to Agent's Account, not later than 10:00 a.m. on the Business Day that is the requested Funding Date. After Agent's receipt of the proceeds of such Revolving Loans from the Lenders, Agent shall make the proceeds thereof available to Borrowers on the applicable Funding Date by transferring immediately available funds equal to such proceeds received by Agent to the Designated Account; provided, that subject to the provisions of Section 2.3(d)(ii), no Lender shall have an obligation to make any Revolving Loan, if (1) one or more of the applicable conditions precedent set forth in Section 3 will not be satisfied on the requested Funding Date for the applicable Borrowing unless such condition has been waived, or (2) the requested Borrowing would exceed the Availability on such Funding Date.

(ii) Unless Agent receives notice from a Lender prior to 9:30 a.m. on the Business Day that is the requested Funding Date relative to a requested Borrowing as to which Agent has notified the Lenders of a requested Borrowing that such Lender will not make available as and when required hereunder to Agent for the account of Borrowers the amount of that Lender's Pro Rata Share of the Borrowing, Agent may assume that each Lender has made or will make such amount available to Agent in immediately available funds on the Funding Date and Agent may (but shall not be so required), in reliance upon such assumption, make available to Borrowers a corresponding amount. If, on the requested Funding Date, any Lender shall not have remitted the full amount that it is required to make available to Agent in immediately available funds and if Agent has made available to Borrowers such amount on the requested Funding Date, then such Lender shall make the amount of such Lender's Pro Rata Share of the requested Borrowing available to Agent in immediately available funds, to Agent's Account, no later than 10:00 a.m. on the Business Day that is the first Business Day after the requested Funding Date (in which case, the interest accrued on such Lender's portion of such Borrowing for the Funding Date shall be for Agent's separate account). If any Lender shall not remit the full amount that it is required to make available to Agent in immediately available funds as and when required hereby and if Agent has made available to Borrowers such amount, then that Lender shall be obligated to immediately remit such amount to Agent, together with interest at the Defaulting Lender Rate for each day until the date on which such amount is so remitted. A notice submitted by Agent to any Lender with respect to amounts owing under this Section 2.3(c)(ii) shall be conclusive, absent manifest error. If the amount that a Lender is required to remit is made available to Agent, then such payment to Agent shall constitute such Lender's Revolving Loan for all purposes of this Agreement. If such amount is not made available to Agent on the Business Day following the Funding Date, Agent will notify Administrative Borrower of

such failure to fund and, upon demand by Agent, Borrowers shall pay such amount to Agent for Agent's account, together with interest thereon for each day elapsed since the date of such Borrowing, at a rate per annum equal to the interest rate applicable at the time to the Revolving Loans composing such Borrowing.

(d) Protective Advances and Optional Overadvances.

(i) Any contrary provision of this Agreement or any other Loan Document notwithstanding (but subject to Section 2.3(d)(iv)), at any time (A) after the occurrence and during the continuance of a Default or an Event of Default, or (B) that any of the other applicable conditions precedent set forth in Section 3 are not satisfied, Agent hereby is authorized by Borrowers and the Lenders, from time to time, in Agent's sole discretion, to make Revolving Loans to, or for the benefit of, Borrowers, on behalf of the Revolving Lenders, that Agent, in its Permitted Discretion, deems necessary or desirable (1) to preserve or protect the Collateral, or any portion thereof, or (2) to enhance the likelihood of repayment of the Obligations (other than the Bank Product Obligations) (the Revolving Loans described in this Section 2.3(d)(i) shall be referred to as "Protective Advances"). In any event if any Protective Advance remains outstanding for more than 60 days, unless otherwise agreed to by the Required Lenders, Borrowers shall immediately repay such Protective Advance. Notwithstanding the foregoing, the aggregate amount of all Protective Advances outstanding at any one time shall not exceed 10% of the Borrowing Base.

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(ii) Any contrary provision of this Agreement or any other Loan Document notwithstanding, the Lenders hereby authorize Agent or Swing Lender, as applicable, and either Agent or Swing Lender, as applicable, may, but is not obligated to, knowingly and intentionally, continue to make Revolving Loans (including Swing Loans) to Borrowers notwithstanding that an Overadvance exists or would be created thereby, so long as (A) after giving effect to such Revolving Loans, the outstanding Revolver Usage does not exceed the Borrowing Base by more than 10% of the Borrowing Base, and (B) subject to Section 2.3(d)(iv) below, after giving effect to such Revolving Loans, the outstanding Revolver Usage (except for and excluding amounts charged to the Loan Account for interest, fees, or Lender Group Expenses) does not exceed the Maximum Revolver Amount. In the event Agent obtains actual knowledge that the Revolver Usage exceeds the amounts permitted by this Section 2.3(d), regardless of the amount of, or reason for, such excess, Agent shall notify the Lenders as soon as practicable (and prior to making any (or any additional) intentional Overadvances (except for and excluding amounts charged to the Loan Account for interest, fees, or Lender Group Expenses) unless Agent determines that prior notice would result in imminent harm to the Collateral or its value, in which case Agent may make such Overadvances and provide notice as promptly as practicable thereafter), and the Lenders with Revolver Commitments thereupon shall, together with Agent, jointly determine the terms of arrangements that shall be implemented with Borrowers intended to reduce, within a reasonable time, the outstanding principal amount of the Revolving Loans to Borrowers to an amount permitted by the preceding sentence. In such circumstances, if any Lender with a Revolver Commitment objects to the proposed terms of reduction or repayment of any Overadvance, the terms of reduction or repayment thereof shall be implemented according to the determination of the Required Lenders. In any event if any Overadvance not otherwise made or permitted pursuant to this Section 2.3(d) remains outstanding for more than 60 days, unless otherwise agreed to by the Required Lenders, Borrowers shall immediately repay Revolving Loans in an amount sufficient to eliminate all such Overadvances not otherwise made or permitted to this Section 2.3(d). The foregoing provisions are meant for the benefit of the Lenders and Agent and are not meant for the benefit of Borrowers, which shall continue to be bound by the provisions of Section 2.4(e)(1).

(iii) Each Protective Advance and each Overadvance (each, an "Extraordinary Advance") shall be deemed to be a Revolving Loan hereunder. Prior to Settlement of any Extraordinary Advance, all payments with respect thereto, including interest thereon, shall be payable to Agent solely for its own account. Each Revolving Lender shall be obligated to settle with Agent as provided in Section 2.3(e) (or Section 2.3(g), as applicable) for the amount of such Lender's Pro Rata Share of any Extraordinary Advance. The Extraordinary Advances shall be repayable on demand, secured by Agent's Liens, constitute Obligations hereunder, and bear interest at the rate applicable from time to time to Revolving Loans. The provisions of this Section 2.3(d) are for the exclusive benefit of Agent, Swing Lender, and the Lenders and are not intended to benefit Borrowers (or any other Loan Party) in any way.

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

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

(i) Agent shall request settlement ("Settlement") with the Lenders on a weekly basis, or on a more frequent basis if so determined by Agent in its sole discretion (1) on behalf of Swing Lender, with respect to the outstanding Swing Loans, (2) for itself, with respect to the outstanding Extraordinary Advances, and (3) with respect to any Borrower's or any of their Subsidiaries' payments or other amounts received, as to each by notifying the Lenders by telecopy, telephone, or other similar form of transmission, of such requested Settlement, no later than 2:00 p.m. on the Business Day immediately prior to the date of such requested Settlement (the date of such requested Settlement being the "Settlement Date"). Such notice of a Settlement Date shall include a summary statement of the amount of outstanding Revolving Loans (including Swing Loans and Extraordinary Advances) for the period since the prior Settlement Date. Subject to the terms and conditions contained herein (including Section 2.3(g)): (y) if the amount of the Revolving Loans (including Swing Loans and Extraordinary Advances) made by a Lender that is not a Defaulting Lender exceeds such Lender's Pro Rata Share of the Revolving Loans (including Swing Loans and Extraordinary Advances) as of a Settlement Date, then Agent shall, by no later than 12:00 p.m. on the Settlement Date, transfer in immediately available funds to a Deposit Account of such Lender (as such Lender may designate), an amount such that each such Lender shall, upon receipt of such amount, have as of the Settlement Date, its Pro Rata Share of the Revolving Loans (including Swing Loans and Extraordinary Advances), and (z) if the amount of the Revolving Loans (including Swing Loans and Extraordinary Advances) made by a Lender is less than such Lender's Pro Rata Share of the Revolving Loans (including Swing Loans and Extraordinary Advances) as of a Settlement Date, such Lender shall no later than 12:00 p.m. on the Settlement Date transfer in immediately available funds to Agent's Account, an amount such that each such Lender shall, upon transfer of such amount, have as of the Settlement Date, its Pro Rata Share of the Revolving Loans (including Swing Loans and Extraordinary Advances). Such amounts made available to Agent under clause (z) of the immediately preceding sentence shall be applied against the amounts of the applicable Swing Loans or Extraordinary Advances and, together with the portion of such Swing Loans or Extraordinary Advances representing Swing Lender's Pro Rata Share thereof, shall constitute Revolving Loans of such Lenders. If any such amount is not made available to Agent by any Lender on the Settlement Date applicable thereto to the extent required by the terms hereof, Agent shall be entitled to recover for its account such amount on demand from such Lender together with interest thereon at the Defaulting Lender Rate.

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

to the Lenders hereunder, and proceeds of Collateral.

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

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

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

(g) Defaulting Lenders.

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

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

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

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

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

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

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

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

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

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

2.4 Payments; Reductions of Commitments; Prepayments

(a) Payments by Borrowers.

(i) Except as otherwise expressly provided herein, all payments by Borrowers shall be made to Agent's Account for the account of the Lender Group and shall be made in immediately available funds, no later than 1:30 p.m. on the date specified herein. Any payment received by Agent later than 1:30 p.m. shall be deemed to have been received (unless Agent, in its sole discretion, elects to credit it on the date received) on the following Business Day and any applicable interest or fee shall continue to accrue until such following Business Day.

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

(b) Apportionment and Application.

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

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

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

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

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

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

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

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

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

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

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

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

(J) tenth, ratably

i. ratably, to pay the principal of all Revolving Loans, until paid in full,

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

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

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

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

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

(iv) Agent promptly shall distribute to each Lender, pursuant to the applicable wire instructions received from each Lender in writing, such funds as it may be entitled to receive, subject to a Settlement delay as provided in Section 2.3(e).

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

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

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

(c) Termination of Revolver Commitments. The Revolver Commitments shall terminate on the Maturity Date or earlier termination thereof pursuant to the terms of this Agreement.

(d) Optional Prepayments. Borrowers may prepay the principal of any Revolving Loan at any time in whole or in part, without premium or penalty.

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

(f) Application of Payments.

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

2.5 Promise to Pay; Promissory Notes

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

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

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

(a) **Interest Rates.** Except as provided in Section 2.6(c), all Obligations (except for undrawn Letters of Credit) that have been charged to the Loan Account pursuant to the terms hereof shall bear interest at a per annum rate equal to the Adjusted Daily Simple SOFR plus the Applicable Margin.

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

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

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

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

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

2.7 Crediting Payments. The receipt of any payment item by Agent shall not be required to be considered a payment on account unless such payment item is a wire transfer of immediately available funds made to Agent's Account or unless and until such payment item is honored when presented for payment. Should any payment item not be honored when presented for payment, then Borrowers shall be deemed not to have made such payment. Anything to the contrary contained herein notwithstanding, any payment item shall be deemed received by Agent only if it is received into Agent's Account on a Business Day on or before 1:30 p.m. If any payment item is received into Agent's Account on a non-Business Day or after 1:30 p.m. on a Business Day (unless Agent, in its sole discretion, elects to credit it on the date received), it shall be deemed to have been received by Agent as of the opening of business on the immediately following Business Day.

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

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2.9 Maintenance of Loan Account; Statements of Obligations. Agent shall maintain an account on its books in the name of Borrowers (the "Loan Account") on which Borrowers will be charged with all Revolving Loans (including Extraordinary Advances and Swing Loans) made by Agent, Swing Lender, or the Lenders to Borrowers or for Borrowers' account, the Letters of Credit issued or arranged by Issuing Bank for Borrowers' account, and with all other payment Obligations hereunder or under the other Loan Documents, including, accrued interest, fees and expenses, and Lender Group Expenses. In accordance with Section 2.7, the Loan Account will be credited with all payments received by Agent from Borrowers or for Borrowers' account. Agent shall make available to Borrowers monthly statements regarding the Loan Account, including the principal amount of the Revolving Loans, interest accrued hereunder, fees accrued or charged hereunder or under the other Loan Documents, and a summary itemization of all charges and expenses constituting Lender Group Expenses accrued hereunder or under the other Loan Documents, and each such statement, absent manifest error, shall be conclusively presumed to be correct and accurate and constitute an account stated between Borrowers and the Lender Group unless, within 45 days after Agent first makes such a statement available to Borrowers, Borrowers shall deliver to Agent written objection thereto describing the error or errors contained in such statement.

2.10 Fees.

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

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

(c) **Field Examination and Other Fees.** Borrowers shall pay to Agent, field examination, appraisal, and valuation fees and charges, as and when incurred or chargeable, as follows (i) the prevailing standard rate established from time to time by Agent as its fee for field examinations, which fee is currently \$1,000 per day per examiner, plus out-of-pocket expenses (including travel, meals, and lodging), for each field examination of any Borrower or its Subsidiaries performed by or on behalf of

Agent, and (ii) the fees, charges or expenses paid or incurred by Agent if it elects to employ the services of one or more third Persons to appraise the Collateral, or any portion thereof.

2.11 Letters of Credit.

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

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

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

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

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

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

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

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

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(f) Each Borrower agrees to indemnify, defend and hold harmless each member of the Lender Group (including Issuing Bank and its branches, Affiliates, and correspondents) and each such Person's respective directors, officers, employees, attorneys and agents (each, including Issuing Bank, a "Letter of Credit Related Person") (to the fullest extent permitted by law) from and against any and all claims, demands, suits, actions, investigations, proceedings, liabilities, fines, costs, penalties, and damages, and all reasonable fees and disbursements of attorneys, experts, or consultants and all other costs and expenses actually incurred in connection therewith or in connection with the

enforcement of this indemnification (as and when they are incurred and irrespective of whether suit is brought), which may be incurred by or awarded against any such Letter of Credit Related Person (other than Taxes, which shall be governed by Section 16) (the “Letter of Credit Indemnified Costs”), and which arise out of or in connection with, or as a result of:

- (i) any Letter of Credit or any pre-advice of its issuance;
- (ii) any transfer, sale, delivery, surrender or endorsement (or lack thereof) of any Drawing Document at any time(s) held by any such Letter of Credit Related Person in connection with any Letter of Credit;
- (iii) any action or proceeding arising out of, or in connection with, any Letter of Credit (whether administrative, judicial or in connection with arbitration), including any action or proceeding to compel or restrain any presentation or payment under any Letter of Credit, or for the wrongful dishonor of, or honoring a presentation under, any Letter of Credit;
- (iv) any independent undertakings issued by the beneficiary of any Letter of Credit;
- (v) any unauthorized instruction or request made to Issuing Bank in connection with any Letter of Credit or requested Letter of Credit, or any error, omission, interruption or delay in such instruction or request, whether transmitted by mail, courier, electronic transmission, SWIFT, or any other telecommunication including communications through a correspondent;
- (vi) an adviser, confirmer or other nominated person seeking to be reimbursed, indemnified or compensated;
- (vii) any third party seeking to enforce the rights of an applicant, beneficiary, nominated person, transferee, assignee of Letter of Credit proceeds or holder of an instrument or document;
- (viii) the fraud, forgery or illegal action of parties other than the Letter of Credit Related Person;
- (ix) any prohibition on payment or delay in payment of any amount payable by Issuing Bank to a beneficiary or transferee beneficiary of a Letter of Credit arising out of Anti-Corruption Laws, Anti-Money Laundering Laws, or Sanctions;
- (x) Issuing Bank’s performance of the obligations of a confirming institution or entity that wrongfully dishonors a confirmation;
- (xi) any foreign language translation provided to Issuing Bank in connection with any Letter of Credit;
- (xii) any foreign law or usage as it relates to Issuing Bank’s issuance of a Letter of Credit in support of a foreign guaranty including without limitation the expiration of such guaranty after the related Letter of Credit expiration date and any resulting drawing paid by Issuing Bank in connection therewith; or
- (xiii) the acts or omissions, whether rightful or wrongful, of any present or future de jure or de facto governmental or regulatory authority or cause or event beyond the control of the Letter of Credit Related Person; provided, that such indemnity shall not be available to any Letter of Credit Related Person claiming indemnification under clauses (i) through (x) above to the extent that such Letter of Credit Indemnified Costs may be finally determined in a final, non-appealable judgment of a court of competent jurisdiction to have resulted directly from the gross negligence or willful misconduct of the Letter of Credit Related Person claiming indemnity. Borrowers hereby agree to pay the Letter of Credit Related Person claiming indemnity on demand from time to time all amounts owing under this Section 2.11(f). If and to the extent that the obligations of Borrowers under this Section 2.11(f) are unenforceable for any reason, Borrowers agree to make the maximum contribution to the Letter of Credit Indemnified Costs permissible under applicable law. This indemnification provision shall survive termination of this Agreement and all Letters of Credit.

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

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

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

- (i) any lack of validity, enforceability or legal effect of any Letter of Credit, any Issuer Document, this Agreement, or any Loan Document, or any term or provision therein or herein;
- (ii) payment against presentation of any draft, demand or claim for payment under any Drawing Document that does not comply in whole or in part with the terms of the applicable Letter of Credit or which proves to be fraudulent, forged or invalid in any respect or any statement therein being untrue or inaccurate in any respect, or

which is signed, issued or presented by a Person or a transferee of such Person purporting to be a successor or transferee of the beneficiary of such Letter of Credit;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(k) Borrowers shall pay immediately upon demand to Agent for the account of Issuing Bank as non-refundable fees, commissions, and charges (it being acknowledged and agreed that any charging of such fees, commissions, and charges to the Loan Account pursuant to the provisions of Section 2.6(d) shall be deemed to constitute a demand for payment thereof for the purposes of this Section 2.11(k)): (i) a fronting fee which shall be imposed by Issuing Bank equal to 0.25% per annum times the average amount of the Letter of Credit Usage during the immediately preceding month, plus (ii) any and all other customary commissions, fees and charges then in effect imposed by, and any and all expenses incurred by, Issuing Bank, or by any adviser, confirming institution or entity or other nominated person, relating to Letters of Credit, at the time of issuance of any Letter of Credit and upon the occurrence of any other activity with respect to any Letter of Credit (including transfers, assignments of proceeds, amendments, drawings, renewals or cancellations).

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

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

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

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

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

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

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

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

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

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

2.12 Special Provisions Applicable to Adjusted Daily Simple SOFR.

(a) The Adjusted Daily Simple SOFR may be adjusted by Agent with respect to any Lender on a prospective basis to take into account any additional or increased costs to such Lender of maintaining or increased costs (other than Taxes which shall be governed by Section 16), in each case, due to changes in applicable law, including any Changes in Law and changes in the reserve requirements imposed by the Board of Governors, or similar requirements imposed by any domestic or foreign governmental authority or resulting from compliance by Lender with any request or directive (whether or not having the force of law) from any central bank or other Governmental Authority and related in any manner to SOFR or Adjusted Daily Simple SOFR, which additional or increased costs would increase the cost of funding or maintaining loans bearing interest at the Adjusted Daily Simple SOFR. In any such event, the affected Lender shall give Borrowers and Agent notice of such a determination and adjustment and Agent promptly shall transmit the notice to each other Lender and, upon its receipt of the notice from the affected Lender, Borrowers may, by notice to such affected Lender, require such Lender to furnish to Borrowers a statement setting forth in reasonable detail the basis for adjusting such Adjusted Daily Simple SOFR and the method for determining the amount of such adjustment.

(b) Notwithstanding anything to the contrary contained herein, subject to the occurrence of a Benchmark Transition Event or an Early Opt-in Election, as such terms are defined in Schedule 2.12, in the event that (i) any change in market conditions or any Change in Law shall at any time after the date hereof, in the reasonable opinion of any Lender, make it unlawful or impractical for such Lender to fund or maintain Loans at the Adjusted Daily Simple SOFR, or to continue such funding or maintaining, or to determine or charge interest rates at the Adjusted Daily Simple SOFR, or (ii) any Lender determines that the interest rate hereunder based on the Adjusted Daily Simple SOFR will not adequately and fairly reflect the cost to such Lender of maintaining or funding any Loans based upon Adjusted Daily Simple SOFR, then, in either case, (x) such Lender shall give notice of such changed circumstances to Agent and Borrower, and Agent promptly shall transmit the notice to each other Lender, (y) such Loans of such Lender shall

thereafter bear interest at a per annum rate equal to the Base Rate plus the Applicable Margin and (z) interest based on the Adjusted Daily Simple SOFR shall not be available for Loans of such Lender until such Lender determines that interest based on such rate is again available.

(c) Anything to the contrary contained herein notwithstanding, neither Agent, nor any Lender, nor any of their Participants, is required actually to match fund any Obligation as to which interest accrues at the Adjusted Daily Simple SOFR.

2.13 Capital Requirements.

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

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

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

2.14 Incremental Facility.

(a) Administrative Borrower may, at any time, deliver a written request to Agent to increase the Maximum Revolver Amount. Any such written request shall specify the amount of the increase in the Maximum Revolver Amount (each such increase, an "Increase") that Borrowers are requesting, provided, that, (i) that in no event shall the Revolver Commitments and the Maximum Revolver Amount be increased by an amount in excess of the \$50,000,000, (ii) each such request for an Increase shall be in an amount of at least \$25,000,000 (or such lower amount that Agent may agree to) and integral multiples of \$5,000,000 (or such lower amount that Agent may agree to) in excess thereof, (iii) in no event shall there be more than two (2) such Increases in any calendar year, and (iv) as of the date of such request, and the Increase Effective Date, no Default or Event of Default shall exist or have occurred and be continuing.

(b) Upon the receipt by Agent of any such written request, Agent shall notify each of the Lenders of such request and each Lender shall have the option (but not the obligation) to increase the amount of its Commitment by an amount up to its Pro Rata Share of the amount of the increase thereof requested by Administrative Borrower as set forth in the notice from Agent to such Lender. Each Lender shall notify Agent within ten (10) Business Days after the receipt of such notice from Agent whether it is willing to so increase its Commitment, and if so, the amount of such increase; provided, that, no Lender shall be obligated to provide such increase in its Commitment and the determination to increase the Commitment of a Lender shall be within the sole and absolute discretion of such Lender. If the aggregate amount of the increases in the Commitments received from the Lenders does not equal or exceed the amount of the increase in the Maximum Revolver Amount requested by Administrative Borrower, Agent may seek additional increases from Lenders or Commitments from such Eligible Transferees as it may determine, after consultation with Administrative Borrower. In the event Lenders (or Lenders and any such Eligible Transferees, as the case may be) have committed in writing to provide increases in their Commitments or new Commitments in an aggregate amount in excess of the increase in the Maximum Revolver Amount requested by Borrowers or permitted hereunder, Agent shall then have the right to allocate such commitments, first to Lenders and then to Eligible Transferees, in such amounts and manner as Agent may determine, after consultation with Administrative Borrower.

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

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

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

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

(iv) Borrowers have delivered to Agent updated pro forma Projections (after giving effect to the applicable Increase) for the Borrowers and their Subsidiaries evidencing compliance on a pro forma basis with Section 7 for the twelve (12) months (on a month-by-month basis) immediately following the proposed date of the applicable Increase (calculated as if testing of the covenant in such Section 7 was in effect during the entire twelve (12) month period), and

(v) Borrowers shall have reached agreement with the Lenders (or prospective lenders) agreeing to the increased Commitment with respect to the interest margins applicable to Revolving Loans to be made pursuant to the increased Commitment (which interest margins may be with respect to Revolving Loans made pursuant to the increased Commitment, higher than, lower than or equal to the interest margins applicable to Revolving Loans set forth in this Agreement immediately prior to the date of the increased Commitment (the date of the effectiveness of the increased Commitment and the Maximum Revolver Amount, the “Increase Date”)) and shall have communicated the amount of such interest margins to Agent. Any Increase Joinder may, with the consent of Agent, Borrowers and only the Lenders or prospective lenders agreeing to the proposed Increase, effect such amendments to this Agreement and the other Loan Documents as may be necessary to effectuate the provisions of this Section 2.14 (including any amendment necessary to effectuate the interest margins for the Revolving Loans to be made pursuant to the increased Commitment. Anything to the contrary contained herein notwithstanding, in the event that there is more than one Lender (excluding other Issuing Banks in such capacities for this purpose) on any Increase Date, if the all-in yield (including interest margins, interest floors, and any original issue discount or similar yield-related discounts or payments, but excluding any arrangement, underwriting, or similar fees payable in connection therewith that are not paid to all Lenders providing the Increase to the Commitment that is to be applicable to the Revolving Loans to be made pursuant to the increased Commitment is higher than the all-in yield (including interest margins, interest floors, and any original issue discount or similar yield-related discounts or payments, but excluding any arrangement, underwriting, or similar fees payable in connection therewith that are not paid to all Lenders providing the Increase to the Commitment applicable to the Revolving Loans hereunder (as applicable) immediately prior to the applicable Increase Date (the amount by which all-in yield is higher, the “Excess”), then the interest margin applicable to the Revolving Loans immediately prior to the Increase Date shall be increased by the amount of the Excess, effective on the applicable Increase Date, and without the necessity of any action by any party hereto.

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

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

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

2.15 Joint and Several Liability of Borrowers

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

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

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

(d) The Obligations of each Borrower under the provisions of this Section 2.15 constitute the absolute and unconditional, full recourse Obligations of each Borrower enforceable against each Borrower to the full extent of its properties and assets, irrespective of the validity, regularity or enforceability of the provisions of this Agreement (other than this Section 2.15(d)) or any other circumstances whatsoever.

(e) Without limiting the generality of the foregoing and except as otherwise expressly provided in this Agreement, each Borrower hereby waives presentments, demands for performance, protests and notices, including notices of acceptance of its joint and several liability, notice of any Revolving Loans, or any Letters of Credit issued under or pursuant to this Agreement, notice of the occurrence of any Default, Event of Default, notices of nonperformance, notices of protest, notices of dishonor, notices of acceptance of this Agreement, notices of the existence, creation, or incurring of new or additional Obligations or other financial accommodations or of any demand for any payment under this Agreement, notice of any action at any time taken or omitted by Agent or Lenders under or in respect of any of the Obligations, any right to proceed against any other Borrower or any other Person, to proceed against or exhaust any security held from any other Borrower or any other Person, to protect, secure, perfect, or insure any

security interest or Lien on any property subject thereto or exhaust any right to take any action against any other Borrower, any other Person, or any collateral, to pursue any other remedy in any member of the Lender Group's or any Bank Product Provider's power whatsoever, any requirement of diligence or to mitigate damages and, generally, to the extent permitted by applicable law, all demands, notices and other formalities of every kind in connection with this Agreement (except as otherwise provided in this Agreement), any right to assert against any member of the Lender Group or any Bank Product Provider, any defense (legal or equitable), set-off, counterclaim, or claim which each Borrower may now or at any time hereafter have against any other Borrower or any other party liable to any member of the Lender Group or any Bank Product Provider, any defense, set-off, counterclaim, or claim, of any kind or nature, arising directly or indirectly from the present or future lack of perfection, sufficiency, validity, or enforceability of the Obligations or any security therefor, and any right or defense arising by reason of any claim or defense based upon an election of remedies by any member of the Lender Group or any Bank Product Provider including any defense based upon an impairment or elimination of such Borrower's rights of subrogation, reimbursement, contribution, or indemnity of such Borrower against any other Borrower. Without limiting the generality of the foregoing, each Borrower hereby assents to, and waives notice of, any extension or postponement of the time for the payment of any of the Obligations, the acceptance of any payment of any of the Obligations, the acceptance of any partial payment thereon, any waiver, consent or other action or acquiescence by Agent or Lenders at any time or times in respect of any default by any Borrower in the performance or satisfaction of any term, covenant, condition or provision of this Agreement, any and all other indulgences whatsoever by Agent or Lenders in respect of any of the Obligations, and the taking, addition, substitution or release, in whole or in part, at any time or times, of any security for any of the Obligations or the addition, substitution or release, in whole or in part, of any Borrower. Without limiting the generality of the foregoing, each Borrower assents to any other action or delay in acting or failure to act on the part of any Agent or Lender with respect to the failure by any Borrower to comply with any of its respective Obligations, including any failure strictly or diligently to assert any right or to pursue any remedy or to comply fully with applicable laws or regulations thereunder, which might, but for the provisions of this Section 2.15 afford grounds for terminating, discharging or relieving any Borrower, in whole or in part, from any of its Obligations under this Section 2.15, it being the intention of each Borrower that, so long as any of the Obligations hereunder remain unsatisfied, the Obligations of each Borrower under this Section 2.15 shall not be discharged except by performance and then only to the extent of such performance. The Obligations of each Borrower under this Section 2.15 shall not be diminished or rendered unenforceable by any winding up, reorganization, arrangement, liquidation, reconstruction or similar proceeding with respect to any other Borrower or any Agent or Lender. Each of the Borrowers waives, to the fullest extent permitted by law, the benefit of any statute of limitations affecting its liability hereunder or the enforcement hereof. Any payment by any Borrower or other circumstance which operates to toll any statute of limitations as to any Borrower shall operate to toll the statute of limitations as to each of the Borrowers. Each of the Borrowers waives any defense based on or arising out of any defense of any Borrower or any other Person, other than payment of the Obligations to the extent of such payment, based on or arising out of the disability of any Borrower or any other Person, or the validity, legality, or unenforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any Borrower other than payment of the Obligations to the extent of such payment. Agent may, at the election of the Required Lenders, foreclose upon any Collateral held by Agent by one or more judicial or nonjudicial sales or other dispositions, whether or not every aspect of any such sale is commercially reasonable or otherwise fails to comply with applicable law or may exercise any other right or remedy Agent, any other member of the Lender Group, or any Bank Product Provider may have against any Borrower or any other Person, or any security, in each case, without affecting or impairing in any way the liability of any of the Borrowers hereunder except to the extent the Obligations have been paid.

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

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

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

(i) [Reserved].

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3. CONDITIONS; TERM OF AGREEMENT.

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

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

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

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

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

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

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

4. REPRESENTATIONS AND WARRANTIES.

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

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

(a) Each Loan Party and each of its Subsidiaries and Parent (i) is duly organized and existing and in good standing under the laws of the jurisdiction of its organization, (ii) is qualified to do business in any state where the failure to be so qualified could reasonably be expected to result in a Material Adverse Effect, and (iii) has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted (except, with respect to Parent, where the failure to be so qualified could not reasonably be expected to result in a Material Adverse Effect), to enter into the Loan Documents to which it is a party and to carry out the transactions contemplated thereby.

(b) Set forth on Schedule 4.1(b) to this Agreement (as such Schedule may be updated from time to time at the request of Agent) is a complete and accurate description of the authorized Equity Interests of each Loan Party and of Parent, by class, and, as of the Closing Date, a description of the number of shares of each such class that are issued and outstanding (with respect to Parent, only to the extent 25% of any such Equity Interests are owned by a single Person, or such lower percentage as may be required for Agent or and Lender to comply with any legal or regulatory requirements to which it is subject).

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

(d) Except as set forth on Schedule 4.1(d) to this Agreement, or in any public filings with the U.S. Securities and Exchange Commission with respect to Parent, there are no subscriptions, options, warrants, or calls relating to any shares of Parent any Loan Party's or any of their respective Subsidiaries' Equity Interests, including any right of conversion or exchange under any outstanding security or other instrument. Neither Parent nor any Loan Party is subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire any shares of its Equity Interests or any security convertible into or exchangeable for any of its Equity Interests, except, with respect to Parent, as reported in any public filings with the U.S. Securities and Exchange Commission.

4.2 **Due Authorization; No Conflict.**

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

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

Parent as of the Closing Date), other than consents or approvals that have been obtained and that are still in force and effect and except, in the case of material agreements, for consents or approvals, the failure to obtain could not individually or in the aggregate reasonably be expected to cause a Material Adverse Effect.

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

4.4 **Binding Obligations; Perfected Liens.**

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

(b) Agent's Liens are validly created, perfected (other than (i) in respect of motor vehicles that are subject to a certificate of title, (ii) money, (iii) letter-of-credit rights (other than supporting obligations), (iv) commercial tort claims (other than those that, by the terms of the Guaranty and Security Agreement, are required to be perfected), and (v) any Deposit Accounts and Securities Accounts not subject to a Control Agreement as permitted by Section 7(k)(iv) of the Guaranty and Security Agreement, and subject only to the filing of financing statements, in each case, in the appropriate filing offices), and subject to the Intercreditor Agreement, first priority Liens, subject only to Permitted Liens which are (A) non-consensual Permitted Liens, (B) permitted purchase money Liens, (C) the interests of lessors under Capital Leases, or (D) Liens securing the Term Loan Debt permitted pursuant to clause (f) of the definition of Permitted Indebtedness (provided, that, such Liens are subject to the Intercreditor Agreement).

4.5 **Title to Assets; No Encumbrances.** Each of the Borrowers and its Subsidiaries has (a) good, sufficient and legal title to (in the case of fee interests in Real Property), (b) valid leasehold interests in (in the case of leasehold interests in real or personal property), and (c) good and marketable title to (in the case of all other personal property), all of their respective assets reflected in their most recent financial statements delivered pursuant to Section 5.1, in each case except for assets disposed of since the date of such financial statements to the extent permitted hereby. All of such assets are free and clear of Liens except for Permitted Liens.

4.6 **Litigation.** There are no actions, suits, or proceedings pending or, to the knowledge of any Borrower, after due inquiry, threatened in writing against Parent, a Loan Party or any of its Subsidiaries that either individually or in the aggregate could reasonably be expected to result in a Material Adverse Effect.

4.7 **Compliance with Laws.** Neither Parent, nor any Loan Party, nor any subsidiary of any Loan Party (a) is in violation of any applicable laws, rules, regulations, executive orders, or codes (including Environmental Laws) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, or (b) is subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

4.8 **No Material Adverse Effect.** As of the Closing Date, all historical financial statements relating to Parent, the the Loan Parties and their Subsidiaries (and Parent) that have been delivered by Borrowers to Agent have been prepared in accordance with GAAP in all material respects (except, in the case of unaudited financial statements, for the lack of footnotes and being subject to year-end audit adjustments) and present fairly in all material respects, the Parent's and Loan Parties' consolidated financial condition as of the date thereof and results of operations for the period then ended. Since December 31, 2016 through the Closing Date, no event, circumstance, or change has occurred that has or could reasonably be expected to result in a Material Adverse Effect.

4.9 **Solvency.**

(a) Each Loan Party and Parent is Solvent (with respect to Parent only, on a consolidated basis with its Subsidiaries).

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

4.10 **Employee Benefits.**

(a) Except as set forth on Schedule 4.10, no Loan Party or any of its Subsidiaries, nor any of their ERISA Affiliates, sponsors, maintains or contributes to (i) any Pension Plan or (ii) any Multiemployer Plan that is intended to qualify as such under Section 401(a) of the IRC.

(b) Each Loan Party has complied in all material respects with ERISA, the IRC and all applicable laws regarding each Employee Benefit Plan other than any such instances of non-compliance that are not reasonably expected to result in an Event of Default under Section 8.12 below.

(c) Each Employee Benefit Plan is, and has been, administered and operated in all material respects in substantial compliance with ERISA, the IRC, all applicable laws and the terms of each such Employee Benefit Plan other than any such instances of non-compliance that are not reasonably expected to result in an Event of Default under Section 8.12 below.

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

(e) No liability to the PBGC (other than for the payment of current premiums which are not past due) by any Loan Party or any of its Subsidiaries has been incurred or is reasonably expected to be incurred by any Loan Party or any of its Subsidiaries with respect to any Pension Plan that is reasonably expected to result in an Event of Default under Section 8.12 below.

(f) No Notification Event exists that could reasonably be expected to result in an Event of Default under Section 8.12 below.

(g) No Loan Party or ERISA Affiliate has provided any security under Section 436 of the IRC that could reasonably be expected to result in an Event of Default under Section 8.12 below.

(h) No Loan Party or any of its Subsidiaries has incurred or is reasonably expected to incur any liability as the result of any ERISA Affiliate that could reasonably be expected to result in an Event of Default under Section 8.12 below.

4.11 **Environmental Condition.** Except as set forth on Schedule 4.11 to this Agreement, (a) to each Borrower's knowledge, no Loan Party's nor any of its Subsidiaries' properties or assets has ever been used by a Loan Party, its Subsidiaries, or to Borrower's knowledge, by previous owners or operators in the disposal of, or to produce, store, handle, treat, release, or transport, any Hazardous Materials, where such disposal, production, storage, handling, treatment, release or transport was in violation, in any material respect, of any applicable Environmental Law, (b) to each Borrower's knowledge, after due inquiry, no Loan Party's nor any of its Subsidiaries' properties or assets has ever been designated or identified in any manner pursuant to any environmental protection statute as a Hazardous Materials disposal site, (c) no Loan Party nor any of its Subsidiaries has received notice that a Lien arising under any Environmental Law has attached to any revenues or to any Real Property owned or operated by a Loan Party or its Subsidiaries, and (d) no Loan Party nor any of its Subsidiaries nor any of their respective facilities or operations is subject to any outstanding written order, consent decree, or settlement agreement with any Person relating to any Environmental Law or Environmental Liability, in each case, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

4.12 **Complete Disclosure.** All factual information taken as a whole (other than forward-looking information and projections and information of a general economic nature and general information about the industry of any Loan Party or its Subsidiaries) furnished by or on behalf of a Loan Party or its Subsidiaries in writing to Agent or any Lender (including all information contained in the Schedules hereto or in the other Loan Documents) for purposes of or in connection with this Agreement or the other Loan Documents, and all other such factual information taken as a whole (other than forward-looking information and projections and information of a general economic nature and general information about the industry of any Loan Party or its Subsidiaries) hereafter furnished by or on behalf of a Loan Party or its Subsidiaries in writing to Agent or any Lender will be, true and accurate, in all material respects, on the date as of which such information is dated or certified and not incomplete by omitting to state any fact necessary to make such information (taken as a whole) not misleading in any material respect at such time in light of the circumstances under which such information was provided.

4.13 **Patriot Act.** To the extent applicable, Parent and each Loan Party is in compliance, in all material respects, with the (a) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (b) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001, as amended) (the "Patriot Act").

4.14 **[Reserved]**

4.15 **Payment of Taxes.** Except as otherwise permitted under Section 5.5, all Tax returns and reports of each Borrower and its Subsidiaries, required to be filed by any of them have been timely filed, and all Taxes shown on such Tax returns to be due and payable and all other Taxes upon each Borrower or its Subsidiaries, or upon their respective assets, income, businesses and franchises, that are due and payable have been paid when due and payable (except, with respect to Parent, to the extent that it could not reasonably be expected to result in a Material Adverse Effect). Each Borrower and each of its Subsidiaries have made adequate provision in accordance with GAAP for all Taxes not yet due and payable. No Borrower knows of any proposed Tax assessment against a Borrower or any of its Subsidiaries that either has not been consented to by Borrower or Subsidiary or is not subject to a Permitted Protest.

4.16 **Margin Stock.** No Borrower nor any Subsidiaries of any Borrower owns any Margin Stock or is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No part of the proceeds of the loans made to Borrowers will be used to purchase or carry any Margin Stock or to extend credit to others for the purpose of purchasing or carrying any Margin Stock or for any purpose that violates the provisions of Regulation T, U or X of the Board of Governors. No Borrower nor any Subsidiaries of any Borrower expects to acquire any Margin Stock.

4.17 **Governmental Regulation.** No Borrower and no Subsidiary of any Borrower is subject to regulation under the Federal Power Act or the Investment Company Act of 1940 or under any other federal or state statute or regulation which may limit its ability to incur the Obligations as applicable to it or which may otherwise render all or any portion of the Obligations unenforceable. No Borrower nor Subsidiaries of any Borrower is a "registered investment company" or a company "controlled" by a "registered investment company" or a "principal underwriter" of a "registered investment company" as such terms are defined in the Investment Company Act of 1940.

4.18 **OFAC; Sanctions; Anti-Corruption Laws; Anti-Money Laundering Laws.** Neither Parent nor any of its Subsidiaries is in violation of any Sanctions. Neither Parent nor any of its Subsidiaries nor, to the knowledge of each Loan Party, any director, officer, employee or Affiliate of Parent or such Subsidiary (a) is a Sanctioned Person or a Sanctioned Entity, (b) has any assets located in Sanctioned Entities, or (c) derives revenues from investments in, or transactions with Sanctioned Persons or Sanctioned Entities. Parent and its Subsidiaries have collectively implemented and maintains in effect policies reasonably designed to ensure compliance with all Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. Parent and its Subsidiaries, and to the knowledge of each such Loan Party, each director, officer, employee and Affiliate of Parent and each such Subsidiary, is in compliance with all Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. No proceeds of any Loan made nor any Letter of Credit issued hereunder will be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Entity, or otherwise used in any manner that would result in a violation of any Sanction, Anti-Corruption Law or Anti-Money Laundering Law by Parent, any of its Subsidiaries or any of its or their respective Affiliates.

4.19 **Employee and Labor Matters.**

(a) There is (i) no unfair labor practice complaint pending or, to the knowledge of any Borrower, threatened against any Borrower or its Subsidiaries before any Governmental Authority and no grievance or arbitration proceeding pending or threatened against any Borrower or its Subsidiaries which arises out of or under any collective bargaining agreement and that could reasonably be expected to result in a material liability, (ii) no strike, labor dispute, slowdown, stoppage or similar action or grievance pending or threatened in writing against any Borrower or its Subsidiaries that could reasonably be expected to result in a material liability, or (iii) to the knowledge of any Borrower, after due inquiry, no union representation question existing with respect to the employees of any Borrower or its Subsidiaries and no union organizing activity taking place with respect to any of the employees of any Borrower or its Subsidiaries. No Borrower or its Subsidiaries has incurred any liability or obligation under the Worker Adjustment and Retraining Notification Act or similar state law, which remains unpaid or unsatisfied. The hours worked and payments made to employees of each Borrower and its Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable legal requirements, except to the extent such violations could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. All material payments due from any Borrower or its Subsidiaries on account of wages and employee health and welfare insurance and other benefits have been paid or accrued as a liability on the books of Borrowers, except where the failure to do so could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(b) No Loan Party (other than the Borrowers and their Subsidiaries) is engaged in any unfair labor practice that could reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect. There is (i) no strike, labor dispute, slowdown, or stoppage pending against any Loan Party (other than the Borrowers and

their Subsidiaries) or, to the Borrowers' knowledge, threatened against or affecting a Loan Party (other than the Borrowers and their Subsidiaries) and (ii) to the Borrowers' knowledge, no union representation proceeding is pending with respect to the employees of any Loan Party (other than the Borrowers and their Subsidiaries) and no union organizing activities are taking place, except (with respect to any matter specified in clause (i) or (ii) above, either individually or in the aggregate) such as could not reasonably be expected to have a Material Adverse Effect. The hours worked and payments made to employees of each Loan Party and its Subsidiaries (other than the Borrowers and their Subsidiaries) have not been in violation of the Fair Labor Standards Act or any other applicable legal requirements, except to the extent such violations could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. All material payments due from any Loan Party or its Subsidiaries (other than the Borrowers and their Subsidiaries) on account of wages and employee health and welfare insurance and other benefits have been paid or accrued as a liability on the books of Borrowers, except where the failure to do so could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

4.20 [Reserved]

4.21 **Leases.** Each Borrower and its Subsidiaries enjoy peaceful and undisturbed possession under all leases material to their business and to which they are parties or under which they are operating, and, subject to Permitted Protests, all of such material leases are valid and subsisting and no material default by the applicable Borrower or its Subsidiaries exists under any of them.

4.22 **Eligible Accounts.** As to each Account that is identified by Borrowers as an Eligible Account in a Borrowing Base Certificate submitted to Agent, such Account is (a) a bona fide existing payment obligation of the applicable Account Debtor created by the sale and delivery of Inventory or the rendition of services to such Account Debtor in the ordinary course of a Borrower's business, (b) owed to a Borrower without any known defenses, disputes, offsets, counterclaims, or rights of return or cancellation, and (c) not excluded as ineligible by virtue of one or more of the excluding criteria (other than any Agent-discretionary criteria) set forth in the definition of Eligible Accounts.

4.23 **Eligible Inventory.** As to each item of Inventory that is identified by Borrowers as Eligible Finished Goods Inventory, or Eligible In-Transit Inventory, in a Borrowing Base Certificate submitted to Agent, such Inventory is (a) of good and merchantable quality, free from known defects, and (b) not excluded as ineligible by virtue of one or more of the excluding criteria (other than any Agent-discretionary criteria) set forth in the definition of Eligible Inventory (in the case of Eligible In-Transit Inventory, after giving effect to any exclusions therefrom specified in the definition of Eligible In-Transit Inventory).

4.24 **Location of Inventory.** Other than de minimus amounts of Inventory in the ordinary course of operations, the Inventory of Borrowers and their Subsidiaries is not stored with a bailee, warehouseman, or similar party and is located only at, or in-transit between, the locations identified on Schedule 4.25 to this Agreement (as such Schedule may be updated pursuant to Section 5.14).

4.25 **Inventory Records.** Each Borrower keeps correct and accurate records itemizing and describing the type, quality, and quantity of its and its Subsidiaries' Inventory and the book value thereof in all material respects.

4.26 **Hedge Agreements.** On each date that any Hedge Agreement is executed by any Hedge Provider, each Borrower satisfies all eligibility, suitability and other requirements under the Commodity Exchange Act (7 U.S.C. § 1, et seq., as in effect from time to time) and the Commodity Futures Trading Commission regulations.

4.27 **Material Contracts.** Schedule 4.29 to this Agreement sets forth all Material Contracts to which any Borrower is a party or is bound as of the date hereof. Borrowers have delivered or otherwise made available true, correct and complete copies of such Material Contracts to Agent on or before the date hereof. Borrowers are not in breach or in default in any material respect of or under any Material Contract and have not received any notice of the intention of any other party thereto to terminate any Material Contract.

4.28 **Pacific Ethanol Acquired Inventory.** Pursuant to the Marketing Agreements, (a) title to Pacific Ethanol Acquired Inventory consisting of ethanol passes from the seller to the applicable Borrower at the fill nozzle to the tank in which such Pacific Ethanol Acquired Inventory is stored by such seller, and (b) title to Pacific Ethanol Acquired Inventory consisting of co-products and distiller grain products passes from the seller to the applicable Borrower upon deposit of such co-product or distiller grain product by such seller into a receiving truck, barge, or railcar located on the storage facility of such seller. No storage tank or storage facility that stores or holds Pacific Ethanol Acquired Inventory as of any date of determination stores or holds any asset or property as of such date of determination other than Pacific Ethanol Acquired Inventory. To the extent a storage tank or storage facility holds Pacific Ethanol Acquired Inventory as of any date of determination, all ethanol and co-products stored or held in such storage tank or storage facility as of such date of determination constitutes Pacific Ethanol Acquired Inventory.

5. AFFIRMATIVE COVENANTS.

Each Borrower covenants and agrees that, until the termination of all of the Commitments and payment in full of the Obligations:

5.1 **Financial Statements, Reports, Certificates.** Borrowers (a) will deliver to Agent, with copies to each Lender, each of the financial statements, reports, and other items set forth on Schedule 5.1 to this Agreement no later than the times specified therein, (b) agree that neither Parent nor any Borrower or any Subsidiary of a Borrower will have a fiscal year different from that of Administrative Borrower, (c) agree to maintain a system of accounting that enables Borrowers to produce financial statements in accordance with GAAP, and (d) agree that they will, and will cause each other Borrower and Parent to, (i) keep a reporting system that shows all additions, sales, claims, returns, and allowances with respect to their and their Subsidiaries' sales, and (ii) maintain their billing systems and practices substantially as in effect as of the Closing Date and shall only make material modifications thereto with notice to and with the consent of Agent in its Permitted Discretion.

5.2 **Reporting.** Borrowers (a) will deliver to Agent (and if so requested by Agent, with copies for each Lender) each of the reports set forth on Schedule 5.2 to this Agreement at the times specified therein, and (b) agree to use commercially reasonable efforts in cooperation with any reasonable request of Agent to facilitate and implement a system of electronic collateral reporting in order to provide electronic reporting of each of the items set forth on such Schedule.

5.3 **Existence.** Except as otherwise permitted under Section 6.3 or Section 6.4, each Loan Party will, and will cause each of its Subsidiaries to, at all times preserve and keep in full force and effect such Person's valid existence and good standing in its jurisdiction of organization and, except as could not reasonably be expected to result in a Material Adverse Effect, good standing with respect to all other jurisdictions in which it is qualified to do business and any rights, franchises, permits, licenses, accreditations, authorizations, or other approvals material to their businesses.

5.4 **Maintenance of Properties.** Each Borrower will, and will cause each of its Subsidiaries to, maintain and preserve all of its assets that are necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear, tear, casualty, and condemnation and Permitted Dispositions excepted (and except where the failure to so maintain and preserve assets could not reasonably be expected to result in a Material Adverse Effect).

5.5 **Taxes.** Each Borrower will, and will cause each of its Subsidiaries to, pay in full before delinquency or before the expiration of any extension period all Taxes imposed, levied, or assessed against it, or any of its assets or in respect of any of its income, businesses, or franchises, other than to the extent that the validity of such Tax is the subject of a Permitted Protest.

5.6 **Insurance.** Each Borrower will, and will cause each of its Subsidiaries to, at Borrowers' expense, maintain insurance respecting each of each Borrower's and its Subsidiaries' assets wherever located, covering liabilities, losses or damages as are customarily are insured against by other Persons engaged in same or similar businesses and similarly situated and located. All such policies of insurance shall be with financially sound and reputable insurance companies acceptable to Agent and in such amounts as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated and located and, in any event, in amount, adequacy, and scope reasonably satisfactory to Agent (it being agreed that the amount, adequacy, and scope of the policies of insurance of Borrowers in effect as of the Closing Date are acceptable to Agent). All property insurance policies are to be made payable to Agent for the benefit of Agent and the Lenders, as their interests may appear, in case of loss, pursuant to a standard lender's loss payable endorsement with a standard non-contributory "lender" or "secured party" clause and are to contain such other provisions as Agent may reasonably require to fully protect the Lenders' interest in the Collateral and to any payments to be made under such policies. All certificates of property and general liability insurance are to be delivered to Agent, with the lender's loss payable and additional insured endorsements in favor of Agent and shall provide for not less than thirty days (ten days in the case of non-payment) prior written notice to Agent of the exercise of any right of cancellation. If any Borrower or its Subsidiaries fails to maintain such insurance, Agent may arrange for such insurance, but at Borrowers' expense and without any responsibility on Agent's part for obtaining the insurance, the solvency of the insurance companies, the adequacy of the coverage, or the collection of claims. Borrowers shall give Agent prompt notice of any loss exceeding \$1,000,000.00 covered by the casualty or business interruption insurance of any Borrower or its Subsidiaries. Upon the occurrence and during the continuance of an Event of Default, Agent shall have the sole right to file claims under any property and general liability insurance policies in respect of the Collateral, to receive, receipt and give acquittance for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies.

5.7 **Inspection.**

(a) Each Borrower will, and will cause each of its Subsidiaries and Parent to, permit Agent, any Lender, and each of their respective duly authorized representatives or agents to visit any of its properties and inspect any of its assets or books and records, to examine and make copies of its books and records, and to discuss its affairs, finances, and accounts with, and to be advised as to the same by, its officers and employees (provided, that an authorized representative of a Borrower shall be allowed to be present) at such reasonable times and intervals as Agent or any Lender, as applicable, may designate and, so long as no Default or Event of Default has occurred and is continuing, with reasonable prior notice to Borrowers and during regular business hours, at Borrowers' expense in accordance with the provisions of the Fee Letter, subject to the limitations set forth below in Section 5.7(c).

(b) Each Borrower will, and will cause each of its Subsidiaries and Parent to, permit Agent and each of its duly authorized representatives or agents to conduct field examinations, appraisals or valuations at such reasonable times and intervals as Agent may designate, at Borrowers' expense in accordance with the provisions of the Fee Letter, subject to the limitations set forth below in Section 5.7(c).

(c) So long as no Default or Event of Default has occurred and is continuing, Borrowers shall not be obligated to pay Agent for out-of-pocket expenses and costs incurred by Agent in connection with more than one (1) such field examination in any twelve (12) month period (or two (2) times during any 12 month period if Excess Availability is at any time during such 12 month period less than 15% of the Maximum Revolver Amount) following the date hereof. In addition, Agent may, at its election and at Borrower's expense, no more than one (1) time in any twelve (12) month period (or two (2) times during any 12 month period (x) with respect to any Inventory subject to a Borrower Requested Appraisal (as defined below) or (y) if Excess Availability is at any time during such 12 month period less than 15% of the Maximum Revolver Amount), conduct appraisals as to the Inventory, which appraisals shall be Acceptable Appraisals, provided, that, (i) if an Event of Default has occurred and is continuing, Agent may conduct, at Borrowers' expense, such additional appraisals as to the Inventory without limitation, as determined by Agent and (ii) at the request of Borrower made no more than one (1) time in any 12 month period, Agent shall conduct, at the expense of Borrower, an appraisal of Inventory selected by Borrower for appraisal (any such appraisal under this clause (ii) referred to herein as a "Borrower Requested Appraisal");

5.8 **Compliance with Laws.** Each Borrower will, and will cause each of its Subsidiaries and Parent to, comply with the requirements of all applicable laws, rules, regulations, and orders of any Governmental Authority, other than laws, rules, regulations, and orders the non-compliance with which, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

5.9 **Environmental.** Each Borrower will, and will cause each of its Subsidiaries and Parent (with respect to Parent only, to the extent its failure to do so could reasonably be expected to result in a Material Adverse Effect) to,

(a) Keep any property either owned or operated by any Borrower or its Subsidiaries free of any Environmental Liens or post bonds or other financial assurances sufficient to satisfy the obligations or liability evidenced by such Environmental Liens,

(b) Comply, in all material respects, with Environmental Laws and provide to Agent documentation of such compliance which Agent reasonably requests,

(c) Promptly notify Agent of any release of which any Borrower has knowledge of a Hazardous Material in any reportable quantity from or onto property owned or operated by any Borrower or its Subsidiaries and take any Remedial Actions required to abate said release or otherwise to come into compliance, in all material respects, with applicable Environmental Law, and

(d) Promptly, but in any event within ten (10) Business Days of its receipt thereof, provide Agent with written notice of any of the following: (i) notice that an Environmental Lien has been filed against any of the real or personal property of a Borrower or its Subsidiaries, (ii) commencement of any Environmental Action or written notice that an Environmental Action will be filed against a Borrower or its Subsidiaries, and (iii) written notice of a violation, citation, or other administrative order from a Governmental Authority to the extent any such violation, citation or other administrative order could result in a Material Adverse Effect.

5.10 **Disclosure Updates.** Each Borrower will, promptly and in no event later than ten (10) Business Days after obtaining knowledge thereof, notify Agent if any written information, exhibit, or report furnished to Agent or the Lenders contained, at the time it was furnished, any untrue statement of a material fact or omitted to state any material fact necessary to make the statements contained therein not misleading in light of the circumstances in which made. The foregoing to the contrary notwithstanding, any

notification pursuant to the foregoing provision will not cure or remedy the effect of the prior untrue statement of a material fact or omission of any material fact nor shall any such notification have the effect of amending or modifying this Agreement or any of the Schedules hereto.

5.11 Formation of Subsidiaries. Each Borrower will, at the time that any Borrower forms any direct or indirect Subsidiary, acquires any direct or indirect Subsidiary after the Closing Date, within ten days of such event (or such later date as permitted by Agent in its sole discretion) (a) cause such new Subsidiary (i) if Administrative Borrower requests, subject to the consent of Agent, that such Domestic Subsidiary be joined as a Borrower hereunder, to provide to Agent a Joinder to this Agreement, and (ii) to provide to Agent a joinder to the Guaranty and Security Agreement, in each case, together with such other security agreements, as well as appropriate financing statements, all in form and substance reasonably satisfactory to Agent (including being sufficient to grant Agent a first priority Lien (subject to Permitted Liens) in and to the assets of such newly formed or acquired Subsidiary); provided, that the Joinder, the joinder to the Guaranty and Security Agreement, and such other security agreements shall not be required to be provided to Agent with respect to any Subsidiary of any Borrower that is a CFC if providing such agreements would result in adverse tax consequences or the costs to the Borrowers of providing such guaranty or such security agreements are unreasonably excessive (as determined by Agent in consultation with Borrowers) in relation to the benefits to Agent and the Lenders of the security or guarantee afforded thereby, (b) provide, or cause the applicable Borrower to provide, to Agent a pledge agreement (or an addendum to the Guaranty and Security Agreement) and appropriate certificates and powers or financing statements, pledging all of the direct or beneficial ownership interest in such new Subsidiary in form and substance reasonably satisfactory to Agent; provided, that only 65% of the total outstanding voting Equity Interests of any first tier Subsidiary of a Borrower that is a CFC (and none of the Equity Interests of any Subsidiary of such CFC) shall be required to be pledged if pledging a greater amount would result in adverse tax consequences or the costs to the Borrowers of providing such pledge are unreasonably excessive (as determined by Agent in consultation with Borrowers) in relation to the benefits to Agent and the Lenders of the security afforded thereby (which pledge, if reasonably requested by Agent, shall be governed by the laws of the jurisdiction of such Subsidiary), and (c) provide to Agent all other documentation, including the Governing Documents of such Subsidiary and one or more opinions of counsel reasonably satisfactory to Agent, which, in its opinion, is appropriate with respect to the execution and delivery of the applicable documentation referred to above (including policies of title insurance, flood certification documentation or other documentation with respect to all Real Property). Any document, agreement, or instrument executed or issued pursuant to this Section 5.11 shall constitute a Loan Document.

5.12 Further Assurances. Each Borrower will, and will cause each of the other Loan Parties to, at any time upon the reasonable request of Agent, execute or deliver to Agent any and all financing statements, fixture filings, security agreements, pledges, assignments, and all other documents (the “Additional Documents”) that Agent may reasonably request in form and substance reasonably satisfactory to Agent, to (i) create, perfect, and continue perfected or to better perfect Agent’s Liens in all of the assets of each of the Loan Parties (whether now owned or hereafter arising or acquired, tangible or intangible, real or personal) (other than any assets expressly excluded from the Collateral (as defined in the Guaranty and Security Agreement) pursuant to Section 3 of the Guaranty and Security Agreement), and (ii) in order to fully consummate all of the transactions contemplated hereby and under the other Loan Documents; provided, that the foregoing shall not apply to any Subsidiary of a Borrower that is a CFC if providing such documents would result in adverse tax consequences or the costs to the Loan Parties of providing such documents are unreasonably excessive (as determined by Agent in consultation with Borrowers) in relation to the benefits to Agent and the Lenders of the security afforded thereby. To the maximum extent permitted by applicable law, if any Borrower or any other Borrower or Parent refuses or fails to execute or deliver any reasonably requested Additional Documents within a reasonable period of time not to exceed ten (10) Business Days following the written request of Agent to do so, each Borrower and each other Borrower and Parent hereby authorizes Agent to execute any such Additional Documents in the applicable Borrower’s name and authorizes Agent to file such executed Additional Documents in any appropriate filing office. In furtherance of, and not in limitation of, the foregoing, each Borrower and Parent shall take such actions as Agent may reasonably request from time to time to ensure that the Obligations, to the extent guaranteed by the Guarantors, continue to be so guaranteed.

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5.13 [Reserved].

5.14 Location of Inventory; Chief Executive Office. Each Borrower will, and will cause each of its Subsidiaries to, keep (a) except while in transit in the ordinary course of business, and a de minimis amount of Inventory that is not Eligible Inventory, all Inventory only at the locations identified on Schedule 4.25 to this Agreement (provided that Borrowers may amend Schedule 4.25 to this Agreement so long as such amendment occurs by written notice to Agent not less than ten (10) days prior to the date on which such Inventory is moved to such new location and so long as Agent has consented to such amendment and such new location is within the continental United States), and (b) their respective chief executive offices only at the locations identified on Schedule 7 to the Guaranty and Security Agreement. Each Borrower will, and will cause each of its Subsidiaries to, use their commercially reasonable efforts to obtain (i) Collateral Access Agreements for each of the locations at which Eligible Inventory is located, and (ii) ratification of all Collateral Access Agreements delivered to Agent’s predecessor agent, Wells Fargo Capital Finance, LLC, under the Existing Loan Agreement.

5.15 OFAC; Sanctions; Anti-Corruption Laws; Anti-Money Laundering Laws. Each Borrower will, and will cause Parent and each of its Subsidiaries to, comply with all applicable Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. Each of the Loan Parties shall implement and maintain, and cause Parent and its Subsidiaries to collectively implement and maintain, in effect policies and procedures designed to ensure compliance by the Parent and its Subsidiaries and their respective directors, officers, employees and Affiliates with all Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. Each of the Loan Parties shall, and shall cause their respective Subsidiaries and Parent and its Subsidiaries, to comply with all Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws.

5.16 Compliance with ERISA and the IRC. In addition to and without limiting the generality of Section 5.8, each Borrower shall, and shall cause its Subsidiaries and Parent to, except for instances that are not reasonably expected to result in an Event of Default under Section 8.12 below, (a) comply in all material respects with the applicable provisions of ERISA and the IRC with respect to all Employee Benefit Plans, (b) without the prior written consent of Agent and the Required Lenders, not take any action or fail to take action the result of which could result in a Borrower or ERISA Affiliate incurring liability to the PBGC with respect to any Pension Plan or to a Multiemployer Plan (other than for contributions, claims for benefits or premiums payable in the ordinary course), (c) not participate in any prohibited transaction that could result in other than a de minimis civil penalty, excise tax, fiduciary liability or correction obligation under ERISA or the IRC, (d) operate each Employee Benefit Plan in such a manner that will not incur any material tax liability under the IRC (including Section 4980B of the IRC) (other than for contributions, claims for benefits or premiums payable in the ordinary course), and (e) furnish to Agent upon Agent’s written request such additional information about any Employee Benefit Plan for which any Borrower or ERISA Affiliate could reasonably expect to incur any material liability other than for contributions, claims for benefits or premiums payable in the ordinary course. With respect to each Pension Plan (other than a Multiemployer Plan), except as could not reasonably be expected to result in an Event of Default under Section 8.12 below, the Loan Parties and ERISA Affiliates shall (i) satisfy in full and in a timely manner, without incurring any late payment or underpayment charge or penalty and without giving rise to any Lien, all of the contribution and funding requirements of the IRC and of ERISA, and (ii) pay, or cause to be paid, to the PBGC in a timely manner, without incurring any late payment or underpayment charge or penalty, all premiums required pursuant to ERISA.

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6. NEGATIVE COVENANTS.

Each Borrower covenants and agrees that, until the termination of all of the Commitments and the payment in full of the Obligations:

6.1 Indebtedness. Each Borrower will not, and will not permit any of its Subsidiaries to, create, incur, assume, suffer to exist, guarantee, or otherwise become or remain, directly or indirectly, liable with respect to any Indebtedness, except for Permitted Indebtedness.

6.2 **Liens.** Each Borrower will not, and will not permit any of its Subsidiaries to, create, incur, assume, or suffer to exist, directly or indirectly, any Lien on or with respect to any of its assets, of any kind, whether now owned or hereafter acquired, or any income or profits therefrom, except for Permitted Liens.

6.3 **Restrictions on Fundamental Changes.** Each Borrower will not, and will not permit any of its Subsidiaries or Parent to,

(a) Enter into any merger, consolidation, reorganization, or recapitalization, or reclassify its Equity Interests, except for (i) any merger between Borrowers; provided, that a Borrower must be the surviving entity of any such merger to which it is a party and no merger may occur between Parent and any Borrower and (ii) any merger between Subsidiaries of any Borrower or of Parent that are not Loan Parties (and, with respect to Parent and Subsidiaries of Parent only, to the extent any of the foregoing could reasonably be expected to result in a Material Adverse Effect),

(b) liquidate, wind up, or dissolve itself (or suffer any liquidation or dissolution), except for (i) the liquidation or dissolution of non-operating Subsidiaries of any Borrower with nominal assets and nominal liabilities, (ii) [reserved], (iii) the liquidation or dissolution of a Subsidiary of any Borrower that is not a Loan Party (other than any such Subsidiary the Equity Interests of which (or any portion thereof) is subject to a Lien in favor of Agent) so long as all of the assets of such liquidating or dissolving Subsidiary are transferred to a Subsidiary of a Borrower that is not liquidating or dissolving, or (iv) the liquidation, winding up, or dissolution of any Subsidiary of Parent, only to the extent it could reasonably be expected to result in a Material Adverse Effect,

(c) suspend or cease operating a substantial portion of its or their business, except as permitted pursuant to clauses (a) or (b) above or in connection with a transaction permitted under Section 6.4 (and, with respect to Parent only, to the extent it could reasonably be expected to result in a Material Adverse Effect), or

(d) change its classification/status for U.S. federal income tax purposes (and, with respect to Parent only, to the extent it could reasonably be expected to result in a Material Adverse Effect).

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6.4 **Disposal of Assets.** Other than Permitted Dispositions or transactions expressly permitted by Sections 6.3 or 6.9, each Borrower will not, and will not permit any of its Subsidiaries to, convey, sell, lease, license, assign, transfer, or otherwise dispose of any of its or their assets.

6.5 **Nature of Business.** Each Borrower will not, and will not permit any of its Subsidiaries to, make any change in the fundamental nature of its or their business as described in Schedule 6.5 to this Agreement or acquire any properties or assets that are not reasonably related to the conduct of such business activities; provided, that the foregoing shall not prevent any Borrower and its Subsidiaries from engaging in any business that is reasonably related or ancillary to its or their business.

6.6 **Prepayments and Amendments.** Each Borrower will not, and will not permit any of its Subsidiaries to,

(a) Except in connection with Refinancing Indebtedness permitted by Section 6.1,

(i) optionally prepay, redeem, defease, purchase, or otherwise acquire (A) any Subordinated Indebtedness of any Borrower or its Subsidiaries, or (B) any Indebtedness of any Borrower or its Subsidiaries that is secured by a Lien on the Collateral that is junior to the Agent's Liens other than any prepayment of the Term Loan Obligations with proceeds of Term Loan Priority Collateral, or

(ii) make any payment on account of Indebtedness that has been contractually subordinated in right of payment to the Obligations if such payment is not permitted at such time under the subordination terms and conditions, or

(b) Directly or indirectly, amend, modify, or change in any material respect any of the terms or provisions of:

(i) any agreement, instrument, document, indenture, or other writing evidencing or concerning Permitted Indebtedness other than (A) the Obligations in accordance with this Agreement, (B) Hedge Obligations, (C) Permitted Intercompany Advances, and (D) Indebtedness permitted under clauses (c), (f) (subject to the terms of the Intercreditor Agreement), (h), (j) and (k) of the definition of Permitted Indebtedness, or

(ii) the Governing Documents of any Borrower or any of its Subsidiaries if the effect thereof, either individually or in the aggregate, could reasonably be expected to be materially adverse to the interests of the Lenders.

6.7 **Restricted Payments.** Each Borrower will not, and will not permit any of its Subsidiaries to, make any Restricted Payment; provided, that so long as it is permitted by law:

(a) so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom, Borrowers may make distributions to former employees, officers, or directors of Borrowers (or any spouses, ex-spouses, or estates of any of the foregoing) on account of redemptions of Equity Interests of Borrowers held by such Persons; provided, that the aggregate amount of such redemptions made by such Borrower during the term of this Agreement plus the amount of Indebtedness outstanding under clause (l) of the definition of Permitted Indebtedness, does not exceed \$50,000 in the aggregate in any calendar year,

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(b) so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom, Borrowers may make distributions to former employees, officers, or directors of such 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 Borrowers on account of repurchases of the Equity Interests of Borrowers held by such Persons; provided, that such Indebtedness was incurred by such Persons solely to acquire Equity Interests of such Borrower,

(c) [reserved],

(d) so long as Kinergy is treated as a limited liability company for federal income tax purposes, Kinergy may distribute to the Parent, to the extent actually payable by Parent to the applicable taxing authority, with respect to each taxable year an aggregate amount equal to the product of (i) the maximum combined federal and state income tax rate applicable to corporations (or individuals, if higher) doing business in the state to which the Parent allocates at least ten (10%) percent of its taxable income and which has the highest such rate (or the state in which the Parent allocates more income than any other state, if it doesn't allocate at least ten percent (10%) of its taxable income to any state) times (ii) the excess of the taxable income of the Parent for such taxable year over the taxable losses of the Parent for all prior taxable years that have not previously been used to reduce taxable income pursuant to this clause (d), or

(e) a Borrower may make other Restricted Payments that satisfy the Additional Payment Conditions.

6.8 **Accounting Methods.** Each Borrower will not, and will not permit any of its Subsidiaries or Parent to modify or change its fiscal year (other than as may be required to conform to GAAP) or its method of accounting from GAAP-based accounting.

6.9 **Investments.** Each Borrower will not, and will not permit any of its Subsidiaries to, directly or indirectly, make or acquire any Investment or incur any liabilities (including contingent obligations) for or in connection with any Investment except for Permitted Investments.

6.10 **Transactions with Affiliates.** Each Borrower will not, and will not permit any of its Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction with any Affiliate of any Borrower or any of its Subsidiaries except for:

(a) [reserved],

(b) [reserved],

(c) the payment of reasonable compensation, severance, or employee benefit arrangements to employees, officers, and outside directors of a Borrower or one of its Subsidiaries in the ordinary course of business and consistent with industry practice so long as it has been approved by such Borrower's or such Subsidiary's board of directors (or comparable governing body) in accordance with applicable law,

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(d) (i) transactions solely among the Borrowers and (ii) transactions solely among Subsidiaries of Borrowers that are not Borrowers,

(e) transactions permitted by Section 6.3, Section 6.7, or Section 6.9,

(f) quarterly payments of Management Fees (i) by Kinerger to Parent for those services provided by Parent to Kinerger pursuant to the Affiliate Company Agreement as in effect on the date hereof in an amount not to exceed \$1,500,000 per fiscal quarter and (ii) by Alto Nutrients to Parent for those services provided by Parent to Alto Nutrients pursuant to the Affiliate Company Agreement as in effect on the date hereof in an amount not to exceed \$500,000 per fiscal quarter,

(g) [reserved],

(h) agreements for the non-exclusive licensing of intellectual property, or distribution of products, in each case, among the Borrowers and their Subsidiaries for the purpose of the counterparty thereof operating its business, and agreements for the assignment of intellectual property from any Borrower or any of its Subsidiaries to any Borrower, or

(i) transactions to purchase, acquire or lease any property from, or sell, transfer, lease or provide any property, goods or services to any Affiliate of a Borrower (including Parent) in the ordinary course of such Borrower's business upon fair and reasonable terms no less favorable to such Borrower than such Borrower would obtain in a comparable arm's length transaction with an unaffiliated person.

6.11 **Use of Proceeds.** Each Borrower will not, and will not permit any of its Subsidiaries to, use the proceeds of any Loan made hereunder for any purpose other than (a) on the Closing Date, (i) to repay, in full, the outstanding principal, accrued interest, and accrued fees and expenses owing under or in connection with the Existing Credit Facility, and (ii) to pay the fees, costs, and expenses incurred in connection with this Agreement, the other Loan Documents, and the transactions contemplated hereby and thereby, in each case, as set forth in the Flow of Funds Agreement, and (b) thereafter, consistent with the terms and conditions hereof, for their lawful and permitted purposes; provided that (x) no part of the proceeds of the Loans will be used to purchase or carry any such Margin Stock or to extend credit to others for the purpose of purchasing or carrying any such Margin Stock or for any purpose that violates the provisions of Regulation T, U or X of the Board of Governors, (y) no part of the proceeds of any Loan or Letter of Credit will be used, directly or to Borrowers' knowledge, indirectly, to make any payments to a Sanctioned Entity or a Sanctioned Person, to fund any investments, loans or contributions in, or otherwise make such proceeds available to, a Sanctioned Entity or a Sanctioned Person, to fund any operations, activities or business of a Sanctioned Entity or a Sanctioned Person, or in any other manner that would result in a violation of Sanctions by any Person, and (z) that no part of the proceeds of any Loan or Letter of Credit will be used, directly or to Borrowers' knowledge, indirectly, in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Sanctions, Anti-Corruption Laws or Anti-Money Laundering Laws.

6.12 **Limitation on Issuance of Equity Interests.** Except for the issuance or sale of Qualified Equity Interests by Parent with respect to Alto Nutrients or by Kinerger with respect to Alto Nutrients, each Borrower will not, and will not permit any of its Subsidiaries issue or sell any of its Equity Interests and each Borrower will not permit Parent issue or sell any of its Equity Interests in and to Kinerger, provided that any pledge of the Equity Interests in and to the Loan Parties and their Subsidiaries pursuant to the terms of the Term Loan Documents, subject to the terms of the Intercreditor Agreement, shall not be prohibited by this Section 6.12.

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6.13 **Inventory with Bailees.** Each Borrower will not, and will not permit any of its Subsidiaries to, store its Inventory at any time with a bailee, warehouseman, or similar party except as set forth on Schedule 4.25 (as such Schedule may be amended in accordance with Section 5.14).

6.14 **[Reserved]**

6.15 **[Reserved]**

6.16 **Employee Benefits.** Each Borrower will not:

(a) Terminate, or permit any ERISA Affiliate to terminate, any Pension Plan in a manner, or take any other action with respect to any Pension Plan, which could reasonably be expected to result in any liability of any Borrower or ERISA Affiliate to the PBGC that could be reasonably expected to result in an Event of Default under Section 8.12 below.

(b) Fail to make, or permit any ERISA Affiliate to fail to make, full payment when due of all amounts which, under the provisions of any Pension Plan, agreement relating thereto or applicable Law, any Borrower or ERISA Affiliate is required to pay if such failure could reasonably be expected to result in an Event of Default under Section 8.12 below.

(c) Permit to exist, or allow any ERISA Affiliate to permit to exist, any accumulated funding deficiency within the meaning of section 302 of ERISA or section 412 of the Code, whether or not waived, with respect to any Pension Plan which could be reasonably expected to result in an Event of Default under Section 8.12 below.

(d) Contribute to or assume an obligation to contribute to, or permit any ERISA Affiliate to contribute to or assume an obligation to contribute to, any Multiemployer Plan not set forth on Schedule 4.10 that could be reasonably expected to result in an Event of Default under Section 8.12 below.

(e) Amend, or permit any ERISA Affiliate to amend, a Pension Plan resulting in a material increase in current liability such that a Borrower or ERISA Affiliate is required to provide security to such Plan under the IRC that could be reasonably expected to result in an Event of Default under Section 8.12 below.

7. FINANCIAL COVENANTS.

Until the termination of all of the Commitments and the payment in full of the Obligations, each Borrower covenants and agrees that:

7.1 **Fixed Charge Coverage Ratio.** Borrowers will maintain a Fixed Charge Coverage Ratio of not less than 1.10 to 1.00, calculated as of the last day of each fiscal month of Borrowers for the 12 month period then ended; provided, that, the financial covenant under this clause (b) shall not apply to any month for which the Excess Availability was at all times during such month, and at all times during each of the two (2) prior months, greater than twenty percent (20%) of the Maximum Revolver Amount; provided, further, that the foregoing test metric shall be based on Liquidity and not Excess Availability during any consecutive five (5) Business Day period that includes the last Business Day of a fiscal quarter (not to exceed five (5) total Business Days for any quarter end).

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8. EVENTS OF DEFAULT.

Any one or more of the following events shall constitute an event of default (each, an “Event of Default”) under this Agreement:

8.1 **Payments.** If Borrowers fail to pay when due and payable, or when declared due and payable, (a) all or any portion of the Obligations consisting of interest, fees, or charges due the Lender Group, reimbursement of Lender Group Expenses, or other amounts (other than any portion thereof constituting principal) constituting Obligations (including any portion thereof that accrues after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding), and such failure continues for a period of three Business Days, (b) all or any portion of the principal of the Loans, or (c) any amount payable to Issuing Bank in reimbursement of any drawing under a Letter of Credit;

8.2 Covenants.

(a) If any Loan Party or any of its Subsidiaries fails to perform or observe any covenant or other agreement contained in any of (i) Sections 5.1, 5.2, 5.6, 5.7 (solely if any Borrower refuses to allow Agent or its representatives or agents to visit any Borrower’s properties, inspect its assets or books or records, examine and make copies of its books and records, or discuss Borrowers’ affairs, finances, and accounts with officers and employees of any Borrower), 5.10, 5.11, 5.13, or 5.14 of this Agreement, (ii) Section 6 of this Agreement, (iii) Section 7 of this Agreement, or (iv) Section 7 of the Guaranty and Security Agreement;

(b) If any Loan Party or any of its Subsidiaries, or, as applicable, Parent, fails to perform or observe any covenant or other agreement contained in any of Sections 5.3, 5.4, 5.5, 5.8, and 5.12 of this Agreement and such failure continues for a period of fifteen (15) days after the earlier of (i) the date on which such failure shall first become known to any executive officer of any Borrower, or (ii) the date on which written notice thereof is given to Borrowers by Agent; or

(c) If any Loan Party or any of its Subsidiaries fails to perform or observe any covenant or other agreement contained in this Agreement, or in any of the other Loan Documents, in each case, other than any such covenant or agreement that is the subject of another provision of this Section 8 (in which event such other provision of this Section 8 shall govern), and such failure continues for a period of thirty days after the earlier of (i) the date on which such failure shall first become known to any officer of any Borrower, or (ii) the date on which written notice thereof is given to Borrowers by Agent;

8.3 **Judgments.** If one or more judgments, orders, or awards for the payment of money involving an aggregate amount of \$250,000 or more (except to the extent any such excess amount is fully covered (other than to the extent of customary deductibles) by insurance pursuant to which the insurer has not denied coverage) is entered or filed against Parent, a Loan Party or any of its Subsidiaries, or with respect to any of their respective assets, and either (a) there is a period of thirty consecutive days at any time after the entry of any such judgment, order, or award during which (i) the same is not discharged, satisfied, vacated, or bonded pending appeal, or (ii) a stay of enforcement thereof is not in effect, or (b) enforcement proceedings are commenced upon such judgment, order, or award (and, for each of the foregoing with respect to Parent only, could reasonably be expected to result in a Material Adverse Effect);

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8.4 **Voluntary Bankruptcy, etc.** If an Insolvency Proceeding of Parent, any Loan Party, or any Subsidiary of any Loan Party, is commenced by Parent, by a Loan Party, or by any Subsidiaries of any Loan Party;

8.5 **Involuntary Bankruptcy, etc.** If an Insolvency Proceeding is commenced against Parent, against a Loan Party, or against any Subsidiaries of any Loan Party, and, in each instance, any of the following events occur: (a) such Parent, such Loan Party, or such Subsidiary, consents to the institution of such Insolvency Proceeding against it, (b) the petition commencing the Insolvency Proceeding is not timely controverted, (c) the petition commencing the Insolvency Proceeding is not dismissed within sixty (60) calendar days of the date of the filing thereof, (d) an interim trustee is appointed to take possession of all or any substantial portion of the properties or assets of, or to operate all or any substantial portion of the business of, such Parent, or such Loan Party or its Subsidiary, or (e) an order for relief shall have been issued or entered therein;

8.6 **Default Under Other Agreements.** If there is (a) a default in one or more agreements to which a Loan Party or any of its Subsidiaries, or Parent, is a party with one or more third Persons relative to a Loan Party’s or any of its Subsidiaries’, or Parent’s, Indebtedness involving an aggregate amount of \$1,000,000 or more, and such default (i) occurs at the final maturity of the obligations thereunder, or (ii) results in a right by such third Person, irrespective of whether exercised, to accelerate the maturity of such Loan Party’s or its Subsidiary’s, or Parent’s, obligations thereunder; (b) if there is an “Event of Default” (as such term is defined in the Term Loan Agreement) under the Term Loan Documents, or (c) a default in or an involuntary early termination of one or more Hedge Agreements to which a Loan Party or any of its Subsidiaries, or Parent, is a party involving an aggregate amount of \$1,000,000 or more, or (c) a default under any Material Contract, which default continues for more than the applicable cure period, if any, with respect thereto and/or is not waived in writing by the other parties thereto (and, for each of the foregoing with respect to the Guarantors only, could reasonably be expected to result in a Material Adverse Effect);

8.7 **Representations, etc.** If any warranty, representation, certificate or record made herein or in any other Loan Document proves to be untrue in any material respect (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of the date of issuance or making or deemed making thereof;

8.8 **Guaranty.** (a) Any default (after expiration of all applicable notice and cure periods therein) by any Guarantor under any Guaranty and Security Agreement or (b) if the obligations of any Guarantor under any Guaranty and Security Agreement is limited in any respect or terminated by operation of law or by such Guarantor (other than in

accordance with the terms of this Agreement) or (c) if any Guarantor repudiates or revokes or purports to repudiate or revoke any such guaranty;

8.9 **Security Documents.** As to any Loan Party, if the Guaranty and Security Agreement or any other Loan Document that purports to create a Lien, shall, for any reason, fail or cease to create a valid and perfected and, (except to the extent of Permitted Liens which are (A) non-consensual Permitted Liens, (B) permitted purchase money Liens, (C) the interests of lessors under Capital Leases, or (D) Liens securing the Term Loan Debt permitted pursuant to clause (f) of the definition of Permitted Indebtedness (provided, that, such Liens are subject to the Intercreditor Agreement)) first priority Lien, subject to the Intercreditor Agreement, on the Collateral covered thereby, except (a) as a result of a disposition of the applicable Collateral in a transaction permitted under this Agreement, or (b) otherwise with respect to such Collateral, having an aggregate value of no greater than \$250,000;

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8.10 **Loan Documents.** The validity or enforceability of any Loan Document shall at any time for any reason (other than solely as the result of an action or failure to act on the part of Agent) be declared to be null and void, or a proceeding shall be commenced by Parent, by a Loan Party or its Subsidiaries, or by any Governmental Authority having jurisdiction over Parent, or any Loan Party or its Subsidiaries, seeking to establish the invalidity or unenforceability thereof, or Parent or any Loan Party or its Subsidiaries shall deny that such Parent, or such Loan Party or its Subsidiaries, has any liability or obligation purported to be created under any Loan Document; or

8.11 **Change of Control.** A Change of Control shall occur, whether directly or indirectly; or

8.12 **ERISA.** The occurrence of any of the following events: (a) any Loan Party or ERISA Affiliate fails to make full payment when due of all amounts which any Loan Party or ERISA Affiliate is required to pay as contributions, installments, or otherwise to or with respect to a Pension Plan or Multiemployer Plan (including the failure to make any Withdrawal Liability payment when due), and such failure could reasonably be expected to result in liability in excess of \$250,000, (b) an accumulated funding deficiency or funding shortfall in excess of \$10,000,000 occurs or exists, whether or not waived, with respect to any Pension Plan, individually or in the aggregate, (c) a Notification Event, which could reasonably be expected to result in liability in excess of \$250,000, either individually or in the aggregate, or (d) any Loan Party or ERISA Affiliate completely or partially withdraws from one or more Multiemployer Plans and incurs Withdrawal Liability in excess of \$250,000 in the aggregate; or

8.13 **Material Adverse Effect.** There shall have occurred a Material Adverse Effect as to any Loan Party or Parent.

9. RIGHTS AND REMEDIES.

9.1 **Rights and Remedies.** Upon the occurrence and during the continuation of an Event of Default, Agent may, and, at the instruction of the Required Lenders, shall, in addition to any other rights or remedies provided for hereunder or under any other Loan Document or by applicable law, do any one or more of the following:

(a) by written notice to Borrowers, (i) declare the principal of, and any and all accrued and unpaid interest and fees in respect of, the Loans and all other Obligations (other than the Bank Product Obligations), whether evidenced by this Agreement or by any of the other Loan Documents to be immediately due and payable, whereupon the same shall become and be immediately due and payable and Borrowers shall be obligated to repay all of such Obligations in full, without presentment, demand, protest, or further notice or other requirements of any kind, all of which are hereby expressly waived by each Borrower, and (ii) direct Borrowers to provide (and Borrowers agree that upon receipt of such notice Borrowers will provide) Letter of Credit Collateralization to Agent to be held as security for Borrowers' reimbursement obligations for drawings that may subsequently occur under issued and outstanding Letters of Credit;

(b) by written notice to Borrowers, declare the Commitments terminated, whereupon the Commitments shall immediately be terminated together with (i) any obligation of any Revolving Lender to make Revolving Loans, (ii) the obligation of the Swing Lender to make Swing Loans, and (iii) the obligation of Issuing Bank to issue Letters of Credit; and

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(c) exercise all other rights and remedies available to Agent or the Lenders under the Loan Documents, under applicable law, or in equity.

The foregoing to the contrary notwithstanding, upon the occurrence of any Event of Default described in Section 8.4 or Section 8.5, in addition to the remedies set forth above, without any notice to Borrowers or any other Person or any act by the Lender Group, the Commitments shall automatically terminate and the Obligations (other than the Bank Product Obligations), inclusive of the principal of, and any and all accrued and unpaid interest and fees in respect of, the Loans and all other Obligations (other than the Bank Product Obligations), whether evidenced by this Agreement or by any of the other Loan Documents, shall automatically become and be immediately due and payable and Borrowers shall automatically be obligated to repay all of such Obligations in full (including Borrowers being obligated to provide (and Borrowers agree that they will provide) (1) Letter of Credit Collateralization to Agent to be held as security for Borrowers' reimbursement obligations in respect of drawings that may subsequently occur under issued and outstanding Letters of Credit and (2) Bank Product Collateralization to be held as security for Borrowers' or their Subsidiaries' obligations in respect of outstanding Bank Products), without presentment, demand, protest, or notice or other requirements of any kind, all of which are expressly waived by Borrowers.

9.2 **Remedies Cumulative.** The rights and remedies of the Lender Group under this Agreement, the other Loan Documents, and all other agreements shall be cumulative. The Lender Group shall have all other rights and remedies not inconsistent herewith as provided under the Code, by law, or in equity. No exercise by the Lender Group of one right or remedy shall be deemed an election, and no waiver by the Lender Group of any Default or Event of Default shall be deemed a continuing waiver. No delay by the Lender Group shall constitute a waiver, election, or acquiescence by it.

9.3 **Reserved.**

10. WAIVERS; INDEMNIFICATION.

10.1 **Demand; Protest; etc.** Each Borrower waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment, nonpayment at maturity, release, compromise, settlement, extension, or renewal of documents, instruments, chattel paper, and guarantees at any time held by the Lender Group on which any Borrower may in any way be liable.

10.2 **The Lender Group's Liability for Collateral.** Each Borrower hereby agrees that: (a) so long as Agent complies with its obligations, if any, under the Code, the Lender Group shall not in any way or manner be liable or responsible for: (i) the safekeeping of the Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof, or (iv) any act or default of any carrier, warehouseman, bailee, forwarding agency, or other Person, and (b) all risk of loss, damage, or destruction of the Collateral shall be borne by the Loan Parties.

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10.3 **Indemnification.** Each Borrower shall pay, indemnify, defend, and hold the Agent-Related Persons, the Lender-Related Persons, the Issuing Bank, and each Participant (each, an “Indemnified Person”) harmless (to the fullest extent permitted by law) from and against any and all claims, demands, suits, actions, investigations, proceedings, liabilities, fines, costs, penalties, and damages, and all reasonable fees and disbursements of attorneys, experts, or consultants and all other costs and expenses actually incurred in connection therewith or in connection with the enforcement of this indemnification (as and when they are incurred and irrespective of whether suit is brought), at any time asserted against, imposed upon, or incurred by any of them (a) in connection with or as a result of or related to the execution and delivery (provided, that Borrowers shall not be liable for costs and expenses (including attorneys’ fees) of any Lender (other than Wells Fargo) incurred in advising, structuring, drafting, reviewing, administering or syndicating the Loan Documents), enforcement, performance, or administration (including any restructuring or workout with respect hereto) of this Agreement, any of the other Loan Documents, or the transactions contemplated hereby or thereby or the monitoring of the Loan Parties’ and their Subsidiaries’ compliance (and to the extent expressly applicable to Parent, Parent’s, compliance) with the terms of the Loan Documents (provided, that the indemnification in this clause (a) shall not extend to (i) disputes solely between or among the Lenders that do not involve any acts or omissions of any Loan Party, or (ii) disputes solely between or among the Lenders and their respective Affiliates that do not involve any acts or omissions of any Loan Party; it being understood and agreed that the indemnification in this clause (a) shall extend to Agent (but not the Lenders unless the dispute involves an act or omission of a Loan Party) relative to disputes between or among Agent on the one hand, and one or more Lenders, or one or more of their Affiliates, on the other hand, or (iii) any claims for Taxes, which shall be governed by Section 16, other than Taxes which relate to primarily non-Tax claims), (b) with respect to any actual or prospective investigation, litigation, or proceeding related to this Agreement, any other Loan Document, the making of any Loans or issuance of any Letters of Credit hereunder, or the use of the proceeds of the Loans or the Letters of Credit provided hereunder (irrespective of whether any Indemnified Person is a party thereto), or any act, omission, event, or circumstance in any manner related thereto, and (c) in connection with or arising out of or attributable to the use, generation, manufacture, reproduction, storage, release, threatened release, spill, discharge, disposal or presence of Hazardous Materials at, on, under, to or from any assets or properties owned, leased or operated by any Loan Party or any of its Subsidiaries or any Environmental Actions, Environmental Liabilities or Remedial Actions related in any way to any such assets or properties of any Loan Party or any of its Subsidiaries (each and all of the foregoing, the “Indemnified Liabilities”). The foregoing to the contrary notwithstanding, no Borrower shall have any obligation to any Indemnified Person under this Section 10.3 with respect to any Indemnified Liability that a court of competent jurisdiction finally determines to have resulted from the gross negligence or willful misconduct of such Indemnified Person or its officers, directors, employees, attorneys, or agents. This provision shall survive the termination of this Agreement and the repayment in full of the Obligations. If any Indemnified Person makes any payment to any other Indemnified Person with respect to an Indemnified Liability as to which Borrowers were required to indemnify the Indemnified Person receiving such payment, the Indemnified Person making such payment is entitled to be indemnified and reimbursed by Borrowers with respect thereto. **WITHOUT LIMITATION, THE FOREGOING INDEMNITY SHALL APPLY TO EACH INDEMNIFIED PERSON WITH RESPECT TO INDEMNIFIED LIABILITIES WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF ANY NEGLIGENT ACT OR OMISSION OF SUCH INDEMNIFIED PERSON OR OF ANY OTHER PERSON.**

11. NOTICES.

Unless otherwise provided in this Agreement, all notices or demands relating to this Agreement or any other Loan Document shall be in writing and (except for financial statements and other informational documents which may be sent by first-class mail, postage prepaid) shall be personally delivered or sent by registered or certified mail (postage prepaid, return receipt requested), overnight courier, electronic mail (at such email addresses as a party may designate in accordance herewith), or telefacsimile. In the case of notices or demands to any Loan Party or Agent, as the case may be, they shall be sent to the respective address set forth below:

If to any Loan Party:	c/o Administrative Borrower 400 Capital Mall, Suite 2060 Sacramento, California 95814 Attn: General Counsel
with copies to:	Troutman Pepper 5 Park Plaza, Suite 1400 Irvine, California 92614 Attn: Larry Cerutti, Esq.
If to Agent:	WELLS FARGO BANK, NATIONAL ASSOCIATION 1800 Century Park East, Suite 1100 Los Angeles, CA 90067 Attn: Loan Portfolio Manager
with copies to:	Otterbourg, P.C. 230 Park Avenue New York, NY 10169 Attn: Jim M. Cretella, Esq.

Any party hereto may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other party. All notices or demands sent in accordance with this Section 11, shall be deemed received on the earlier of the date of actual receipt or three Business Days after the deposit thereof in the mail; provided, that (a) notices sent by overnight courier service shall be deemed to have been given when received, (b) notices by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient) and (c) notices by electronic mail shall be deemed received upon the sender’s receipt of an acknowledgment from the intended recipient (such as by the “return receipt requested” function, as available, return email or other written acknowledgment).

12. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER; JUDICIAL REFERENCE PROVISION.

(a) **THE VALIDITY OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT), THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF AND THEREOF, THE RIGHTS OF THE PARTIES HERETO AND THERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO, AND ANY CLAIMS, CONTROVERSIES OR DISPUTES ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.**

(b) THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, FEDERAL COURTS LOCATED IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA; PROVIDED, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE AGENT ELECTS TO BRING SUCH ACTION OR WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH OF PARENT AND EACH BORROWER AND EACH MEMBER OF THE LENDER GROUP WAIVE, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 12(b).

(c) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH OF PARENT AND EACH BORROWER AND EACH MEMBER OF THE LENDER GROUP HEREBY WAIVE THEIR RESPECTIVE RIGHTS, IF ANY, TO A JURY TRIAL OF ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS (EACH A "CLAIM"). EACH BORROWER AND EACH MEMBER OF THE LENDER GROUP REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

(d) EACH OF PARENT AND EACH BORROWER HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF LOS ANGELES AND THE STATE OF CALIFORNIA, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENTS, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT AGENT MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(e) NO CLAIM MAY BE MADE BY ANY LOAN PARTY AGAINST THE AGENT, THE SWING LENDER, ANY OTHER LENDER, ISSUING BANK, OR ANY AFFILIATE, DIRECTOR, OFFICER, EMPLOYEE, COUNSEL, REPRESENTATIVE, AGENT, OR ATTORNEY-IN-FACT OF ANY OF THEM FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OR LOSSES IN RESPECT OF ANY CLAIM FOR BREACH OF CONTRACT OR ANY OTHER THEORY OF LIABILITY ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY ACT, OMISSION, OR EVENT OCCURRING IN CONNECTION THEREWITH, AND EACH LOAN PARTY HEREBY WAIVES, RELEASES, AND AGREES NOT TO SUE UPON ANY CLAIM FOR SUCH DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN ITS FAVOR.

(f) IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CLAIM AND THE WAIVER SET FORTH IN CLAUSE (C) ABOVE IS NOT ENFORCEABLE IN SUCH PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

(i) WITH THE EXCEPTION OF THE MATTERS SPECIFIED IN SUBCLAUSE (ii) BELOW, ANY CLAIM SHALL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE. VENUE FOR THE REFERENCE PROCEEDING SHALL BE IN THE COUNTY OF LOS ANGELES, CALIFORNIA.

(ii) THE FOLLOWING MATTERS SHALL NOT BE SUBJECT TO A GENERAL REFERENCE PROCEEDING: (A) NON-JUDICIAL FORECLOSURE OF ANY SECURITY INTERESTS IN REAL OR PERSONAL PROPERTY, (B) EXERCISE OF SELF-HELP REMEDIES (INCLUDING SET-OFF OR RECOUPMENT), (C) APPOINTMENT OF A RECEIVER, AND (D) TEMPORARY, PROVISIONAL, OR ANCILLARY REMEDIES (INCLUDING WRITS OF ATTACHMENT, WRITS OF POSSESSION, TEMPORARY RESTRAINING ORDERS, OR PRELIMINARY INJUNCTIONS). THIS AGREEMENT DOES NOT LIMIT THE RIGHT OF ANY PARTY TO EXERCISE OR OPPOSE ANY OF THE RIGHTS AND REMEDIES DESCRIBED IN CLAUSES (A) - (D) AND ANY SUCH EXERCISE OR OPPOSITION DOES NOT WAIVE THE RIGHT OF ANY PARTY TO PARTICIPATE IN A REFERENCE PROCEEDING PURSUANT TO THIS AGREEMENT WITH RESPECT TO ANY OTHER MATTER.

(iii) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY SHALL HAVE THE RIGHT TO REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B). THE REFEREE SHALL BE APPOINTED TO SIT WITH ALL OF THE POWERS PROVIDED BY LAW. PENDING APPOINTMENT OF THE REFEREE, THE COURT SHALL HAVE THE POWER TO ISSUE TEMPORARY OR PROVISIONAL REMEDIES.

(iv) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE REFEREE SHALL DETERMINE THE MANNER IN WHICH THE REFERENCE PROCEEDING IS CONDUCTED INCLUDING THE TIME AND PLACE OF HEARINGS, THE ORDER OF PRESENTATION OF EVIDENCE, AND ALL OTHER QUESTIONS THAT ARISE WITH RESPECT TO THE COURSE OF THE REFERENCE PROCEEDING. ALL PROCEEDINGS AND HEARINGS CONDUCTED BEFORE THE REFEREE, EXCEPT FOR TRIAL, SHALL BE CONDUCTED WITHOUT A COURT REPORTER, EXCEPT WHEN ANY PARTY SO REQUESTS A COURT REPORTER AND A TRANSCRIPT IS ORDERED, A COURT REPORTER SHALL BE USED AND THE REFEREE SHALL BE PROVIDED A COURTESY COPY OF THE TRANSCRIPT. THE PARTY MAKING SUCH REQUEST SHALL HAVE THE OBLIGATION TO ARRANGE FOR AND PAY THE COSTS OF THE COURT REPORTER; PROVIDED, THAT SUCH COSTS, ALONG WITH THE REFEREE'S FEES, SHALL ULTIMATELY BE BORNE BY THE PARTY WHO DOES NOT PREVAIL, AS DETERMINED BY THE REFEREE.

(v) THE REFEREE MAY REQUIRE ONE OR MORE PREHEARING CONFERENCES. THE PARTIES HERETO SHALL BE ENTITLED TO DISCOVERY, AND THE REFEREE SHALL OVERSEE DISCOVERY IN ACCORDANCE WITH THE RULES OF DISCOVERY, AND SHALL ENFORCE ALL DISCOVERY ORDERS IN THE SAME MANNER AS ANY TRIAL COURT JUDGE IN PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA.

(vi) THE REFEREE SHALL APPLY THE RULES OF EVIDENCE APPLICABLE TO PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA AND SHALL DETERMINE ALL ISSUES IN ACCORDANCE WITH CALIFORNIA SUBSTANTIVE AND PROCEDURAL LAW. THE

REFEREE SHALL BE EMPOWERED TO ENTER EQUITABLE AS WELL AS LEGAL RELIEF AND RULE ON ANY MOTION WHICH WOULD BE AUTHORIZED IN A TRIAL, INCLUDING MOTIONS FOR DEFAULT JUDGMENT OR SUMMARY JUDGMENT. THE REFEREE SHALL REPORT HIS OR HER DECISION, WHICH REPORT SHALL ALSO INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW. THE REFEREE SHALL ISSUE A DECISION AND PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE, SECTION 644, THE REFEREE'S DECISION SHALL BE ENTERED BY THE COURT AS A JUDGMENT IN THE SAME MANNER AS IF THE ACTION HAD BEEN TRIED BY THE COURT. THE FINAL JUDGMENT OR ORDER FROM ANY APPEALABLE DECISION OR ORDER ENTERED BY THE REFEREE SHALL BE FULLY APPEALABLE AS IF IT HAS BEEN ENTERED BY THE COURT.

(vii) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY. AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR OWN CHOICE, EACH PARTY HERETO KNOWINGLY AND VOLUNTARILY AND FOR THEIR MUTUAL BENEFIT AGREES THAT THIS REFERENCE PROVISION SHALL APPLY TO ANY DISPUTE BETWEEN THEM THAT ARISES OUT OF OR IS RELATED TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS.

13. ASSIGNMENTS AND PARTICIPATIONS; SUCCESSORS.

13.1 Assignments and Participations.

(a) Assignments Generally

(i) Subject to the conditions set forth in clause (a)(ii) below, any Lender may assign and delegate all or any portion of its rights and duties under the Loan Documents (including the Obligations owed to it and its Commitments) to one or more assignees (each, an "Assignee"), with the prior written consent (such consent not be unreasonably withheld or delayed) of:

(A) Borrowers; provided, that no consent of Borrowers shall be required (1) if a Default or Event of Default has occurred and is continuing, (2) in connection with the primary syndication of the Commitments and the Obligations by Wells Fargo provided that Wells Fargo shall consult with Borrowers in connection with such primary syndication (it being understood that in no event shall Wells Fargo be required to obtain Borrowers' consent with respect to any assignment made in connection with such primary syndication to an Eligible Transferee) or (3) in connection with an assignment to a Person that is a Lender or an Affiliate (other than natural persons) of a Lender; provided further, that Borrowers shall be deemed to have consented to a proposed assignment unless they object thereto by written notice to Agent within five (5) Business Days after having received notice thereof; and

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(B) Agent, Swing Lender, and Issuing Bank.

(ii) Assignments shall be subject to the following additional conditions:

(A) no assignment may be made (i) so long as no Event of Default has occurred and is continuing, to a Disqualified Institution or (ii) to a Person,

(B) no assignment may be made to a Loan Party or an Affiliate of a Loan Party,

(C) the amount of the Commitments and the other rights and obligations of the assigning Lender hereunder and under the other Loan Documents subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to Agent) shall be in an amount (unless waived by Agent) of \$5,000,000 (except such minimum amount shall not apply to (I) an assignment or delegation by any Lender to any other Lender, or a Related Fund of such Lender, or (II) a group of new Lenders, each of which is an Affiliate of each other or a Related Fund of such new Lender) provided that the aggregate amount to be assigned to all such new Lenders is at least \$5,000,000,

(D) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement,

(E) the parties to each assignment shall execute and deliver to Agent an Assignment and Acceptance; provided, that Borrowers and Agent shall continue to deal solely and directly with the assigning Lender in connection with the interest so assigned to an Assignee until written notice of such assignment, together with assignment instructions, addresses, and related information with respect to the Assignee, have been given to Borrowers and Agent by such Lender and the Assignee,

(F) unless waived by Agent, the assigning Lender or Assignee has paid to Agent, for Agent's separate account, a processing fee in the amount of \$3,500, and

(G) the assignee, if it is not a Lender, shall deliver to Agent an Administrative Questionnaire in a form approved by Agent (the "Administrative Questionnaire").

(b) From and after the date that Agent receives the executed Assignment and Acceptance and, if applicable, payment of the required processing fee, (i) the Assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, shall be a "Lender" and shall have the rights and obligations of a Lender under the Loan Documents, and (ii) the assigning Lender shall, to the extent that rights and obligations hereunder and under the other Loan Documents have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights (except with respect to Section 10.3) and be released from any future obligations under this Agreement (and in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement and the other Loan Documents, such Lender shall cease to be a party hereto and thereto); provided, that nothing contained herein shall release any assigning Lender from obligations that survive the termination of this Agreement, including such assigning Lender's obligations under Section 15 and Section 17.9(a).

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(c) By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the Assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other Loan Document furnished pursuant hereto, (ii) such assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of any Loan Party or the performance or observance by any Loan Party of any of its obligations

under this Agreement or any other Loan Document furnished pursuant hereto, (iii) such Assignee confirms that it has received a copy of this Agreement, together with such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance, (iv) such Assignee will, independently and without reliance upon Agent, such assigning Lender or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement, (v) such Assignee appoints and authorizes Agent to take such actions and to exercise such powers under this Agreement and the other Loan Documents as are delegated to Agent, by the terms hereof and thereof, together with such powers as are reasonably incidental thereto, and (vi) such Assignee agrees that it will perform all of the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(d) Immediately upon Agent's receipt of the required processing fee, if applicable, and delivery of notice to the assigning Lender pursuant to Section 13.1(b), this Agreement shall be deemed to be amended to the extent, but only to the extent, necessary to reflect the addition of the Assignee and the resulting adjustment of the Commitments arising therefrom. The Commitment allocated to each Assignee shall reduce such Commitments of the assigning Lender *pro tanto*.

(e) Any Lender may at any time sell to one or more commercial banks, financial institutions, or other Persons (a "Participant") participating interests in all or any portion of its Obligations, its Commitment, and the other rights and interests of that Lender (the "Originating Lender") hereunder and under the other Loan Documents; provided, that (i) the Originating Lender shall remain a "Lender" for all purposes of this Agreement and the other Loan Documents and the Participant receiving the participating interest in the Obligations, the Commitments, and the other rights and interests of the Originating Lender hereunder shall not constitute a "Lender" hereunder or under the other Loan Documents and the Originating Lender's obligations under this Agreement shall remain unchanged, (ii) the Originating Lender shall remain solely responsible for the performance of such obligations, (iii) Borrowers, Agent, and the Lenders shall continue to deal solely and directly with the Originating Lender in connection with the Originating Lender's rights and obligations under this Agreement and the other Loan Documents, (iv) no Lender shall transfer or grant any participating interest under which the Participant has the right to approve any amendment to, or any consent or waiver with respect to, this Agreement or any other Loan Document, except to the extent such amendment to, or consent or waiver with respect to this Agreement or of any other Loan Document would (A) extend the final maturity date of the Obligations hereunder in which such Participant is participating, (B) reduce the interest rate applicable to the Obligations hereunder in which such Participant is participating, (C) release all or substantially all of the Collateral or guaranties (except to the extent expressly provided herein or in any of the Loan Documents) supporting the Obligations hereunder in which such Participant is participating, (D) postpone the payment of, or reduce the amount of, the interest or fees payable to such Participant through such Lender (other than a waiver of default interest), or (E) decreases the amount or postpones the due dates of scheduled principal repayments or prepayments or premiums payable to such Participant through such Lender, (v) no participation shall be sold to a natural person, (vi) no participation shall be sold to a Loan Party or an Affiliate of a Loan Party, and (vii) all amounts payable by Borrowers hereunder shall be determined as if such Lender had not sold such participation, except that, if amounts outstanding under this Agreement are due and unpaid, or shall have been declared or shall have become due and payable upon the occurrence of an Event of Default, each Participant shall be deemed to have the right of set off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement. The rights of any Participant only shall be derivative through the Originating Lender with whom such Participant participates and no Participant shall have any rights under this Agreement or the other Loan Documents or any direct rights as to the other Lenders, Agent, Borrowers, the Collateral, or otherwise in respect of the Obligations. No Participant shall have the right to participate directly in the making of decisions by the Lenders among themselves.

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(f) In connection with any such assignment or participation or proposed assignment or participation or any grant of a security interest in, or pledge of, its rights under and interest in this Agreement, a Lender may, subject to the provisions of Section 17.9, disclose all documents and information which it now or hereafter may have relating to any Loan Party and its Subsidiaries and their respective businesses.

(g) Any other provision in this Agreement notwithstanding, any Lender may at any time create a security interest in, or pledge, all or any portion of its rights under and interest in this Agreement to secure obligations of such Lender, including any pledge in favor of any Federal Reserve Bank in accordance with Regulation A of the Federal Reserve Bank or U.S. Treasury Regulation 31 CFR §203.24, and such Federal Reserve Bank may enforce such pledge or security interest in any manner permitted under applicable law; provided, that no such pledge shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(h) Agent (as a non-fiduciary agent on behalf of Borrowers) shall maintain, or cause to be maintained, a register (the "Register") on which it enters the name and address of each Lender as the registered owner of the Revolving Loan (and the principal amount thereof and stated interest thereon) held by such Lender (each, a "Registered Loan"). Other than in connection with an assignment by a Lender of all or any portion of its portion of the Revolving Loan to an Affiliate of such Lender or a Related Fund of such Lender (i) a Registered Loan (and the registered note, if any, evidencing the same) may be assigned or sold in whole or in part only by registration of such assignment or sale on the Register (and each registered note shall expressly so provide) and (ii) any assignment or sale of all or part of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by registration of such assignment or sale on the Register, together with the surrender of the registered note, if any, evidencing the same duly endorsed by (or accompanied by a written instrument of assignment or sale duly executed by) the holder of such registered note, whereupon, at the request of the designated assignee(s) or transferee(s), one or more new registered notes in the same aggregate principal amount shall be issued to the designated assignee(s) or transferee(s). Prior to the registration of assignment or sale of any Registered Loan (and the registered note, if any, evidencing the same), Borrowers shall treat the Person in whose name such Registered Loan (and the registered note, if any, evidencing the same) is registered as the owner thereof for the purpose of receiving all payments thereon and for all other purposes, notwithstanding notice to the contrary. In the case of any assignment by a Lender of all or any portion of its Revolving Loan to an Affiliate of such Lender or a Related Fund of such Lender, and which assignment is not recorded in the Register, the assigning Lender, on behalf of Borrowers, shall maintain a register comparable to the Register.

(i) In the event that a Lender sells participations in the Registered Loan, such Lender, as a non-fiduciary agent on behalf of Borrowers, shall maintain (or cause to be maintained) a register on which it enters the name of all participants in the Registered Loans held by it (and the principal amount (and stated interest thereon) of the portion of such Registered Loans that is subject to such participations) (the "Participant Register"). A Registered Loan (and the Registered Note, if any, evidencing the same) may be participated in whole or in part only by registration of such participation on the Participant Register (and each registered note shall expressly so provide). Any participation of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by the registration of such participation on the Participant Register. No Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under 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 Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

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(j) Agent shall make a copy of the Register (and each Lender shall make a copy of its Participant Register to the extent it has one) available for review by Borrowers from time to time as Borrowers may reasonably request.

13.2 Successors. This Agreement shall bind and inure to the benefit of the respective successors and assigns of each of the parties; provided, that no Borrower may

assign this Agreement or any rights or duties hereunder without the Lenders' prior written consent and any prohibited assignment shall be absolutely void *ab initio*. No consent to assignment by the Lenders shall release any Borrower from its Obligations. A Lender may assign this Agreement and the other Loan Documents and its rights and duties hereunder and thereunder pursuant to Section 13.1 and, except as expressly required pursuant to Section 13.1, no consent or approval by any Borrower is required in connection with any such assignment.

14. AMENDMENTS; WAIVERS.

14.1 Amendments and Waivers.

(a) No amendment, waiver or other modification of any provision of this Agreement or any other Loan Document (other than the Fee Letter), and no consent with respect to any departure by any Borrower (and to the extent expressly applicable to Parent, by Parent) therefrom, shall be effective unless the same shall be in writing and signed by the Required Lenders (or by Agent at the written request of the Required Lenders) and the Loan Parties that are party thereto and then any such waiver or consent shall be effective, but only in the specific instance and for the specific purpose for which given; provided, that no such waiver, amendment, or consent shall, unless in writing and signed by all of the Lenders directly affected thereby and all of the Loan Parties that are party thereto, do any of the following:

(i) increase the amount of or extend the expiration date of any Commitment of any Lender or amend, modify, or eliminate the last sentence of Section 2.4(c) (i).

(ii) postpone or delay any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees, or other amounts due hereunder or under any other Loan Document,

(iii) reduce the principal of, or the rate of interest on, any loan or other extension of credit hereunder, or reduce any fees or other amounts payable hereunder or under any other Loan Document (except (y) in connection with the waiver of applicability of Section 2.6(c) (which waiver shall be effective with the written consent of the Required Lenders), and (z) that any amendment or modification of defined terms used in the financial covenants in this Agreement shall not constitute a reduction in the rate of interest or a reduction of fees for purposes of this clause (iii)),

(iv) amend, modify, or eliminate this Section or any provision of this Agreement providing for consent or other action by all Lenders,

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(v) as to those Lenders in place as of the Closing Date, amend, modify, or eliminate Section 3.1.

(vi) amend, modify, or eliminate Section 15.11,

(vii) other than as permitted by Section 15.11, release or contractually subordinated Agent's Lien in and to any of the Collateral,

(viii) amend, modify, or eliminate the definitions of "Required Lenders", or "Pro Rata Share",

(ix) other than in connection with a merger, liquidation, dissolution or sale of such Person expressly permitted by the terms hereof or the other Loan Documents, release any Borrower or any Guarantor from any obligation for the payment of money or consent to the assignment or transfer by any Borrower or any Guarantor of any of its rights or duties under this Agreement or the other Loan Documents,

(x) amend, modify, or eliminate any of the provisions of Section 2.4(b)(i), (ii) or (iii), or

(xi) amend, modify, or eliminate any of the provisions of Section 13.1 with respect to assignments to, or participations with, Persons who are Loan Parties, or Affiliates of a Loan Party;

(b) No amendment, waiver, modification, or consent shall amend, modify, waive, or eliminate,

(i) the definition of, or any of the terms or provisions of, the Fee Letter, without the written consent of Agent and Borrowers (and shall not require the written consent of any of the Lenders),

(ii) any provision of Section 15 pertaining to Agent, or any other rights or duties of Agent under this Agreement or the other Loan Documents, without the written consent of Agent, Borrowers, and the Required Lenders;

(c) No amendment, waiver, modification, elimination, or consent shall amend, without written consent of Agent, Borrowers and the Required Lenders, modify, or eliminate the definition of Borrowing Base or any of the defined terms (including the definitions of Eligible Accounts, Eligible Cash, Eligible Finished Goods Inventory, Eligible In-Transit Inventory, and Eligible Inventory) that are used in such definition to the extent that any such change results in more credit being made available to Borrowers based upon the Borrowing Base, but not otherwise, or the definition of Maximum Revolver Amount, or change Section 2.1(c);

(d) No amendment, waiver, modification, elimination, or consent shall amend, modify, or waive any provision of this Agreement or the other Loan Documents pertaining to Issuing Bank, or any other rights or duties of Issuing Bank under this Agreement or the other Loan Documents, without the written consent of Issuing Bank, Agent, Borrowers, and the Required Lenders;

(e) No amendment, waiver, modification, elimination, or consent shall amend, modify, or waive any provision of this Agreement or the other Loan Documents pertaining to Swing Lender, or any other rights or duties of Swing Lender under this Agreement or the other Loan Documents, without the written consent of Swing Lender, Agent, Borrowers, and the Required Lenders; and

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(f) Anything in this Section 14.1 to the contrary notwithstanding, (i) any amendment, modification, elimination, waiver, consent, termination, or release of, or with respect to, any provision of this Agreement or any other Loan Document that relates only to the relationship of the Lender Group among themselves, and that does not affect the rights or obligations of any Loan Party, shall not require consent by or the agreement of any Loan Party, (ii) any amendment, waiver, modification, elimination, or consent of or with respect to any provision of this Agreement or any other Loan Document may be entered into without the consent of, or over the objection of, any Defaulting Lender, and (iii) the Intercreditor Agreement may be amended or modified in a manner that is expressly contemplated by the Intercreditor Agreement.

14.2 Replacement of Certain Lenders.

(a) If (i) any action to be taken by the Lender Group or Agent hereunder requires the consent, authorization, or agreement of all Lenders or all Lenders affected thereby and if such action has received the consent, authorization, or agreement of the Required Lenders but not of all Lenders or all Lenders affected thereby, or (ii) Adjusted Daily Simple SOFR is adjusted with respect to any Lender pursuant to Section 2.12(a), or (iii) any Lender makes a claim for compensation under Section 16, then Borrowers or Agent, upon at least five Business Days prior irrevocable notice, may permanently replace any Lender that failed to give its consent, authorization, or agreement (a "Non-Consenting Lender"), any Lender in respect of which Adjusted Daily Simple SOFR is increased (an "Increased Costs Lender") or any Lender that made a claim for compensation (a "Tax Lender") with one or more Replacement Lenders, and the Non-Consenting Lender, Increased Costs Lender or Tax Lender, as applicable, shall have no right to refuse to be replaced hereunder. Such notice to replace the Non-Consenting Lender, Increased Costs Lender or Tax Lender, as applicable, shall specify an effective date for such replacement, which date shall not be later than 15 Business Days after the date such notice is given.

(b) Prior to the effective date of such replacement, the Non-Consenting Lender or Tax Lender, as applicable, and each Replacement Lender shall execute and deliver an Assignment and Acceptance, subject only to the Non-Consenting Lender, Increased Costs Lender or Tax Lender, as applicable, being repaid in full its share of the outstanding Obligations (without any premium or penalty of any kind whatsoever, but including (i) all interest, fees and other amounts that may be due in payable in respect thereof, and (ii) an assumption of its Pro Rata Share of participations in the Letters of Credit. If the Non-Consenting Lender, Increased Costs Lender or Tax Lender, as applicable, shall refuse or fail to execute and deliver any such Assignment and Acceptance prior to the effective date of such replacement, Agent may, but shall not be required to, execute and deliver such Assignment and Acceptance in the name or on behalf of the Non-Consenting Lender, Increased Costs Lender or Tax Lender, as applicable, and irrespective of whether Agent executes and delivers such Assignment and Acceptance, the Non-Consenting Lender, Increased Costs Lender or Tax Lender, as applicable, shall be deemed to have executed and delivered such Assignment and Acceptance. The replacement of any Non-Consenting Lender, Increased Costs Lender or Tax Lender, as applicable, shall be made in accordance with the terms of Section 13.1. Until such time as one or more Replacement Lenders shall have acquired all of the Obligations, the Commitments, and the other rights and obligations of the Non-Consenting Lender, Increased Costs Lender or Tax Lender, as applicable, hereunder and under the other Loan Documents, the Non-Consenting Lender, Increased Costs Lender or Tax Lender, as applicable, shall remain obligated to make the Non-Consenting Lender's, Increased Costs Lender's or Tax Lender's, as applicable, Pro Rata Share of Revolving Loans and to purchase a participation in each Letter of Credit, in an amount equal to its Pro Rata Share of participations in such Letters of Credit.

14.3 No Waivers; Cumulative Remedies. No failure by Agent or any Lender to exercise any right, remedy, or option under this Agreement or any other Loan Document, or delay by Agent or any Lender in exercising the same, will operate as a waiver thereof. No waiver by Agent or any Lender will be effective unless it is in writing, and then only to the extent specifically stated. No waiver by Agent or any Lender on any occasion shall affect or diminish Agent's and each Lender's rights thereafter to require strict performance by Borrowers of any provision of this Agreement. Agent's and each Lender's rights under this Agreement and the other Loan Documents will be cumulative and not exclusive of any other right or remedy that Agent or any Lender may have.

15. AGENT; THE LENDER GROUP.

15.1 Appointment and Authorization of Agent. Each Lender hereby designates and appoints Wells Fargo as its agent under this Agreement and the other Loan Documents and each Lender hereby irrevocably authorizes (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to designate, appoint, and authorize) Agent to execute and deliver each of the other Loan Documents on its behalf and to take such other action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to Agent by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Agent agrees to act as agent for and on behalf of the Lenders (and the Bank Product Provider) on the conditions contained in this Section 15. Any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document notwithstanding, Agent shall not have any duties or responsibilities, except those expressly set forth herein or in the other Loan Documents, nor shall Agent have or be deemed to have any fiduciary relationship with any Lender (or Bank Product Provider), and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Agent. Without limiting the generality of the foregoing, the use of the term "agent" in this Agreement or the other Loan Documents with reference to Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only a representative relationship between independent contracting parties. Each Lender hereby further authorizes (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent to act as the secured party under each of the Loan Documents that create a Lien on any item of Collateral. Except as expressly otherwise provided in this Agreement, Agent shall have and may use its sole discretion with respect to exercising or refraining from exercising any discretionary rights or taking or refraining from taking any actions that Agent expressly is entitled to take or assert under or pursuant to this Agreement and the other Loan Documents. Without limiting the generality of the foregoing, or of any other provision of the Loan Documents that provides rights or powers to Agent, Lenders agree that Agent shall have the right to exercise the following powers as long as this Agreement remains in effect: (a) maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Obligations, the Collateral, payments and proceeds of Collateral, and related matters, (b) execute or file any and all financing or similar statements or notices, amendments, renewals, supplements, documents, instruments, proofs of claim, notices and other written agreements with respect to the Loan Documents, or to take any other action with respect to any Collateral or Loan Documents which may be necessary to perfect, and maintain perfected, the security interests and Liens upon Collateral pursuant to the Loan Documents, (c) make Revolving Loans, for itself or on behalf of Lenders, as provided in the Loan Documents, (d) exclusively receive, apply, and distribute payments and proceeds of the Collateral as provided in the Loan Documents, (e) open and maintain such bank accounts and cash management arrangements as Agent deems necessary and appropriate in accordance with the Loan Documents for the foregoing purposes, (f) perform, exercise, and enforce any and all other rights and remedies of the Lender Group with respect to any Loan Party or its Subsidiaries, the Obligations, the Collateral, or otherwise related to any of same as provided in the Loan Documents, and (g) incur and pay such Lender Group Expenses as Agent may deem necessary or appropriate for the performance and fulfillment of its functions and powers pursuant to the Loan Documents.

15.2 Delegation of Duties. Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys in fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Agent shall not be responsible for the negligence or misconduct of any agent or attorney in fact that it selects as long as such selection was made without gross negligence or willful misconduct.

15.3 Liability of Agent. None of the Agent-Related Persons shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct), or (b) be responsible in any manner to any of the Lenders (or Bank Product Provider) for any recital, statement, representation or warranty made by any Loan Party or any of its Subsidiaries or Affiliates, or any officer or director thereof, contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or for any failure of any Loan Party or its Subsidiaries or any other party to any Loan Document to perform its obligations hereunder or thereunder. No Agent-Related Person shall be under any obligation to any Lenders (or Bank Product Provider) to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the books and records or properties of any Loan Party or its Subsidiaries. No Agent-Related Person shall have any liability to any Lender, and Loan Party or any of their respective Affiliates if any request for a Loan, Letter of Credit or other extension of credit was not authorized by the applicable Borrower. Agent shall not be required to take any action that, in its opinion or in the opinion of its counsel, may expose it to liability or that is contrary to any Loan Document or applicable law or regulation.

15.4 Reliance by Agent. Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, telefacsimile or other electronic method of transmission, telex or telephone message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent, or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to Borrowers or counsel to any Lender), independent accountants and other experts selected by Agent. Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless Agent shall first receive such advice or concurrence of the Lenders as it deems appropriate and until such instructions are received, Agent shall act, or refrain from acting, as it deems advisable. If Agent so requests, it shall first be indemnified to its reasonable satisfaction by the Lenders (and, if it so elects, the Bank Product Provider) against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Required Lenders and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Lenders (and Bank Product Provider).

15.5 Notice of Default or Event of Default Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, except with respect to defaults in the payment of principal, interest, fees, and expenses required to be paid to Agent for the account of the Lenders and, except with respect to Events of Default of which Agent has actual knowledge, unless Agent shall have received written notice from a Lender or Borrowers referring to this Agreement, describing such Default or Event of Default, and stating that such notice is a “notice of default.” Agent promptly will notify the Lenders of its receipt of any such notice or of any Event of Default of which Agent has actual knowledge. If any Lender obtains actual knowledge of any Event of Default, such Lender promptly shall notify the other Lenders and Agent of such Event of Default. Each Lender shall be solely responsible for giving any notices to its Participants, if any. Subject to Section 15.4, Agent shall take such action with respect to such Default or Event of Default as may be requested by the Required Lenders in accordance with Section 9; provided, that unless and until Agent has received any such request, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable.

15.6 Credit Decision. Each Lender (and Bank Product Provider) acknowledges that none of the Agent-Related Persons has made any representation or warranty to it, and that no act by Agent hereinafter taken, including any review of the affairs of any Loan Party and its Subsidiaries or Affiliates, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender (or Bank Product Provider). Each Lender represents (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to represent) to Agent that it has, independently and without reliance upon any Agent-Related Person and based on such due diligence, documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of each Borrower or any other Person party to a Loan Document, and all applicable bank regulatory laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to Borrowers. Each Lender also represents (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to represent) that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of each Borrower or any other Person party to a Loan Document. Except for notices, reports, and other documents expressly herein required to be furnished to the Lenders by Agent, Agent shall not have any duty or responsibility to provide any Lender (or Bank Product Provider) with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any Borrower or any other Person party to a Loan Document that may come into the possession of any of the Agent-Related Persons. Each Lender acknowledges (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that Agent does not have any duty or responsibility, either initially or on a continuing basis (except to the extent, if any, that is expressly specified herein) to provide such Lender (or Bank Product Provider) with any credit or other information with respect to any Borrower, its Affiliates or any of their respective business, legal, financial or other affairs, and irrespective of whether such information came into Agent’s or its Affiliates’ or representatives’ possession before or after the date on which such Lender became a party to this Agreement (or such Bank Product Provider entered into a Bank Product Agreement).

15.7 Costs and Expenses; Indemnification. Agent may incur and pay Lender Group Expenses to the extent Agent reasonably deems necessary or appropriate for the performance and fulfillment of its functions, powers, and obligations pursuant to the Loan Documents, including court costs, attorneys’ fees and expenses, fees and expenses of financial accountants, advisors, consultants, and appraisers, costs of collection by outside collection agencies, auctioneer fees and expenses, and costs of security guards or insurance premiums paid to maintain the Collateral, whether or not Borrowers are obligated to reimburse Agent or Lenders for such expenses pursuant to this Agreement or otherwise. Agent is authorized and directed to deduct and retain sufficient amounts from payments or proceeds of the Collateral received by Agent to reimburse Agent for such out-of-pocket costs and expenses prior to the distribution of any amounts to Lenders (or Bank Product Provider). In the event Agent is not reimbursed for such costs and expenses by the Loan Parties and their Subsidiaries, each Lender hereby agrees that it is and shall be obligated to pay to Agent such Lender’s ratable thereof. Whether or not the transactions contemplated hereby are consummated, each of the Lenders, on a ratable basis, shall indemnify and defend the Agent-Related Persons (to the extent not reimbursed by or on behalf of Borrowers and without limiting the obligation of Borrowers to do so) from and against any and all Indemnified Liabilities; provided, that no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities resulting solely from such Person’s gross negligence or willful misconduct nor shall any Lender be liable for the obligations of any Defaulting Lender in failing to make a Revolving Loan or other extension of credit hereunder. Without limitation of the foregoing, each Lender shall reimburse Agent upon demand for such Lender’s ratable share of any costs or out of pocket expenses (including attorneys, accountants, advisors, and consultants fees and expenses) incurred by Agent in connection with the preparation, execution, delivery, administration, modification, amendment, or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement or any other Loan Document to the extent that Agent is not reimbursed for such expenses by or on behalf of Borrowers. The undertaking in this Section shall survive the payment of all Obligations hereunder and the resignation or replacement of Agent.

15.8 Agent in Individual Capacity. Wells Fargo and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, provide Bank Products to, acquire Equity Interests in, and generally engage in any kind of banking, trust, financial advisory, underwriting, or other business with any Loan Party and its Subsidiaries and Affiliates and any other Person party to any Loan Document as though Wells Fargo were not Agent hereunder, and, in each case, without notice to or consent of the other members of the Lender Group. The other members of the Lender Group acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, pursuant to such activities, Wells Fargo or its Affiliates may receive information regarding a Loan Party or its Affiliates or any other Person party to any Loan Documents that is subject to confidentiality obligations in favor of such Loan Party or such other Person and that prohibit the disclosure of such information to the Lenders (or Bank Product Provider), and the Lenders acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver Agent will use its reasonable best efforts to obtain), Agent shall not be under any obligation to provide such information to them. The terms “Lender” and “Lenders” include Wells Fargo in its individual capacity.

15.9 Successor Agent. Agent may resign as Agent upon 30 days (ten days if an Event of Default has occurred and is continuing) prior written notice to the Lenders (unless such notice is waived by the Required Lenders) and Borrowers (unless such notice is waived by Borrowers or a Default or Event of Default has occurred and is continuing) and without any notice to the Bank Product Provider. If Agent resigns under this Agreement, the Required Lenders shall be entitled, with (so long as no Event of Default has occurred and is continuing) the consent of Borrowers (such consent not to be unreasonably withheld, delayed, or conditioned), appoint a successor Agent for the Lenders (and the Bank Product Provider). If, at the time that Agent’s resignation is effective, it is acting as Issuing Bank or the Swing Lender, such resignation shall also operate to effectuate its resignation as Issuing Bank or the Swing Lender, as applicable, and it shall automatically be relieved of any further obligation to issue Letters of Credit, or to

make Swing Loans. If no successor Agent is appointed prior to the effective date of the resignation of Agent, Agent may appoint, after consulting with the Lenders and Borrowers, a successor Agent. If Agent has materially breached or failed to perform any material provision of this Agreement or of applicable law, the Required Lenders may agree in writing to remove and replace Agent with a successor Agent from among the Lenders with (so long as no Event of Default has occurred and is continuing) the consent of Borrowers (such consent not to be unreasonably withheld, delayed, or conditioned). In any such event, upon the acceptance of its appointment as successor Agent hereunder, such successor Agent shall succeed to all the rights, powers, and duties of the retiring Agent and the term "Agent" shall mean such successor Agent and the retiring Agent's appointment, powers, and duties as Agent shall be terminated. After any retiring Agent's resignation hereunder as Agent, the provisions of this Section 15 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement. If no successor Agent has accepted appointment as Agent by the date which is 30 days following a retiring Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of Agent hereunder until such time, if any, as the Lenders appoint a successor Agent as provided for above.

15.10 Lender in Individual Capacity. Any Lender and its respective Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, provide Bank Products to, acquire Equity Interests in and generally engage in any kind of banking, trust, financial advisory, underwriting, or other business with any Loan Party and its Subsidiaries and Affiliates and any other Person party to any Loan Documents as though such Lender were not a Lender hereunder without notice to or consent of the other members of the Lender Group (or the Bank Product Provider). The other members of the Lender Group acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, pursuant to such activities, such Lender and its respective Affiliates may receive information regarding a Loan Party or its Affiliates or any other Person party to any Loan Documents that is subject to confidentiality obligations in favor of such Loan Party or such other Person and that prohibit the disclosure of such information to the Lenders, and the Lenders acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver such Lender will use its reasonable best efforts to obtain), such Lender shall not be under any obligation to provide such information to them.

15.11 Collateral Matters.

(a) The Lenders hereby irrevocably authorize (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent to release any Lien on any Collateral (i) upon the termination of the Commitments and payment and satisfaction in full by the Loan Parties and their Subsidiaries of all of the Obligations, (ii) constituting property being sold or disposed of if a release is required or desirable in connection therewith and if Borrowers certify to Agent that the sale or disposition is permitted under Section 6.4 (and Agent may rely conclusively on any such certificate, without further inquiry), (iii) constituting property in which no Loan Party or any of its Subsidiaries owned any interest at the time Agent's Lien was granted nor at any time thereafter, (iv) constituting property leased or licensed to a Loan Party or its Subsidiaries under a lease or license that has expired or is terminated in a transaction permitted under this Agreement, or (v) in connection with a credit bid or purchase authorized under this Section 15.11. The Loan Parties and the Lenders hereby irrevocably authorize (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent, based upon the instruction of the Required Lenders, to (a) consent to the sale of, credit bid, or purchase (either directly or indirectly through one or more entities) all or any portion of the Collateral at any sale thereof conducted under the provisions of the Bankruptcy Code, including Section 363 of the Bankruptcy Code, (b) credit bid or purchase (either directly or indirectly through one or more entities) all or any portion of the Collateral at any sale or other disposition thereof conducted under the provisions of the Code, including pursuant to Sections 9-610 or 9-620 of the Code, or (c) credit bid or purchase (either directly or indirectly through one or more entities) all or any portion of the Collateral at any other sale or foreclosure conducted or consented to by Agent in accordance with applicable law in any judicial action or proceeding or by the exercise of any legal or equitable remedy. In connection with any such credit bid or purchase, (i) the Obligations owed to the Lenders and the Bank Product Provider shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims being estimated for such purpose if the fixing or liquidation thereof would not impair or unduly delay the ability of Agent to credit bid or purchase at such sale or other disposition of the Collateral and, if such contingent or unliquidated claims cannot be estimated without impairing or unduly delaying the ability of Agent to credit bid at such sale or other disposition, then such claims shall be disregarded, not credit bid, and not entitled to any interest in the Collateral that is the subject of such credit bid or purchase) and the Lenders and the Bank Product Provider whose Obligations are credit bid shall be entitled to receive interests (ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid) in the Collateral that is the subject of such credit bid or purchase (or in the Equity Interests of the any entities that are used to consummate such credit bid or purchase), and (ii) Agent, based upon the instruction of the Required Lenders, may accept non-cash consideration, including debt and equity securities issued by any entities used to consummate such credit bid or purchase and in connection therewith Agent may reduce the Obligations owed to the Lenders and the Bank Product Provider (ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid) based upon the value of such non-cash consideration; provided, that Bank Product Obligations not entitled to the application set forth in Section 2.4(b)(iii)(J) shall not be entitled to be, and shall not be, credit bid, or used in the calculation of the ratable interest of the Lenders and Bank Product Provider in the Obligations which are credit bid. Except as provided above, Agent will not execute and deliver a release of any Lien on any Collateral without the prior written authorization of (y) if the release is of all or substantially all of the Collateral, all of the Lenders (without requiring the authorization of the Bank Product Provider), or (z) otherwise, the Required Lenders (without requiring the authorization of the Bank Product Provider). Upon request by Agent or Borrowers at any time, the Lenders will (and if so requested, the Bank Product Provider will) confirm in writing Agent's authority to release any such Liens on particular types or items of Collateral pursuant to this Section 15.11; provided, that (1) anything to the contrary contained in any of the Loan Documents notwithstanding, Agent shall not be required to execute any document or take any action necessary to evidence such release on terms that, in Agent's opinion, could expose Agent to liability or create any obligation or entail any consequence other than the release of such Lien without recourse, representation, or warranty, and (2) such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those expressly released) upon (or obligations of Borrowers in respect of) any and all interests retained by any Borrower, including, the proceeds of any sale, all of which shall continue to constitute part of the Collateral. Each Lender further hereby irrevocably authorize (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to irrevocably authorize) Agent, at its option and in its sole discretion, to subordinate (by contract or otherwise) any Lien granted to or held by Agent on any property under any Loan Document (a) to the holder of any Permitted Lien on such property if such Permitted Lien secures purchase money Indebtedness (including Capitalized Lease Obligations) which constitute Permitted Indebtedness and (b) to the extent Agent has the authority under this Section 15.11 to release its Lien on such property.

(b) Agent shall have no obligation whatsoever to any of the Lenders (or the Bank Product Provider) (i) to verify or assure that the Collateral exists or is owned by a Loan Party or any of its Subsidiaries or is cared for, protected, or insured or has been encumbered, (ii) to verify or assure that Agent's Liens have been properly or sufficiently or lawfully created, perfected, protected, or enforced or are entitled to any particular priority, (iii) to verify or assure that any particular items of Collateral meet the eligibility criteria applicable in respect thereof, (iv) to impose, maintain, increase, reduce, implement, or eliminate any particular reserve hereunder or to determine whether the amount of any reserve is appropriate or not, or (v) to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to Agent pursuant to any of the Loan Documents, it being understood and agreed that in respect of the Collateral, or any act, omission, or event related thereto, subject to the terms and conditions contained herein, Agent may act in any manner it may deem appropriate, in its sole discretion given Agent's own interest in the Collateral in its capacity as one of the Lenders and that Agent shall have no other duty or liability whatsoever to any Lender (or Bank Product Provider) as to any of the foregoing, except as otherwise expressly provided herein.

15.12 Restrictions on Actions by Lenders; Sharing of Payments.

(a) Each of the Lenders agrees that it shall not, without the express written consent of Agent, and that it shall, to the extent it is lawfully entitled to do so, upon the written request of Agent, set off against the Obligations, any amounts owing by such Lender to any Loan Party or its Subsidiaries or any deposit accounts of any Loan Party or

its Subsidiaries now or hereafter maintained with such Lender. Each of the Lenders further agrees that it shall not, unless specifically requested to do so in writing by Agent, take or cause to be taken any action, including, the commencement of any legal or equitable proceedings to enforce any Loan Document against any Borrower or any Guarantor or to foreclose any Lien on, or otherwise enforce any security interest in, any of the Collateral.

(b) If, at any time or times any Lender shall receive (i) by payment, foreclosure, setoff, or otherwise, any proceeds of Collateral or any payments with respect to the Obligations, except for any such proceeds or payments received by such Lender from Agent pursuant to the terms of this Agreement, or (ii) payments from Agent in excess of such Lender's Pro Rata Share of all such distributions by Agent, such Lender promptly shall (A) turn the same over to Agent, in kind, and with such endorsements as may be required to negotiate the same to Agent, or in immediately available funds, as applicable, for the account of all of the Lenders and for application to the Obligations in accordance with the applicable provisions of this Agreement, or (B) purchase, without recourse or warranty, an undivided interest and participation in the Obligations owed to the other Lenders so that such excess payment received shall be applied ratably as among the Lenders in accordance with their Pro Rata Shares; provided, that to the extent that such excess payment received by the purchasing party is thereafter recovered from it, those purchases of participations shall be rescinded in whole or in part, as applicable, and the applicable portion of the purchase price paid therefor shall be returned to such purchasing party, but without interest except to the extent that such purchasing party is required to pay interest in connection with the recovery of the excess payment.

15.13 Agency for Perfection. Agent hereby appoints each other Lender (and each Bank Product Provider) as its agent (and each Lender hereby accepts (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to accept) such appointment) for the purpose of perfecting Agent's Liens in assets which, in accordance with Article 8 or Article 9, as applicable, of the Code can be perfected by possession or control. Should any Lender obtain possession or control of any such Collateral, such Lender shall notify Agent thereof, and, promptly upon Agent's request therefor shall deliver possession or control of such Collateral to Agent or in accordance with Agent's instructions.

15.14 Payments by Agent to the Lenders. All payments to be made by Agent to the Lenders (or Bank Product Provider) shall be made by bank wire transfer of immediately available funds pursuant to such wire transfer instructions as each party may designate for itself by written notice to Agent. Concurrently with each such payment, Agent shall identify whether such payment (or any portion thereof) represents principal, premium, fees, or interest of the Obligations.

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15.15 Concerning the Collateral and Related Loan Documents. Each member of the Lender Group authorizes and directs Agent to enter into this Agreement and the other Loan Documents. Each member of the Lender Group agrees (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to agree) that any action taken by Agent in accordance with the terms of this Agreement or the other Loan Documents relating to the Collateral and the exercise by Agent of its powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Lenders (and such Bank Product Provider).

15.16 Field Examination Reports; Confidentiality; Disclaimers by Lenders; Other Reports and Information By becoming a party to this Agreement, each Lender:

(a) is deemed to have requested that Agent furnish such Lender, promptly after it becomes available, a copy of each field examination report respecting any Borrower or its Subsidiaries (each, a "Report") prepared by or at the request of Agent, and Agent shall so furnish each Lender with such Reports,

(b) expressly agrees and acknowledges that Agent does not (i) make any representation or warranty as to the accuracy of any Report, and (ii) shall not be liable for any information contained in any Report,

(c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that Agent or other party performing any field examination will inspect only specific information regarding the Borrowers and their Subsidiaries and will rely significantly upon Parent's, and upon Borrowers' and their Subsidiaries', books and records, as well as on representations of Borrowers' personnel,

(d) agrees to keep all Reports and other material, non-public information regarding the Borrowers and their Subsidiaries and their operations, assets, and existing and contemplated business plans in a confidential manner in accordance with Section 17.9, and

(e) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold Agent and any other Lender preparing a Report harmless from any action the indemnifying Lender may take or fail to take or any conclusion the indemnifying Lender may reach or draw from any Report in connection with any loans or other credit accommodations that the indemnifying Lender has made or may make to Borrowers, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a loan or loans of Borrowers, and (ii) to pay and protect, and indemnify, defend and hold Agent, and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including, attorneys' fees and costs) incurred by Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

In addition to the foregoing, (x) any Lender may from time to time request of Agent in writing that Agent provide to such Lender a copy of any report or document provided by any Borrower or its Subsidiaries to Agent that has not been contemporaneously provided by such Borrower or such Subsidiary to such Lender, and, upon receipt of such request, Agent promptly shall provide a copy of same to such Lender, (y) to the extent that Agent is entitled, under any provision of the Loan Documents, to request additional reports or information from any Borrower or its Subsidiaries, any Lender may, from time to time, reasonably request Agent to exercise such right as specified in such Lender's notice to Agent, whereupon Agent promptly shall request of Borrowers the additional reports or information reasonably specified by such Lender, and, upon receipt thereof from such Borrower or such Subsidiary, Agent promptly shall provide a copy of same to such Lender, and (z) any time that Agent renders to Borrowers a statement regarding the Loan Account, Agent shall send a copy of such statement to each Lender.

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15.17 Several Obligations; No Liability. Notwithstanding that certain of the Loan Documents now or hereafter may have been or will be executed only by or in favor of Agent in its capacity as such, and not by or in favor of the Lenders, any and all obligations on the part of Agent (if any) to make any credit available hereunder shall constitute the several (and not joint) obligations of the respective Lenders on a ratable basis, according to their respective Commitments, to make an amount of such credit not to exceed, in principal amount, at any one time outstanding, the amount of their respective Commitments. Nothing contained herein shall confer upon any Lender any interest in, or subject any Lender to any liability for, or in respect of, the business, assets, profits, losses, or liabilities of any other Lender. Each Lender shall be solely responsible for notifying its Participants of any matters relating to the Loan Documents to the extent any such notice may be required, and no Lender shall have any obligation, duty, or liability to any Participant of any other Lender. Except as provided in Section 15.7, no member of the Lender Group shall have any liability for the acts of any other member of the Lender Group. No Lender shall be responsible to any Borrower or any other Person for any failure by any other Lender (or Bank Product Provider) to fulfill its obligations to make credit available hereunder, nor to advance for such Lender (or Bank Product Provider) or on its behalf, nor to take any other action on behalf of such Lender (or Bank Product Provider) hereunder or in connection with the financing contemplated herein.

15.18 [Reserved]

16. WITHHOLDING TAXES.

16.1 Payments. All payments made by any Loan Party under any Loan Document will be made free and clear of, and without deduction or withholding for, any Taxes, except as otherwise required by applicable law, and in the event any deduction or withholding of Taxes is required, the applicable Loan Party shall make the requisite withholding, promptly pay over to the applicable Governmental Authority the withheld tax, and furnish to Agent as promptly as possible after the date the payment of any such Tax is due pursuant to applicable law, certified copies of tax receipts evidencing such payment by the Loan Parties. Furthermore, if any such Tax is an Indemnified Tax or an Indemnified Tax is so levied or imposed, the Loan Parties agree to pay the full amount of such Indemnified Taxes and such additional amounts as may be necessary so that every payment of all amounts due under this Agreement, any note, or Loan Document, including any amount paid pursuant to this Section 16.1 after withholding or deduction for or on account of any Indemnified Taxes, will not be less than the amount provided for herein. The Loan Parties will promptly pay any Other Taxes or reimburse Agent for such Other Taxes upon Agent's demand. The Loan Parties shall jointly and severally indemnify each Indemnified Person (as defined in Section 10.3) (collectively a "Tax Indemnitee") for the full amount of Indemnified Taxes arising in connection with this Agreement or any other Loan Document or breach thereof by any Loan Party (including, without limitation, any Indemnified Taxes imposed or asserted on, or attributable to, amounts payable under this Section 16) imposed on, or paid by, such Tax Indemnitee and all reasonable costs and expenses related thereto (including fees and disbursements of attorneys and other tax professionals), as and when they are incurred and irrespective of whether suit is brought, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority (other than Indemnified Taxes and additional amounts that a court of competent jurisdiction finally determines to have resulted from the gross negligence or willful misconduct of such Tax Indemnitee). The obligations of the Loan Parties under this Section 16 shall survive the termination of this Agreement, the resignation and replacement of the Agent, and the repayment of the Obligations.

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16.2 Exemptions.

(a) If a Lender or Participant is entitled to claim an exemption or reduction from United States withholding tax, such Lender or Participant agrees with and in favor of Agent, to deliver to Agent (or, in the case of a Participant, to the Lender granting the participation only) and the Administrative Borrower on behalf of all Borrowers one of the following before receiving its first payment under this Agreement:

(i) if such Lender or Participant is entitled to claim an exemption from United States withholding tax pursuant to the portfolio interest exception, (A) a statement of the Lender or Participant, signed under penalty of perjury, that it is not a (I) a "bank" as described in Section 881(c)(3)(A) of the IRC, (II) a 10% shareholder of Administrative Borrower (within the meaning of Section 871(h)(3)(B) of the IRC), or (III) a controlled foreign corporation related to Borrowers within the meaning of Section 864(d)(4) of the IRC, and (B) a properly completed and executed IRS Form W-8BEN, Form W-8BEN-E or Form W-8IMY (with proper attachments as applicable);

(ii) if such Lender or Participant is entitled to claim an exemption from, or a reduction of, withholding tax under a United States tax treaty, a properly completed and executed copy of IRS Form W-8BEN or Form W-8BEN-E, as applicable;

(iii) if such Lender or Participant is entitled to claim that interest paid under this Agreement is exempt from United States withholding tax because it is effectively connected with a United States trade or business of such Lender, a properly completed and executed copy of IRS Form W-8ECI;

(iv) if such Lender or Participant is entitled to claim that interest paid under this Agreement is exempt from United States withholding tax because such Lender or Participant serves as an intermediary, a properly completed and executed copy of IRS Form W-8IMY (including a withholding statement and copies of the tax certification documentation for its beneficial owner(s) of the income paid to the intermediary, if required based on its status provided on the Form W-8IMY); or

(v) a properly completed and executed copy of any other form or forms, including IRS Form W-9, as may be required under the IRC or other laws of the United States as a condition to exemption from, or reduction of, United States withholding or backup withholding tax.

(b) Each Lender or Participant shall provide new forms (or successor forms) upon the expiration or obsolescence of any previously delivered forms and to promptly notify Agent and Administrative Borrower (or, in the case of a Participant, to the Lender granting the participation only) of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(c) If a Lender or Participant claims an exemption from withholding tax in a jurisdiction other than the United States, such Lender or such Participant agrees with and in favor of Agent and Borrowers, to deliver to Agent and Administrative Borrower (or, in the case of a Participant, to the Lender granting the participation only) any such form or forms, as may be required under the laws of such jurisdiction as a condition to exemption from, or reduction of, foreign withholding or backup withholding tax before receiving its first payment under this Agreement, but only if such Lender or such Participant is legally able to deliver such forms, or the providing of or delivery of such forms in the Lender's reasonable judgment would not subject such Lender to any material unreimbursed cost or expense or materially prejudice the legal or commercial position of such Lender (or its Affiliates); provided, further, that nothing in this Section 16.2(c) shall require a Lender or Participant to disclose any information that it deems to be confidential (including without limitation, its tax returns). Each Lender and each Participant shall provide new forms (or successor forms) upon the expiration or obsolescence of any previously delivered forms and to promptly notify Agent and Administrative Borrower (or, in the case of a Participant, to the Lender granting the participation only) of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

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(d) If a Lender or Participant claims exemption from, or reduction of, withholding tax and such Lender or Participant sells, assigns, grants a participation in, or otherwise transfers all or part of the Obligations of Borrowers to such Lender or Participant, such Lender or Participant agrees to notify Agent and Administrative Borrower (or, in the case of a sale of a participation interest, to the Lender granting the participation only) of the percentage amount in which it is no longer the beneficial owner of Obligations of Borrowers to such Lender or Participant. To the extent of such percentage amount, Agent and Administrative Borrower will treat such Lender's or such Participant's documentation provided pursuant to Section 16.2(a) or 16.2(c) as no longer valid. With respect to such percentage amount, such Participant or Assignee may provide new documentation, pursuant to Section 16.2(a) or 16.2(c), if applicable. Borrowers agree that each Participant shall be entitled to the benefits of this Section 16 with respect to its participation in any portion of the Commitments and the Obligations so long as such Participant complies with the obligations set forth in this Section 16 with respect thereto.

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

16.3 Reductions.

(a) If a Lender or a Participant is subject to an applicable withholding tax, Agent (or, in the case of a Participant, the Lender granting the participation) may withhold from any payment to such Lender or such Participant an amount equivalent to the applicable withholding tax. If the forms or other documentation required by Section 16.2(a) or 16.2(c) are not delivered to Agent (or, in the case of a Participant, to the Lender granting the participation), then Agent (or, in the case of a Participant, to the Lender granting the participation) may withhold from any payment to such Lender or such Participant not providing such forms or other documentation an amount equivalent to the applicable withholding tax.

(b) If the IRS or any other Governmental Authority of the United States or other jurisdiction asserts a claim that Agent (or, in the case of a Participant, to the Lender granting the participation) did not properly withhold tax from amounts paid to or for the account of any Lender or any Participant due to a failure on the part of the Lender or any Participant (because the appropriate form was not delivered, was not properly executed, or because such Lender failed to notify Agent (or such Participant failed to notify the Lender granting the participation) of a change in circumstances which rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason) such Lender shall indemnify and hold Agent harmless (or, in the case of a Participant, such Participant shall indemnify and hold the Lender granting the participation harmless) for all amounts paid, directly or indirectly, by Agent (or, in the case of a Participant, to the Lender granting the participation), as tax or otherwise, including penalties and interest, and including any taxes imposed by any jurisdiction on the amounts payable to Agent (or, in the case of a Participant, to the Lender granting the participation only) under this Section 16, together with all costs and expenses (including attorneys' fees and expenses). The obligation of the Lenders and the Participants under this subsection shall survive the payment of all Obligations and the resignation or replacement of Agent.

16.4 Refunds. If Agent or a Lender determines, in its sole discretion, that it has received a refund of any Indemnified Taxes to which the Loan Parties have paid additional amounts pursuant to this Section 16, so long as no Default or Event of Default has occurred and is continuing, it shall pay over such refund to the Administrative Borrower on behalf of the Loan Parties (but only to the extent of payments made, or additional amounts paid, by the Loan Parties under this Section 16 with respect to Indemnified Taxes giving rise to such a refund), net of all out-of-pocket expenses of Agent or such Lender and without interest (other than any interest paid by the applicable Governmental Authority with respect to such a refund); provided, that the Loan Parties, upon the request of Agent or such Lender, agrees to repay the amount paid over to the Loan Parties (plus any penalties, interest or other charges, imposed by the applicable Governmental Authority, other than such penalties, interest or other charges imposed as a result of the willful misconduct or gross negligence of Agent or Lender hereunder as finally determined by a court of competent jurisdiction) to Agent or such Lender in the event Agent or such Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything in this Agreement to the contrary, this Section 16 shall not be construed to require Agent or any Lender to make available its tax returns (or any other information which it deems confidential) to Loan Parties or any other Person or require Agent or any Lender to pay any amount to an indemnifying party pursuant to Section 16.4, the payment of which would place Agent or such Lender (or their Affiliates) in a less favorable net after-Tax position than such Person would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid.

17. GENERAL PROVISIONS.

17.1 Effectiveness. This Agreement shall be binding and deemed effective when executed by each Borrower, Agent, and each Lender whose signature is provided for on the signature pages hereof.

17.2 Section Headings. Headings and numbers have been set forth herein for convenience only. Unless the contrary is compelled by the context, everything contained in each Section applies equally to this entire Agreement.

17.3 Interpretation. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed against the Lender Group or any Borrower, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to accomplish fairly the purposes and intentions of all parties hereto.

17.4 Severability of Provisions. Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

17.5 Bank Product Provider. The Bank Product Provider in its capacity as such shall be deemed a third party beneficiary hereof and of the provisions of the other Loan Documents for purposes of any reference in a Loan Document to the parties for whom Agent is acting. Agent hereby agrees to act as agent for such Bank Product Provider and, by virtue of entering into a Bank Product Agreement, the applicable Bank Product Provider shall be automatically deemed to have appointed Agent as its agent and to have accepted the benefits of the Loan Documents. It is understood and agreed that the rights and benefits of each Bank Product Provider under the Loan Documents consist exclusively of such Bank Product Provider's being a beneficiary of the Liens and security interests (and, if applicable, guarantees) granted to Agent and the right to share in payments and collections out of the Collateral as more fully set forth herein. In addition, each Bank Product Provider, by virtue of entering into a Bank Product Agreement, shall be automatically deemed to have agreed that Agent shall have the right, but shall have no obligation, to establish, maintain, relax, or release reserves in respect of the Bank Product Obligations and that if reserves are established there is no obligation on the part of Agent to determine or insure whether the amount of any such reserve is appropriate or not. In connection with any such distribution of payments or proceeds of Collateral, Agent shall be entitled to assume no amounts are due or owing to any Bank Product Provider unless such Bank Product Provider has provided a written certification (setting forth a reasonably detailed calculation) to Agent as to the amounts that are due and owing to it and such written certification is received by Agent a reasonable period of time prior to the making of such distribution. Agent shall have no obligation to calculate the amount due and payable with respect to any Bank Products, but may rely upon the written certification of the amount due and payable from the applicable Bank Product Provider. In the absence of an updated certification, Agent shall be entitled to assume that the amount due and payable to the applicable Bank Product Provider is the amount last certified to Agent by such Bank Product Provider as being due and payable (less any distributions made to such Bank Product Provider on account thereof). Borrowers may obtain Bank Products from any Bank Product Provider, although Borrowers are not required to do so. Each Borrower acknowledges and agrees that no Bank Product Provider has committed to provide any Bank Products and that the providing of Bank Products by any Bank Product Provider is in the sole and absolute discretion of such Bank Product Provider. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, no provider or holder of any Bank Product shall have any voting or approval rights hereunder (or be deemed a Lender) solely by virtue of its status as the provider or holder of such agreements or products or the Obligations owing thereunder, nor shall the consent of any such provider or holder be required (other than in their capacities as Lenders, to the extent applicable) for any matter hereunder or under any of the other Loan Documents, including as to any matter relating to the Collateral or the release of Collateral or Guarantors.

17.6 Debtor-Creditor Relationship. The relationship between the Lenders and Agent, on the one hand, and the Loan Parties, on the other hand, is solely that of creditor and debtor. No member of the Lender Group has (or shall be deemed to have) any fiduciary relationship or duty to any Loan Party arising out of or in connection with the Loan Documents or the transactions contemplated thereby, and there is no agency or joint venture relationship between the members of the Lender Group, on the one hand, and the Loan Parties, on the other hand, by virtue of any Loan Document or any transaction contemplated therein.

17.7 **Counterparts; Electronic Execution.** This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Delivery of an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement. The foregoing shall apply to each other Loan Document *mutatis mutandis*.

17.8 **Revival and Reinstatement of Obligations; Certain Waivers.**

(a) If any member of the Lender Group or any Bank Product Provider repays, refunds, restores, or returns in whole or in part, any payment or property (including any proceeds of Collateral) previously paid or transferred to such member of the Lender Group or such Bank Product Provider in full or partial satisfaction of any Obligation or on account of any other obligation of any Loan Party under any Loan Document or any Bank Product Agreement, because the payment, transfer, or the incurrence of the obligation so satisfied is asserted or declared to be void, voidable, or otherwise recoverable under any law relating to creditors' rights, including provisions of the Bankruptcy Code relating to fraudulent transfers, preferences, or other voidable or recoverable obligations or transfers (each, a "Voidable Transfer"), or because such member of the Lender Group or Bank Product Provider elects to do so on the reasonable advice of its counsel in connection with a claim that the payment, transfer, or incurrence is or may be a Voidable Transfer, then, as to any such Voidable Transfer, or the amount thereof that such member of the Lender Group or Bank Product Provider elects to repay, restore, or return (including pursuant to a settlement of any claim in respect thereof), and as to all reasonable costs, expenses, and attorneys' fees of such member of the Lender Group or Bank Product Provider related thereto, (i) the liability of the Loan Parties with respect to the amount or property paid, refunded, restored, or returned will automatically and immediately be revived, reinstated, and restored and will exist, and (ii) Agent's Liens securing such liability shall be effective, revived, and remain in full force and effect, in each case, as fully as if such Voidable Transfer had never been made. If, prior to any of the foregoing, (A) Agent's Liens shall have been released or terminated, or (B) any provision of this Agreement shall have been terminated or cancelled, Agent's Liens, or such provision of this Agreement, shall be reinstated in full force and effect and such prior release, termination, cancellation or surrender shall not diminish, release, discharge, impair or otherwise affect the obligation of any Loan Party in respect of such liability or any Collateral securing such liability. This provision shall survive the termination of this Agreement and the repayment in full of the Obligations.

(b) Anything to the contrary contained herein notwithstanding, if Agent or any Lender accepts a guaranty of only a portion of the Obligations pursuant to any guaranty, each Borrower hereby waive its right under Section 2822(a) of the California Civil Code or any similar laws of any other applicable jurisdiction to designate the portion of the Obligations satisfied by the applicable guarantor's partial payment.

17.9 **Confidentiality.**

(a) Agent and Lenders each individually (and not jointly or jointly and severally) agree that material, non-public information regarding the Loan Parties and their Subsidiaries, their operations, assets, and existing and contemplated business plans ("Confidential Information") shall be treated by Agent and the Lenders in a confidential manner, and shall not be disclosed by Agent and the Lenders to Persons who are not parties to this Agreement, except: (i) to attorneys for and other advisors, accountants, auditors, and consultants to any member of the Lender Group and to employees, directors and officers of any member of the Lender Group (the Persons in this clause (i), "Lender Group Representatives") on a "need to know" basis in connection with this Agreement and the transactions contemplated hereby and on a confidential basis, (ii) to Subsidiaries and Affiliates of any member of the Lender Group (including the Bank Product Provider); provided, that any such Subsidiary or Affiliate shall have agreed to receive such information hereunder subject to the terms of this Section 17.9, (iii) as may be required by regulatory authorities so long as such authorities are informed of the confidential nature of such information, (iv) as may be required by statute, decision, or judicial or administrative order, rule, or regulation; provided, that (x) prior to any disclosure under this clause (iv), the disclosing party agrees to provide Borrowers with prior notice thereof, to the extent that it is practicable to do so and to the extent that the disclosing party is permitted to provide such prior notice to Borrowers pursuant to the terms of the applicable statute, decision, or judicial or administrative order, rule, or regulation and (y) any disclosure under this clause (iv) shall be limited to the portion of the Confidential Information as may be required by such statute, decision, or judicial or administrative order, rule, or regulation, (v) as may be agreed to in advance in writing by Borrowers, (vi) as requested or required by any Governmental Authority pursuant to any subpoena or other legal process; provided, that (x) prior to any disclosure under this clause (vi) the disclosing party agrees to provide Borrowers with prior written notice thereof, to the extent that it is practicable to do so and to the extent that the disclosing party is permitted to provide such prior written notice to Borrowers pursuant to the terms of the subpoena or other legal process and (y) any disclosure under this clause (vi) shall be limited to the portion of the Confidential Information as may be required by such Governmental Authority pursuant to such subpoena or other legal process, (vii) as to any such information that is or becomes generally available to the public (other than as a result of prohibited disclosure by Agent or the Lenders or the Lender Group Representatives), (viii) in connection with any assignment, participation or pledge of any Lender's interest under this Agreement; provided, that prior to receipt of Confidential Information any such assignee, participant, or pledgee shall have agreed in writing to receive such Confidential Information either subject to the terms of this Section 17.9 or pursuant to confidentiality requirements substantially similar to those contained in this Section 17.9 (and such Person may disclose such Confidential Information to Persons employed or engaged by them as described in clause (i) above), (ix) in connection with any litigation or other adversary proceeding involving parties hereto which such litigation or adversary proceeding involves claims related to the rights or duties of such parties under this Agreement or the other Loan Documents; provided, that prior to any disclosure to any Person (other than any Loan Party, Agent, any Lender, any of their respective Affiliates, or their respective counsel) under this clause (ix) with respect to litigation involving any Person (other than any Borrower, Agent, any Lender, any of their respective Affiliates, or their respective counsel), the disclosing party agrees to provide Borrowers with prior written notice thereof, and (x) in connection with, and to the extent reasonably necessary for, the exercise of any secured creditor remedy under this Agreement or under any other Loan Document.

(b) Anything in this Agreement to the contrary notwithstanding, Agent may disclose information concerning the terms and conditions of this Agreement and the other Loan Documents to loan syndication and pricing reporting services or in its marketing or promotional materials, with such information to consist of deal terms and other information customarily found in such publications or marketing or promotional materials and may otherwise use the name, logos, and other insignia of any Borrower or the other Loan Parties and the Commitments provided hereunder in any "tombstone" or other advertisements, on its website or in other marketing materials of the Agent.

(c) Each Loan Party agrees that Agent may make available to the Lenders materials or information provided by or on behalf of Borrowers hereunder ("Borrower Materials") by posting the Communications on IntraLinks, SyndTrak or a substantially similar secure electronic transmission system (the "Platform"). The Platform is provided "as is" and "as available." Agent does not warrant the accuracy or completeness of the Borrower Materials, or the adequacy of the Platform and expressly disclaim liability for errors or omissions in the communications. No warranty of any kind, express, implied or statutory, including, 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 Agent in connection with the Borrower Materials or the Platform. In no event shall Agent or any of the Agent-Related Persons have any liability to the Loan Parties, any Lender or any other person for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of any Loan Party's or Agent's transmission of communications through the Internet, except to the extent the liability of such person is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted from such person's gross negligence or willful misconduct. Each Loan Party further agrees that certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Loan Parties or their securities) (each, a "Public Lender"). The Loan Parties shall be deemed to have authorized Agent and its Affiliates and the Lenders to treat Borrower Materials marked "PUBLIC" or otherwise at any time filed with the SEC as not containing any material non-public information with respect to the Loan Parties or their securities for purposes of United States federal and state securities laws. All

Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated as “Public Investor” (or another similar term). Agent and its Affiliates and the Lenders shall be entitled to treat any Borrower Materials that are not marked “PUBLIC” or that are not at any time filed with the SEC as being suitable only for posting on a portion of the Platform not marked as “Public Investor” (or such other similar term).

17.10 **Survival.** All representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that Agent, Issuing Bank, or any Lender may have had notice or knowledge of any Default or Event of Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of, or any accrued interest on, any Loan or any fee or any other amount payable under this Agreement is outstanding or unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or been terminated.

17.11 **Patriot Act; Due Diligence.** Each Lender that is subject to the requirements of the Patriot Act hereby notifies the Loan Parties that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender to identify each Loan Party in accordance with the Patriot Act. In addition, Agent and each Lender shall have the right to periodically conduct due diligence on all Loan Parties, their senior management and key principals and legal and beneficial owners. Each Loan Party agrees to cooperate in respect of the conduct of such due diligence and further agrees that the reasonable costs and charges for any such due diligence by Agent shall constitute Lender Group Expenses hereunder and be for the account of Borrowers.

17.12 **Integration.** This Agreement, together with the other Loan Documents, reflects the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof. The foregoing to the contrary notwithstanding, all Bank Product Agreements, if any, are independent agreements governed by the written provisions of such Bank Product Agreements, which will remain in full force and effect, unaffected by any repayment, prepayments, acceleration, reduction, increase, or change in the terms of any credit extended hereunder, except as otherwise expressly provided in such Bank Product Agreement.

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17.13 **Kinergy as Agent for Borrowers.** Each Borrower hereby irrevocably appoints Kinergy as the borrowing agent and attorney-in-fact for all Borrowers (the “Administrative Borrower”) which appointment shall remain in full force and effect unless and until Agent shall have received prior written notice signed by each Borrower that such appointment has been revoked and that another Borrower has been appointed Administrative Borrower. Each Borrower hereby irrevocably appoints and authorizes the Administrative Borrower (a) to provide Agent with all notices with respect to Revolving Loans and Letters of Credit obtained for the benefit of any Borrower and all other notices and instructions under this Agreement and the other Loan Documents (and any notice or instruction provided by Administrative Borrower shall be deemed to be given by Borrowers hereunder and shall bind each Borrower), (b) to receive notices and instructions from members of the Lender Group (and any notice or instruction provided by any member of the Lender Group to the Administrative Borrower in accordance with the terms hereof shall be deemed to have been given to each Borrower), and (c) to take such action as the Administrative Borrower deems appropriate on its behalf to obtain Revolving Loans and Letters of Credit and to exercise such other powers as are reasonably incidental thereto to carry out the purposes of this Agreement. It is understood that the handling of the Loan Account and Collateral in a combined fashion, as more fully set forth herein, is done solely as an accommodation to Borrowers in order to utilize the collective borrowing powers of Borrowers in the most efficient and economical manner and at their request, and that Lender Group shall not incur liability to any Borrower as a result hereof. Each Borrower expects to derive benefit, directly or indirectly, from the handling of the Loan Account and the Collateral in a combined fashion since the successful operation of each Borrower is dependent on the continued successful performance of the integrated group. To induce the Lender Group to do so, and in consideration thereof, each Borrower hereby jointly and severally agrees to indemnify each member of the Lender Group and hold each member of the Lender Group harmless against any and all liability, expense, loss or claim of damage or injury, made against the Lender Group by any Borrower or by any third party whosoever, arising from or incurred by reason of (i) the handling of the Loan Account and Collateral of Borrowers as herein provided, or (ii) the Lender Group’s relying on any instructions of the Administrative Borrower, except that Borrowers will have no liability to the relevant Agent-Related Person or Lender-Related Person under this Section 17.13 with respect to any liability that has been finally determined by a court of competent jurisdiction to have resulted solely from the gross negligence or willful misconduct of such Agent-Related Person or Lender-Related Person, as the case may be.

17.14 **Acknowledgement and Consent to Bail-In of EEA 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 EEA 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 an EEA 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 an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA 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 EEA 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 any EEA Resolution Authority.

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17.15 **Amendment and Restatement.**

The terms, conditions, agreements, covenants, representations and warranties set forth in the Existing Loan Agreement are, effective as of the Closing Date, amended and restated in their entirety, and as so amended and restated, replaced and superseded by, the terms, conditions agreements, covenants, representations and warranties set forth in this Agreement; provided, that, nothing herein or in the other Financing Agreements shall, in any manner, be construed to constitute payment of, or impair, limit, cancel or extinguish, or constitute a novation in respect of any of the “Obligations” existing under (and as defined in) the Existing Loan Agreement (the “Existing Obligations”) or any other obligations, liabilities and indebtedness of the Borrowers evidenced by or arising under the Existing Loan Agreement or impair or adversely affect the continuation of the security interests, liens and other interests in the Collateral heretofore granted, pledged and/or assigned by the Borrowers to Agent pursuant to or in connection with the Existing Loan Agreement. All Existing Obligations of Borrowers to Agent and Lenders, and all other loans, advances and other financial accommodations under the Existing Loan Agreement, that are outstanding and unpaid as of the date hereof pursuant to the Existing Loan Agreement (including, without limitation, all Existing Obligations now or hereafter arising in connection with the Existing Letters of Credit) shall be deemed Obligations of Borrowers under this Agreement which are secured by Liens in the Collateral

pursuant to the terms of this Agreement.

17.16 **Acknowledgement Regarding Any Supported QFCs** To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Hedge Agreements or any other agreement or instrument that is a QFC (such support, “QFC Credit Support” and each such QFC a “Supported QFC”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York or of the United States or any other state of the United States): In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

17.17 **Intercreditor Agreement** This Agreement, including without limitation, Section 2.4(b) and this Article 17 hereof, is subject in all respects to the terms and conditions of the Intercreditor Agreement. In the event of any conflict between this Agreement and the Intercreditor Agreement, the Intercreditor Agreement shall govern..

[Signature pages to follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

BORROWERS:

KINERGY MARKETING LLC, an Oregon limited liability company

By: _____
Name: _____
Title: _____

ALTO NUTRIENTS LLC, a California limited liability company

By: _____
Name: _____
Title: _____

[SIGNATURE PAGE TO CREDIT AGREEMENT]

WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association, as Agent, as Lead Arranger, as Book Runner, as Syndication Agent, as Documentation Agent, and as a Lender

By: _____
Name: _____
Its Authorized Signatory

[SIGNATURE PAGE TO CREDIT AGREEMENT]

_____,
as a Lender

By: _____
Name: _____
Title: _____

[SIGNATURE PAGE TO CREDIT AGREEMENT]

Deliver to Agent (and if so requested by Agent, with copies for each Lender) each of the financial statements, reports, or other items set forth below at the following times in form satisfactory to Agent:

within 30 days after the end of each fiscal month during each of Borrowers' fiscal years,	(a) monthly unaudited consolidated financial statements and unaudited consolidating financial statements (including in each case balance sheets, statements of income and loss, statements of cash flow, and statements of shareholders' equity), all in reasonable detail, fairly presenting in all material respects the consolidated financial position and the consolidated results of the operations of Borrowers and their respective Subsidiaries as of the end of and through such fiscal month, certified to be correct by the chief financial officer of Administrative Borrower, subject to normal year-end adjustments and accompanied by a Compliance Certificate substantially in the form of Exhibit C-1 hereto, along with a schedule in form reasonably satisfactory to Agent of the calculations used in determining, as of the end of such month, whether Borrowers were, on a collective basis, in compliance with the covenant set forth in Section 7 of this Agreement for such month.
within 50 days after the end of the first three (3) fiscal quarters of each fiscal year; provided, that, with respect to Parent, the filing of such financial statements or other information with the SEC, or the making of such reports or other information available on the SEC's EDGAR filing system shall be deemed to have satisfied the delivery requirement	<p>(b) quarterly unaudited consolidated financial statements and unaudited consolidating financial statements of Borrowers their respective Subsidiaries (including in each case balance sheets, statements of income and loss, statements of cash flow, and statements of shareholders' equity), all in reasonable detail, fairly presenting in all material respects the consolidated financial position and the consolidated results of the operations of Borrowers and their respective Subsidiaries as of the end of and through such fiscal quarter, certified to be correct by the chief financial officer of Administrative Borrower, subject to normal quarterly and year-end adjustments and accompanied by a Compliance Certificate substantially in the form of Exhibit C hereto along with a schedule in form reasonably satisfactory to Agent of the calculations used in determining, as of the end of such fiscal quarter, whether Borrowers were in compliance with the covenants set forth in Section 7 of this Agreement for such fiscal quarter, and</p> <p>(c) quarterly unaudited consolidated financial statements of Parent and its Subsidiaries (including balance sheets, statements of income and loss, statements of cash flow, and statements of shareholders' equity), all in reasonable detail, fairly presenting in all material respects the consolidated financial position and the consolidated results of the operations of Parent and its Subsidiaries as of the end of and through such fiscal quarter, certified to be correct by the chief financial officer of Parent, subject to normal quarterly and year-end adjustments and accompanied by a Compliance Certificate substantially in the form of Exhibit C hereto along with a schedule in form reasonably satisfactory to Agent of the calculations used in determining, as of the end of such fiscal quarter, whether Borrowers were in compliance with the covenants set forth in Section 7 of this Agreement for such fiscal quarter, and</p>

within 120 days after the end of each fiscal year; provided, that, with respect to Parent, the filing of such financial statements or other information with the SEC, or the making of such reports or other information available on the SEC's EDGAR filing system shall be deemed to have satisfied the delivery requirement	<p>(d) audited consolidated financial statements and unaudited consolidating financial statements of Borrowers and their respective Subsidiaries (including in each case balance sheets, statements of income and loss, statements of cash flow, and statements of shareholders' equity), all in reasonable detail, fairly presenting in all material respects the consolidated financial position and the consolidated results of the operations of Borrowers and their respective Subsidiaries as of the end of and for such fiscal year, together with the unqualified opinion of independent certified public accountants with respect to the audited consolidated financial statements, which accountants shall be an independent accounting firm selected by Parent on behalf of Borrowers and reasonably acceptable to Agent, that such audited consolidated financial statements have been prepared in accordance with GAAP, and present fairly in all material respects the results of operations and financial condition of Borrowers and their respective Subsidiaries as of the end of and for the fiscal year then ended, and</p> <p>(e) audited consolidated financial statements of Parent and its Subsidiaries (including balance sheets, statements of income and loss, statements of cash flow, and statements of shareholders' equity), and the accompanying notes thereto, all in reasonable detail, fairly presenting in all material respects the consolidated financial position and the consolidated results of the operations of Parent and its Subsidiaries as of the end of and for such fiscal year, together with the unqualified opinion of independent certified public accountants with respect to the audited consolidated financial statements, which accountants shall be an independent accounting firm selected by Parent and reasonably acceptable to Agent, that such audited consolidated financial statements have been prepared in accordance with GAAP, and present fairly in all material respects the consolidated results of operations and consolidated financial condition of Parent and its Subsidiaries as of the end of and for the fiscal year then ended.</p>
At such time as available, but in no event no later than the end of each fiscal year	(f) projected consolidated financial statements (including in each case, forecasted balance sheets and statements of income and loss, statements of cash flow, and statements of shareholders' equity), and Borrowers and their respective Subsidiaries, on a consolidated basis, for the next fiscal year, all in reasonable detail, and in a format consistent with the projections delivered by Borrowers to Agent prior to the date hereof, together with such supporting information as Agent may reasonably request. Such projected financial statements shall be prepared on a monthly basis for the next succeeding year. Such projections shall represent Parent's and Borrowers' reasonable best estimate of the future financial performance of Borrowers for the periods set forth therein and shall have been prepared on the basis of the assumptions set forth therein which Borrowers believe are fair and reasonable as of the date of preparation in light of current and reasonably foreseeable business conditions (it being understood that actual results may differ from those set forth in such projected financial statements). Each year Parent and Borrowers shall provide to Agent a semi-annual update with respect to such projections or at any time a Default or Event of Default exists or has occurred and is continuing, more frequently as Agent may require.

Promptly after the sending or filing thereof, provided, that, the filing of such reports or other information with the SEC, or the making of such reports or other information available on the SEC's EDGAR filing system shall be deemed to have satisfied the delivery requirement	<p>(g) all reports which Parent or any of their Subsidiaries sends to its security holders generally,</p> <p>(h) all reports and registration statements which Parent or any of its Subsidiaries files with the Securities Exchange Commission, any national or foreign securities exchange or the National Association of Securities Dealers, Inc., and such other reports as Agent may hereafter specifically identify to Administrative Borrower that Agent reasonably requires be provided to Agent,</p> <p>(i) all press releases, and</p> <p>(j) all other statements concerning material changes or developments in the business of a Borrower made available by any Borrower to the public.</p>
upon the reasonable request of Agent and to the extent not otherwise required to be delivered herewith	(k) budgets, forecasts, projections and other information respecting the Collateral and the business of Borrowers, it being acknowledged and agreed that Agent is hereby authorized to deliver a copy of any financial statement or any other information relating to the business of Borrowers to any court or other Governmental Authority, or to any Lender or Participant or prospective Lender or Participant, or any Affiliate of any Lender or Participant; provided that any such delivery will be subject to the provisions set forth in Section 17.9 of the Credit Agreement.
	Each Borrower hereby irrevocably authorizes and directs all auditors who prepared any audited statements as and when required hereunder, to deliver to Agent, at Borrowers' expense, copies of the financial statements of any Borrower and any reports or management letters prepared by such auditors on behalf of any Borrower and to disclose to Agent and Lenders such material information as they may have regarding the business of any Borrower, all subject to the confidentiality provisions of Section 17.9. Any documents, schedules, invoices or other papers delivered to Agent or any Lender may be destroyed or otherwise disposed of by Agent or such Lender one (1) year after the same are delivered to Agent or such Lender, except as otherwise designated by Administrative Borrower to Agent or such Lender in writing

Schedule 5.2
Collateral Reporting

Provide Agent (and if so requested by Agent, with copies for each Lender) with each of the documents set forth below at the following times in form satisfactory to Agent:

If (x) no Increased Reporting Period is in effect, monthly, as soon as practicable (but in any event no later than the 15th day after the end of each month), or (y) an Increased Reporting Period is in effect, weekly, as soon as practicable (but in any event no later than two (2) Business Days after the end of each week, commencing with the first such day to occur during any Increased Reporting Period), or (z) more frequently as the Agent may reasonably request:	<p>(a) schedules of sales made, credits issued and cash received,</p> <p>(b) inventory reports by location and category (and including the amounts of Inventory and the value thereof at any leased locations and at premises of warehouses, processors or other third parties), and</p> <p>(c) an executed Borrowing Base Certificate as of the last Business Day of the immediately preceding period, together with all schedule, each duly completed, as required pursuant to the terms of the Borrowing Base Certificate.</p>
Monthly (no later than the 15th Business Day after the end of each month), or more frequently as Agent may reasonably request:	<p>(d) perpetual inventory reports,</p> <p>(e) agings of accounts receivable (together with a reconciliation to the previous month's aging and general ledger),</p> <p>(f) agings of accounts payable (and including information indicating the amounts owing to owners and lessors of leased premises, warehouses, processors and other third parties from time to time in possession of any Collateral), and</p> <p>(g) a schedule of all ethanol purchase and sale contracts or agreements constituting a Material Contract entered into, amended or terminated during the previous month.</p>
Promptly upon request by Agent:	<p>(h) copies of customer statements, purchase orders, sales invoices, credit memos, remittance advices and reports, and copies of deposit slips and bank statements,</p> <p>(i) copies of shipping and delivery documents,</p> <p>(j) copies of purchase orders, invoices and delivery documents for Inventory and Equipment acquired by any Borrower, and</p> <p>(k) such other reports as to the Collateral as Agent shall reasonably request from time to time.</p>
	It being acknowledged and agreed that, with respect to each of the foregoing, if Borrowers' records or reports of the Collateral are prepared or maintained by an accounting service, contractor, shipper or other agent, Borrowers hereby irrevocably authorize such service, contractor, shipper or agent to deliver such records, reports, and related documents to Agent and to follow Agent's instructions with respect to further services at any time that an Event of Default exists or has occurred and is continuing.

Exhibit B
to
Amendment No. 6 to Credit Agreement

Updated Schedules to Credit Agreement

See attached.

REGISTRATION RIGHTS AGREEMENT

This REGISTRATION RIGHTS AGREEMENT (this “**Agreement**”) is made and entered into as of November 7, 2022, by and among Alto Ingredients, Inc., a Delaware corporation (the “**Company**”), and the Holders (as defined herein) set forth on the signature page hereto and the Persons who become party to this Agreement from time to time upon the execution of a Joinder (as defined herein) in accordance with Section 2.10 of this Agreement.

RECITALS

WHEREAS, pursuant to and subject to the terms and conditions of that certain Credit Agreement by and among the Company, OIC Investment Agent, LLC, as the administrative agent and the collateral agent, and the lenders from time to time thereto (collectively, the “**Lenders**” and each as a “**Lender**”), dated November 7, 2022 (as amended, modified, or supplemented, the “**Credit Agreement**”), the Lenders have agreed to extend a senior secured credit facility to the Company;

WHEREAS, in connection with, and effective upon, the consummation of the transactions contemplated by the Credit Agreement, the Company will issue shares of common stock of the Company, \$0.001 par value per share (“**Common Stock**”) to the Lenders; and

WHEREAS, in connection with, and effective upon, the consummation of the transactions contemplated by the Credit Agreement, and pursuant to the terms of the Credit Agreement, the parties hereto desire to enter into this Agreement to grant certain registration rights to the Holders as set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements set forth herein and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party hereto, the parties hereby agree as follows:

ARTICLE I DEFINITIONS

Section 1.01 Definitions. Capitalized terms used herein without definition shall have the meanings given to them in the Credit Agreement, except that the terms set forth below are used herein as so defined:

“**Affiliate**” means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with, such Person. As used in this definition, the term “**control**” and its derivatives means, with respect to any Person, the possession, directly or indirectly, of more than 50% of the equity interests or the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract, or otherwise.

“**Agreement**” is defined in the preamble.

“**Board**” means the board of directors of the Company.

“**Business Day**” means a day (other than a Saturday or Sunday) on which commercial banks in New York are generally open for business.

“**Common Stock**” is defined in the recitals.

“**Company**” is defined in the preamble and includes the Company’s successors by merger, acquisition, reorganization or otherwise.

“**Credit Agreement**” is defined in the recitals.

“**EDGAR**” is defined in Section 2.04(i).

“**Effectiveness Period**” means the period beginning from and after the date the Shelf Registration Statement is declared or becomes effective until the earlier of (i) the date all Registrable Securities covered by the Shelf Registration Statement have been sold thereunder, or pursuant to another Registration Statement or pursuant to Rule 144 and (ii) the second anniversary of the date of this Agreement.

“**Equity Securities**” means (i) with respect to any Person that is a corporation, any and all shares, interests or equivalents in capital stock of such corporation (whether voting or nonvoting and whether common or preferred), (ii) with respect to any Person that is not a corporation, individual or governmental entity, any and all partnership, membership, limited liability company or other equity interests of such Person that confer on the holder thereof the right to receive a share of the profits and losses of, or the distribution of assets of the issuing Person, and (iii) any and all warrants, rights (including conversion and exchange rights) and options to purchase any security described in the clause (i) or (ii) above. Unless otherwise indicated, the term “Equity Securities” refers to Equity Securities of the Company.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and any successor statute thereto and the rules and regulations of the SEC promulgated thereunder.

“**Holder**” means a holder of any Registrable Securities.

“**Included Registrable Securities**” is defined in Section 2.02(a).

“**Joinder**” is defined in Section 2.10.

“**Launch Date**” is defined in Section 2.02(b).

“**Lenders**” is defined in the recitals.

“**Losses**” is defined in Section 2.08(a).

“**Managing Underwriter(s)**” means, with respect to any Underwritten Offering or Overnight Underwritten Offering, the book running lead manager or managers of such Underwritten Offering or Overnight Underwritten Offering.

“**Maximum Number of Securities**” is defined in Section 2.02(c).

“**Member Distribution**” is defined in Section 2.01(b).

“**Opt-Out Notice**” is defined in Section 2.02(a).

“**Overnight Underwritten Offering**” is defined in Section 2.02(b).

“**Parity Holders**” is defined in Section 2.02(c).

“**Person**” means an individual or any corporation, partnership, limited liability company, trust, unincorporated organization, association, joint venture or any other organization or entity, whether or not a legal entity.

“**Piggyback Notice**” is defined in Section 2.02(a).

“**Piggyback Offering**” is defined in Section 2.02(a).

“**Registrable Securities**” means (i) any shares of Common Stock received in connection with the transactions contemplated by the Credit Agreement; and (ii) any common Equity Securities of the Company issued or issuable with respect to the securities referred to in clause (i) above by way of dividend, distribution, split or combination of securities, or any recapitalization, merger, consolidation or other reorganization.

“**Registration Expenses**” is defined in Section 2.07(a).

“**Registration Statement**” means any registration statement of the Company filed or to be filed with the SEC under the Securities Act, including the related prospectus, amendments and supplements to such registration statement, and including pre- and post-effective amendments, and all exhibits and all material incorporated by reference in such registration statement.

“**Rule 144**” means Rule 144 under the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC.

“**SEC**” means the U.S. Securities and Exchange Commission.

“**Securities Act**” means the Securities Act of 1933, as amended, and any successor statute thereto and the rules and regulations of the SEC promulgated thereunder.

“**Selling Expenses**” is defined in Section 2.07(a).

“**Selling Holder**” means a Holder who is selling Registrable Securities pursuant to a Registration Statement.

“**Selling Holder Indemnified Persons**” is defined in Section 2.08(a).

“**Selling Holder Underwriter Registration Statement**” is defined in Section 2.04(p).

“**Shelf Registration Statement**” is defined in Section 2.01(a).

“**Staff**” means the staff of the SEC.

“**Underwritten Offering**” means an offering (including an offering pursuant to a Shelf Registration Statement) in which shares of Common Stock are sold to an underwriter on a block trade basis or on a firm commitment basis for reoffering to the public or an offering that is a “bought deal” with one or more investment banks.

“**Underwritten Offering Filing**” is defined in Section 2.02(a).

Section 1.02 Registrable Securities. Any Registrable Security will cease to be a Registrable Security when (a) a Registration Statement covering such Registrable Security is effective and such Registrable Security has been sold or disposed of pursuant to such effective Registration Statement; (b) such Registrable Security has been disposed of pursuant to any section of Rule 144 (or any successor rule or regulation to Rule 144 then in force) under the Securities Act; or (c) such Registrable Security is held by the Company or one of its subsidiaries; provided that any security that has ceased to be a Registrable Security shall not thereafter become a Registrable Security and any security that is issued or distributed in respect of securities that have ceased to be Registrable Securities shall not be a Registrable Security.

Section 1.03 Effectiveness. This Agreement is effective as of the date hereof and shall continue in full force and effect until the expiration of the Effectiveness Period (except with respect to Section 2.02(a), Section 2.02(b) and Section 2.12, which shall continue in full force and effect until the time set forth therein, as applicable).

ARTICLE II REGISTRATION RIGHTS

Section 2.01 Shelf Registration.

(a) **Shelf Registration.** The Company shall (i) prepare and file by no later than the date that is ten (10) Business Days after the date that the Company receives all information required from the Holders to be included in the selling stockholder table of the Shelf Registration Statement (as defined below) including without limitation a selling stockholder questionnaire, a Registration Statement under the Securities Act to permit the public resale of the Registrable Securities from time to time, including as permitted by Rule 415 under the Securities Act (or any similar provision then in force) with respect to all of the Registrable Securities (the “**Shelf Registration Statement**”) and (ii) use its reasonable best efforts to cause the Shelf Registration Statement to become or be declared effective as soon as practicable after the filing thereof.

(b) The Shelf Registration Statement shall be on Form S-3 (or any equivalent or successor form) under the Securities Act or, if Form S-3 is not then available to the Company, on Form S-1 or such other form of Registration Statement as is then available to effect a registration for resale of the Registrable Securities; *provided, however*, that if the Company has filed the Shelf Registration Statement on Form S-1 and subsequently becomes eligible to use Form S-3 or any equivalent or successor form or forms, the Company shall (i) file a post-effective amendment to the Shelf Registration Statement converting such Registration Statement on Form S-1 to a Registration Statement on Form S-3 or any equivalent or successor form or forms or (ii) withdraw the Shelf Registration Statement on Form S-1 and file a subsequent Shelf Registration Statement on Form S-3 or any equivalent or successor form or forms. The Shelf Registration Statement shall provide for the resale pursuant to any method or combination of methods legally

available to, and reasonably requested by, the Holders of any and all Registrable Securities covered by such Shelf Registration Statement. Subject to Section 2.01(c), the Company shall use its reasonable best efforts to cause the Shelf Registration Statement to remain effective under the Securities Act during the Effectiveness Period and to be supplemented and amended to the extent necessary to ensure that the Shelf Registration Statement is available for the resale of all the Registrable Securities by the Holders during the Effectiveness Period. The Shelf Registration Statement when declared effective (including the documents incorporated therein by reference) shall comply as to form in all material respects with all applicable requirements of the Securities Act and the Exchange Act and shall not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. As soon as practicable following the date of effectiveness of such Shelf Registration Statement, but in any event within three (3) Business Days of such date, the Company will notify the Holders of the effectiveness of such Shelf Registration Statement. Notwithstanding anything contained herein to the contrary, the Company hereby agrees that (i) the Shelf Registration Statement filed pursuant to this Section 2.01(b) shall contain all language (including on the prospectus cover sheet, the principal stockholders' table and the plan of distribution) as may be reasonably requested by any Holder to allow for a distribution to, and resale by, the members, stockholders or partners (as the case may be) of such Holder (each, a "**Member Distribution**"), each of whom shall upon such distribution execute a Joinder (as defined herein) and upon such execution shall be considered a Holder under the terms of this Agreement, and (ii) the Company shall, at the reasonable request of any Holder seeking to effect a Member Distribution, file any prospectus supplement or post-effective amendments and otherwise take any action reasonably necessary to include such language, if such language was not included in the initial Shelf Registration Statement, or revise such language if deemed reasonably necessary by such Holder to effect any such Member Distribution.

(c) Delay Rights. Notwithstanding anything to the contrary contained herein, the Company may, upon written notice to (x) all Holders, delay the filing of the Shelf Registration Statement or (y) any Selling Holder whose Registrable Securities are included in the Shelf Registration Statement, suspend such Selling Holder's use of any prospectus which is a part of the Shelf Registration Statement (in which event the Selling Holder shall discontinue sales of the Registrable Securities pursuant to the Shelf Registration Statement but such Selling Holder may settle any contracted sales of Registrable Securities) if the Company (i) is pursuing an acquisition, merger, tender offer, reorganization, disposition or other similar transaction and the Board determines in good faith that its ability to pursue or consummate such a transaction would be materially adversely affected by any required disclosure of such transaction in the Shelf Registration Statement or (ii) has experienced some other material non-public event the disclosure of which at such time, in the good faith judgment of the Board would materially adversely affect the Company; *provided, however*, that in no event shall (A) such filing of the Shelf Registration Statement be delayed under clauses (i) or (ii) of this Section 2.01(c) for a period that exceeds ninety (90) days or (B) such Selling Holders be suspended under clauses (i) or (ii) of this Section 2.01(c) from selling Registrable Securities pursuant to the Shelf Registration Statement for a period that exceeds an aggregate of thirty (30) days in any 90-day period or sixty (60) days in any 365-day period. Upon disclosure of such information or the termination of the condition described above, the Company shall provide prompt notice to the Selling Holders whose Registrable Securities are included in the Shelf Registration Statement and shall promptly terminate any suspension of sales it has put into effect and shall take such other reasonable actions to permit registered sales of Registrable Securities as contemplated in this Agreement. The Company will only exercise its suspension rights under this Section 2.01(c) if it exercises similar suspension rights with respect to any Parity Holders. If the Company exercises its suspension rights under this Section 2.01(c), then during such suspension period the Company shall not engage in any transaction involving the offer, issuance, sale or purchase of Equity Securities (whether for the benefit of the Company or a third Person), except transactions involving (I) the issuance or purchase of Equity Securities as contemplated by the Company's employee benefit plans or employee or director arrangements or (II) the issuance of Equity Securities to a seller as consideration for, or to a third party in order to finance or partially finance, the transaction specified under clause (i) of this Section 2.01(c) that was the basis for which the suspension rights under this Section 2.01(c) were exercised or (III) any issuance of additional Equity Securities to a Holder as permitted under the Credit Agreement.

Section 2.02 Piggyback Rights.

(a) Participation. Except as provided in Section 2.02(b), if at any time from the date of this Agreement until Payment in Full of Term Loan Debt (as defined in the Credit Agreement), the Company proposes to file (i) a shelf Registration Statement other than the Shelf Registration Statement (in which event the Company covenants and agrees to include thereon a description of the transaction under which the Holders acquired the Registrable Securities), (ii) a prospectus supplement to an effective shelf Registration Statement, other than the Shelf Registration Statement contemplated by Section 2.01(a) of this Agreement, or (iii) a Registration Statement, other than a shelf Registration Statement, in the case of each of clause (i), (ii) or (iii), for the sale of Common Stock in an Underwritten Offering or Overnight Underwritten Offering for its own account and/or the account of another Person, then as soon as practicable but not less than ten (10) Business Days (or two (2) Business Days in the case of an Overnight Underwritten Offering) prior to the filing of (A) any preliminary prospectus supplement relating to such Underwritten Offering pursuant to Rule 424(b) under the Securities Act, (B) the prospectus supplement relating to such Underwritten Offering pursuant to Rule 424(b) under the Securities Act (if no preliminary prospectus supplement is used) or (C) such Registration Statement (other than a Shelf Registration Statement), as the case may be (an "**Underwritten Offering Filing**"), the Company shall give notice (including, but not limited to, notification by email) of such proposed Underwritten Offering (a "**Piggyback Offering**") to the Holders and such notice shall offer the Holders the opportunity to include in such Underwritten Offering such number of shares of Common Stock (the "**Included Registrable Securities**") as each such Holder may request in writing; *provided, however*, that if the Company has been advised by the Managing Underwriter(s) in writing that the inclusion of Registrable Securities for sale for the benefit of the Selling Holders will have a material adverse effect on the price, timing or distribution of the Common Stock in the Underwritten Offering, then the amount of Registrable Securities to be offered for the accounts of Selling Holders shall be determined based on the provisions of Section 2.02(c) of this Agreement. The notice required to be provided in this Section 2.02(a) to each Holder (the "**Piggyback Notice**") shall be provided on a Business Day pursuant to Section 3.01 hereof. Each Holder shall then have five (5) Business Days (or two (2) Business Days in the case of an Overnight Underwritten Offering) after the date on which the Holders received the Piggyback Notice to request inclusion of Registrable Securities in the Underwritten Offering. If no request for inclusion from a Holder is received within such period, such Holder shall have no further right to participate in such Underwritten Offering. If, at any time after giving written notice of its intention to undertake an Underwritten Offering and prior to the closing of such Underwritten Offering, the Board shall determine for any reason not to undertake or to delay such Underwritten Offering, the Company may, at its election, give written notice of such determination to the Selling Holders and (x) in the case of a determination not to undertake such Underwritten Offering, shall be relieved of its obligation to sell any Included Registrable Securities in connection with such terminated Underwritten Offering, and (y) in the case of a determination to delay such Underwritten Offering, shall be permitted to delay offering any Included Registrable Securities for the same period as the delay in the Underwritten Offering. Any Selling Holder shall have the right to withdraw such Selling Holder's request for inclusion of such Selling Holder's Registrable Securities in any Underwritten Offering, Overnight Underwritten Offering or Piggyback Offering by giving written notice to the Company of such withdrawal up to and including the time of pricing of such offering. Notwithstanding the foregoing, any Holder may deliver written notice (an "**Opt-Out Notice**") to the Company requesting that such Holder not receive notice from the Company of any proposed Underwritten Offering; *provided, however*, that such Holder may later revoke any such Opt-Out Notice in writing. Following receipt of an Opt-Out Notice from a Holder, the Company shall not deliver any notice to such Holder pursuant to this Section 2.02(a), unless such Opt-Out Notice is revoked by such Holder. Notwithstanding anything contained herein to the contrary, the Company hereby agrees that (i) any shelf Registration Statement which includes Registrable Securities pursuant to this Section 2.02(a) shall contain all language (including on the prospectus cover sheet, the principal stockholders' table and the plan of distribution) as may be reasonably requested by any Holder to allow for a Member Distribution and (ii) the Company shall, at the reasonable request of any Holder seeking to effect a Member Distribution, file any prospectus supplement or post-effective amendments and otherwise take any action reasonably necessary to include such language, if such language was not included in the initial Registration Statement, or revise such language if deemed reasonably necessary by such Holder to effect such Member Distribution.

(b) Overnight Underwritten Offering Piggyback Rights. If at any time from the date of this Agreement until Payment in Full of Term Loan Debt (as defined in the Credit Agreement), the Company proposes to file an Underwritten Offering Filing and such Underwritten Offering is expected to be launched (the "**Launch Date**") after the close of trading on one trading day and priced before the open of trading on the next succeeding trading day (such execution format, an "**Overnight Underwritten Offering**"), then no later than one (1) Business Day after the Company engages one or more Managing Underwriter(s) for the proposed Overnight Underwritten Offering, the Company

shall notify (including, but not limited to, notice by email) the Holders of the pendency of the Overnight Underwritten Offering and such notice shall offer the Holders the opportunity to include in such Overnight Underwritten Offering such number of Registrable Securities as each such Holder may request in writing within two (2) Business Days after such Holder receives such notice. Notwithstanding the foregoing, if the Company has been advised by the Managing Underwriter(s) in writing that the inclusion of Registrable Securities in the Overnight Underwritten Offering for the accounts of the Selling Holders is likely to have a material adverse effect on the price, timing or distribution of the Common Stock being offered in such Overnight Underwritten Offering, then the amount of Registrable Securities to be included in the Overnight Underwritten Offering for the accounts of Selling Holders shall be determined based on the provisions of Section 2.02(c) of this Agreement. If, at any time after giving written notice of its intention to execute an Overnight Underwritten Offering and prior to the closing of such Overnight Underwritten Offering, the Company determines for any reason not to undertake or to delay such Overnight Underwritten Offering, the Company shall give written notice of such determination to the Selling Holders and, (i) in the case of a determination not to undertake such Overnight Underwritten Offering, shall be relieved of its obligation to sell any Registrable Securities held by the Selling Holders in connection with such abandoned or delayed Overnight Underwritten Offering, and (ii) in the case of a determination to delay such Overnight Underwritten Offering, shall be permitted to delay offering any Registrable Securities held by the Selling Holders for the same period as the delay of the Overnight Underwritten Offering. Any Selling Holder shall have the right to withdraw such Selling Holder's request for inclusion of such Selling Holder's Registrable Securities in such Overnight Underwritten Offering by giving written notice to the Company of such withdrawal at least one (1) Business Day prior to the expected Launch Date. Notwithstanding the foregoing, any Holder may deliver an Opt-Out Notice to the Company requesting that such Holder not receive notice from the Company of any proposed Overnight Underwritten Offering and, following receipt of such an Opt-Out Notice from a Holder, the Company shall not deliver any notice to such Holder pursuant to this Section 2.02(b), unless such Opt-Out Notice is revoked by such Holder.

(c) *Priority of Rights.* In connection with an Underwritten Offering and Overnight Underwritten Offering contemplated by Section 2.02(a) and Section 2.02(b), respectively, if the Managing Underwriter(s) of any such Underwritten Offering or Overnight Underwritten Offering, as the case may be, advises the Company that the total amount of Common Stock that the Selling Holders and any other Persons intend to include in such Underwritten Offering or Overnight Underwritten Offering exceeds the number that can be sold in such Underwritten Offering or Overnight Underwritten Offering without being likely to have a material adverse effect on the price, timing or distribution of the Common Stock offered in such Underwritten Offering or Overnight Underwritten Offering, as the case may be, or the market for the Common Stock, then the Common Stock to be included in such Underwritten Offering or Overnight Underwritten Offering shall include the number of shares of Common Stock that such Managing Underwriter(s) advise the Company can be sold without having such adverse effect (such maximum number of shares of Common Stock, the “**Maximum Number of Securities**”), with such number to be allocated (i) first, to the Company and (ii) second, *pro rata* among all Selling Holders and holders of any other securities of the Company having rights of registration on parity with the Registrable Securities (“**Parity Holders**”) who have requested participation in such Underwritten Offering or Overnight Underwritten Offering and. The *pro rata* allocations for each such Selling Holder or Parity Holder shall be (A) based on the percentage derived by dividing (1) the number of shares of Common Stock (or other securities) that such Selling Holder or such Parity Holder has requested be included in such Underwritten Offering or Overnight Underwritten Offering by (2) the aggregate number of shares of Common Stock (or other securities) that all Selling Holders and all Parity Holders have requested be included in such Underwritten Offering or Overnight Underwritten Offering or (B) as otherwise agreed by such Selling Holder or Parity Holder, as applicable.

(d) *At the Market Program.* Notwithstanding anything in this Section 2.02 to the contrary, no Holder shall have any right to include any Common Stock in any offering by the Company of Common Stock executed pursuant to any “at the market” program that the Company may have in effect from time to time on or after the date of this Agreement.

Section 2.03 [Reserved].

Section 2.04 Registration Procedures. In connection with its obligations under this Article II, the Company will, as expeditiously as possible:

(a) prepare and file with the SEC such amendments and supplements to the Shelf Registration Statement and the prospectus used in connection therewith as may be necessary to cause the Shelf Registration Statement to be effective and to keep the Shelf Registration Statement effective for the Effectiveness Period and as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by the Shelf Registration Statement;

(b) if a prospectus supplement will be used in connection with the marketing of an Underwritten Offering or Overnight Underwritten Offering from the Shelf Registration Statement and the Managing Underwriter(s) at any time shall notify the Company in writing that, in the good faith judgment of such Managing Underwriter(s), inclusion of detailed information to be used in such prospectus supplement is of material importance to the success of the Underwritten Offering or Overnight Underwritten Offering of such Registrable Securities, the Company shall use its commercially reasonable efforts to include such information in such a prospectus supplement;

(c) furnish to each Selling Holder (i) as far in advance as reasonably practicable before filing the Shelf Registration Statement or any other Registration Statement contemplated by this Agreement or any supplement or amendment thereto, upon request, copies of reasonably complete drafts of all such documents proposed to be filed (including exhibits and each document incorporated by reference therein to the extent then required by the rules and regulations of the SEC other than annual or quarterly reports on Form 10-K or 10-Q, respectively, current reports on Form 8-K or proxy statements; *provided, however*, that such reports or proxy statements shall be provided at least two (2) Business Days prior to filing in connection with an Underwritten Offering or Overnight Underwritten Offering), and provide each such Selling Holder the opportunity to object to any information pertaining to such Selling Holder and its plan of distribution that is contained therein and make the corrections reasonably requested by such Selling Holder with respect to such information prior to filing the Shelf Registration Statement or such other Registration Statement or supplement or amendment thereto, and (ii) such number of copies of the Shelf Registration Statement or such other Registration Statement and the prospectus included therein and any supplements and amendments thereto as such Persons may reasonably request in order to facilitate the public sale or other disposition of the Registrable Securities covered by the Shelf Registration Statement or such other Registration Statement;

(d) if applicable, use its reasonable best efforts to register or qualify the Registrable Securities covered by the Shelf Registration Statement or any other Registration Statement contemplated by this Agreement under the securities or blue sky laws of such jurisdictions as the Selling Holders or, in the case of an Underwritten Offering or Overnight Underwritten Offering, the Managing Underwriter(s) shall reasonably request, except that the Company will not be required to qualify generally to transact business in any jurisdiction where it is not then required to so qualify or to take any action which would subject it to general service of process in any such jurisdiction where it is not then so subject;

(e) promptly notify each Selling Holder, at any time when a prospectus relating thereto is required to be delivered by any of them under the Securities Act, of (i) the filing of the Shelf Registration Statement or any other Registration Statement contemplated by this Agreement or any prospectus or prospectus supplement to be used in connection therewith, or any amendment or supplement thereto, and, with respect to such Shelf Registration Statement or any other Registration Statement contemplated by this Agreement, when the same has become effective; and (ii) the receipt of any written comments from the SEC with respect to any filing referred to in clause (i) and any written request by the SEC for amendments or supplements to the Shelf Registration Statement or any other Registration Statement contemplated by this Agreement or any prospectus or prospectus supplement thereto;

(f) promptly notify each Selling Holder, at any time when a prospectus relating thereto is required to be delivered under the Securities Act, of (i) the happening of

any event as a result of which, the prospectus or prospectus supplement contained in the Shelf Registration Statement or any other Registration Statement contemplated by this Agreement, as then in effect, includes an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; (ii) the issuance or threat of issuance by the SEC of any stop order suspending the effectiveness of the Shelf Registration Statement or any other Registration Statement contemplated by this Agreement, or the initiation of any proceedings for that purpose; or (iii) the receipt by the Company of any notification with respect to the suspension of the qualification of any Registrable Securities for sale under the applicable securities or blue sky laws of any jurisdiction. Following the provision of such notice, the Company agrees to as promptly as practicable amend or supplement the prospectus or prospectus supplement or take other appropriate action so that the prospectus or prospectus supplement does not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading, in the light of the circumstances then existing, and to take such other commercially reasonable action as is necessary to remove a stop order, suspension, threat thereof or proceedings related thereto;

(g) upon request and subject to appropriate confidentiality obligations, furnish to each Selling Holder copies of any and all transmittal letters or other correspondence with the SEC or any other governmental agency or self-regulatory body or other body having jurisdiction (including any domestic or foreign securities exchange) relating to any offering of Registrable Securities;

(h) in connection with an Underwritten Offering or Overnight Underwritten Offering, use commercially reasonable efforts to furnish upon request and addressed to the underwriters and to the Selling Holders on the date that shares of Registrable Securities are delivered to the underwriters for sale, if such securities are being sold through underwriters, (i) an opinion of counsel for the Company, and (ii) “comfort letter(s)” signed by the auditors who have certified the financial statements included in or incorporated by reference into the applicable Registration Statement (including, for the avoidance of doubt, financial statements required by Rule 3-05 of Regulation S-X and any other financial information required by Regulation S-X), and each of the opinion and the “comfort letter(s)” shall be in customary form and covering substantially the same matters with respect to such Registration Statement (and the prospectus and any prospectus supplement included therein) as are customarily covered in opinions of issuer’s counsel and in auditors’ letters delivered to the underwriters in Underwritten Offerings or Overnight Underwritten Offerings of securities, and such other matters as such underwriters or Selling Holders may reasonably request;

(i) otherwise use its commercially reasonable efforts to comply with all applicable rules and regulations of the SEC, and make available to its security holders (which may be satisfied by making such information available on the SEC’s Electronic Data Gathering, Analysis and Retrieval system or any successor system known as “EDGAR”), as soon as reasonably practicable, an earnings statement, which earnings statement shall satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 promulgated thereunder;

(j) make available to the appropriate representatives of the Managing Underwriter(s) and Selling Holders access to such information and the Company personnel as is reasonable and customary to enable such parties to establish a due diligence defense under the Securities Act; *provided* that the Company need not disclose any non-public information to any such representative unless and until such representative has entered into a customary confidentiality agreement with the Company;

(k) cause all such Registrable Securities covered by such Shelf Registration Statement to be listed on each securities exchange or nationally recognized quotation system on which the Common Stock is then listed or quoted;

(l) use its commercially reasonable efforts to cause the Registrable Securities to be registered with or approved by such other governmental agencies or authorities as may be necessary by virtue of the business and operations of the Company to enable the Selling Holders to consummate the disposition of such Registrable Securities;

(m) provide a transfer agent and registrar for all Registrable Securities covered by a Registration Statement not later than the effective date of such Registration Statement;

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(n) enter into customary agreements and take such other actions as are reasonably requested by the Selling Holders or the underwriters, if any, in order to expedite or facilitate the disposition of such Registrable Securities;

(o) if reasonably required by the Company’s transfer agent, use its commercially reasonable efforts to promptly (and in no more than two (2) Business Days) deliver any customary authorizations, certificates and directions required by the transfer agent which authorize and direct the transfer agent to transfer such Registrable Securities without legend, in accordance with applicable law, upon sale by the Holder of such Registrable Securities under the Registration Statement;

(p) if any Selling Holder could reasonably be deemed to be an “underwriter,” as defined in Section 2(a)(11) of the Securities Act, in connection with the Registration Statement in respect of any registration of Registrable Securities of such Selling Holder pursuant to this Agreement, and any amendment or supplement thereof (any such Registration Statement or amendment or supplement, a “**Selling Holder Underwriter Registration Statement**”), then, until the Effectiveness Period ends, (i) cooperate with such Selling Holder in allowing such Selling Holder to conduct customary “underwriter’s due diligence” with respect to the Company and satisfy its obligations in respect thereof; (ii) until the Effectiveness Period ends, at any Selling Holder request, furnish to such Selling Holder, on the date of the effectiveness of any Selling Holder Underwriter Registration Statement and thereafter no more often than on a quarterly basis, (A) a letter, dated such date, from the auditors who have certified the financial statements included in or incorporated by reference into the applicable Selling Holder Underwriter Registration Statement (including, for the avoidance of doubt, financial statements required by Rule 3-05 of Regulation S-X and any other financial information required by Regulation S-X) in form and substance as is customarily given by auditors to underwriters in an underwritten public offering, addressed to such Selling Holder, (B) an opinion, dated as of such date, of counsel representing the Company for purposes of such Selling Holder Underwriter Registration Statement, in form, scope and substance as is customarily given in an underwritten public offering, including a standard “10b-5” opinion for such offering, addressed to such Selling Holder and (C) a standard officer’s certificate from the Chief Executive Officer and Chief Financial Officer of the Company addressed to such Selling Holder; and (iii) permit legal counsel of such Selling Holder to review and comment upon any Selling Holder Underwriter Registration Statement at least five Business Days prior to its filing with the SEC and all amendments and supplements to any such Selling Holder Underwriter Registration Statement within a reasonable number of days prior to their filing with the SEC and not file any Selling Holder Underwriter Registration Statement or amendment or supplement thereto in a form to which such Selling Holder’s legal counsel reasonably objects; and

(q) if requested by a Selling Holder, (i) as soon as practicable incorporate in a prospectus supplement or post-effective amendment such information as such Selling Holder reasonably requests to be included therein relating to the sale and distribution of Registrable Securities, including information with respect to the number of Registrable Securities being offered or sold, the purchase price being paid therefor and any other terms of the offering of the Registrable Securities to be sold in such offering; (ii) as soon as practicable make all required filings of such prospectus supplement or post-effective amendment after being notified of the matters to be incorporated in such prospectus supplement or post-effective amendment; and (iii) as soon as practicable, supplement or make amendments to any Registration Statement.

Notwithstanding anything to the contrary in this Section 2.04, the Company will not name a Holder as an underwriter (as defined in Section 2(a)(11) of the Securities Act) in any Registration Statement or Selling Holder Underwriter Registration Statement, as applicable, without such Holder’s consent. If the Company determines, upon advice of counsel, that the Company is required to name any Holder as an underwriter (as defined in Section 2(a)(11) of the Securities Act), and such Holder does not consent thereto, then such Holder’s Registrable Securities shall not be included on the applicable Registration Statement and the Company shall have no further obligations hereunder with respect to Registrable Securities held by such Holder with respect to such Registration Statement or Selling Holder Registration Statement unless such Holder has not had an opportunity to conduct customary underwriter’s due diligence as set forth in Section 2.04(p) with respect to the Company at the time such Holder’s consent is sought.

Each Selling Holder, upon receipt of notice from the Company of the happening of any event of the kind described in subsection (e) of this Section 2.04, shall forthwith discontinue disposition of the Registrable Securities until such Selling Holder’s receipt of the copies of the supplemented or amended prospectus contemplated by

subsection (e) of this Section 2.04 or until it is advised in writing by the Company that the use of the prospectus may be resumed, and has received copies of any additional or supplemental filings incorporated by reference in the prospectus, and, if so directed by the Company, such Selling Holder will, or will request the Managing Underwriter(s), if any, to deliver to the Company (at the Company's expense) all copies in their possession or control, other than permanent file copies then in such Selling Holder's possession, of the prospectus covering such Registrable Securities current at the time of receipt of such notice.

Section 2.05 Cooperation by Holders. The Company shall have no obligation to include Registrable Securities of a Holder in any Registration Statement or Underwritten Offering if such Holder has failed to timely furnish such information which the Company determines, after consultation with counsel, is reasonably required for any Registration Statement or prospectus supplement thereto, as applicable, to comply with the Securities Act.

Section 2.06 Restrictions on Public Sale by Holders of Registrable Securities. Each Holder of Registrable Securities who sells his or her Registrable Securities in an Underwritten Offering or Overnight Underwritten Offering of Equity Securities by the Company agrees not to effect any public sale or distribution of the Registrable Securities for a period of up to 30 days or such longer period as required by the Managing Underwriter(s) following completion of such Underwritten Offering or Overnight Underwritten Offering of Equity Securities by the Company, *provided* that (i) the Company gives written notice to such Holder of the date of the commencement and termination of such period with respect to any such Underwritten Offering or Overnight Underwritten Offering and (ii) the duration of the foregoing restrictions shall be no longer than the duration of the shortest restriction generally imposed by the underwriters of such public sale or distribution on the Company or on the officers or directors or any other Affiliate of the Company on whom a restriction is imposed; provided further, that this Section 2.06 shall not apply to a Holder that holds less than 10% of the voting power of the Company's outstanding Equity Securities.

Section 2.07 Expenses.

(a) Certain Definitions. The term "**Registration Expenses**" means all expenses incident to the Company's performance under or compliance with this Agreement to effect the registration of Registrable Securities on the Shelf Registration Statement, an Underwritten Offering or Overnight Underwritten Offering covered under this Agreement, and/or the disposition of such Registrable Securities, including, without limitation, all registration, filing, securities exchange listing fees, all registration, filing, qualification and other fees and expenses of complying with securities or blue sky laws, fees of the Financial Industry Regulatory Authority, Inc., fees of transfer agents and registrars, all word processing, duplicating and printing expenses, and the fees and disbursements of counsel and auditors who have certified the financial statements included in or incorporated by reference into the applicable Registration Statement (including, for the avoidance of doubt, financial statements required by Rule 3-05 of Regulation S-X and any other financial information required by Regulation S-X) including the expenses of any special audits or "cold comfort" letters(s) required by or incident to such performance and compliance, and reasonable fees and expenses of one legal counsel engaged by the Holders in connection with the registration of the Registrable Securities on the initial Shelf Registration Statement; *provided, however*, that "Registration Expenses" shall not include any Selling Expenses. The term "**Selling Expenses**" means all (i) transfer taxes allocable to the sale of the Registrable Securities and (ii) commissions and discounts of brokers, dealers and underwriters.

(b) Expenses. The Company will pay all Registration Expenses, including, in the case of an Underwritten Offering or Overnight Underwritten Offering, whether or not any sale is made pursuant to the Shelf Registration Statement. Each Selling Holder shall pay its *pro rata* share of all Selling Expenses in connection with any sale of Registrable Securities hereunder based on the number of Registrable Securities sold in such Underwritten Offering or Overnight Underwritten Offering.

Section 2.08 Indemnification.

(a) By the Company. In the event of a registration of any Registrable Securities under the Securities Act pursuant to this Agreement, to the extent permitted by applicable law, the Company will indemnify and hold harmless each Selling Holder thereunder and its directors and officers and each Person, if any, who controls such Selling Holder within the meaning of the Securities Act and the Exchange Act and its directors and officers (collectively, the "**Selling Holder Indemnified Persons**"), against any losses, claims, damages, expenses or liabilities (including reasonable attorneys', accountants' and experts' fees and expenses) (collectively, "**Losses**"), joint or several, to which such Selling Holder or underwriter or controlling Person may become subject under the Securities Act, the Exchange Act or otherwise, insofar as such Losses (or actions or proceedings, whether commenced or threatened, in respect thereof) arise out of or are based upon (i) any untrue statement or alleged untrue statement of any material fact contained in (which, for the avoidance of doubt, includes documents incorporated by reference in) the Shelf Registration Statement or any other Registration Statement contemplated by this Agreement, any preliminary prospectus, free writing prospectus or final prospectus contained therein, or any amendment or supplement thereof, or (ii) the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of a prospectus, in the light of the circumstances under which they were made) not misleading, and will reimburse each such Selling Holder Indemnified Person for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such Loss or actions or proceedings; *provided, however*, that the Company will not be liable in any such case if and to the extent that any such Loss arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission so made arising out of or based upon information furnished by such Selling Holder Indemnified Person in writing specifically for use in the Shelf Registration Statement or such other Registration Statement or any prospectus contained therein or any amendment or supplement thereof. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such Selling Holder or any such director, officer or controlling Person, and shall survive the transfer of such securities by such Selling Holder.

(b) By Each Selling Holder. Each Selling Holder agrees severally and not jointly to indemnify and hold harmless the Company, its directors and officers and each Person, if any, who controls the Company within the meaning of the Securities Act or of the Exchange Act against any Losses to the same extent as the foregoing indemnity from the Company to the Selling Holders, but only with respect to information regarding such Selling Holder furnished in writing by or on behalf of such Selling Holder expressly for inclusion in the Shelf Registration Statement or any prospectus contained therein or any amendment or supplement thereof relating to the Registrable Securities; *provided, however*, that the liability of each Selling Holder shall not be greater in amount than the dollar amount of the proceeds received by such Selling Holder (net of Selling Expenses) from the sale of the Registrable Securities giving rise to such indemnification.

(c) Notice. Promptly after receipt by an indemnified party hereunder of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party hereunder, notify the indemnifying party in writing thereof, but such indemnified party's failure to so notify the indemnifying party within a reasonable time of the commencement of any such action shall not relieve the indemnifying party from any liability which it may have to any indemnified party other than under this Section 2.08, except to the extent that the indemnifying party is materially and adversely prejudiced in its ability to defend the action. The indemnifying party shall be entitled to participate in and, to the extent it shall wish, to assume and undertake the defense thereof with counsel reasonably satisfactory to such indemnified party and, after notice from the indemnifying party to such indemnified party of its election so to assume and undertake the defense thereof, the indemnifying party shall not be liable to such indemnified party under this Section 2.08 for any legal expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation and of liaison with counsel so selected; *provided, however*, that, (i) if the indemnifying party has failed to assume the defense and employ counsel reasonably acceptable to the indemnified party or (ii) if the defendants in any such action include both the indemnified party and the indemnifying party and counsel to the indemnified party shall have concluded that there may be reasonable defenses available to the indemnified party that are different from or additional to those available to the indemnifying party, or if the interests of the indemnified party reasonably may be deemed to conflict with the interests of the indemnifying party, then the indemnified party shall have the right to select a separate counsel and to assume such legal defense and otherwise to participate in the defense of such action, with the reasonable expenses and fees of one such separate counsel (firm) and other reasonable expenses related to such participation to be reimbursed by the indemnifying party as

incurred. Notwithstanding any other provision of this Agreement, no indemnified party shall settle any action brought against it with respect to which it is entitled to indemnification hereunder without the consent of the indemnifying party, unless the settlement thereof imposes no liability or obligation on, and includes a complete and unconditional release from all liability of, the indemnifying party.

(d) Contribution. If the indemnification provided for in this Section 2.08 is held by a court or government agency of competent jurisdiction to be unavailable to the Company or any Selling Holder or is insufficient to hold it harmless in respect of any Losses, then each such indemnifying party, in lieu of indemnifying such indemnified party, shall contribute to the amount paid or payable by such indemnified party as a result of such Losses as between the Company, on the one hand, and such Selling Holder, on the other hand, in such proportion as is appropriate to reflect the relative fault of the Company, on the one hand, and of such Selling Holder, on the other, in connection with the statements or omissions which resulted in such Losses, as well as any other relevant equitable considerations; *provided, however*, that in no event shall such Selling Holder be required to contribute an aggregate amount in excess of the dollar amount of proceeds received by such Selling Holder (net of Selling Expenses) from the sale of Registrable Securities giving rise to such indemnification. The relative fault of the Company, on the one hand, and each Selling Holder, on the other hand, shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact has been made by, or relates to, information supplied by such party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The parties hereto agree that it would not be just and equitable if contributions pursuant to this paragraph were to be determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in the first sentence of this paragraph. The amount paid by an indemnified party as a result of the Losses referred to in the first sentence of this paragraph shall be deemed to include any legal and other expenses reasonably incurred by such indemnified party in connection with investigating or defending any Loss which is the subject of this paragraph. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who is not guilty of such fraudulent misrepresentation.

(e) Other Indemnification. The provisions of this Section 2.08 shall be in addition to any other rights to indemnification or contribution which an indemnified party may have pursuant to law, equity, contract or otherwise.

Section 2.09 Rule 144 Reporting. With a view to making available the benefits of certain rules and regulations of the SEC that may permit the sale of the Registrable Securities to the public without registration, during the Effectiveness Period the Company agrees to use its reasonable best efforts to:

(a) make and keep public information regarding the Company available, as those terms are understood and defined in Rule 144 (or any successor rule or regulation to Rule 144 then in force) of the Securities Act, at all times from and after the date of this Agreement;

(b) file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act at all times from and after the date of this Agreement;

(c) so long as a Holder owns any Registrable Securities, furnish to such Holder forthwith upon request a copy of the most recent annual or quarterly report of the Company, and such other reports and documents so filed as such Holder may reasonably request in availing itself of any rule or regulation of the SEC allowing such Holder to sell any such securities without registration; and

(d) take such further action as any Holder may reasonably request, all to the extent required from time to time to enable the Holders to sell Registrable Securities without registration under the Securities Act within the limitations of the exemption provided by Rule 144 (or any successor rule or regulation to Rule 144 then in force) under the Securities Act.

Section 2.10 Transfer or Assignment of Registration Rights. The rights to cause the Company to include Registrable Securities in a Shelf Registration Statement may be transferred or assigned by any Holder to one or more transferee(s) or assignee(s) of such Registrable Securities; *provided* that (a) the Company is given written notice prior to any said transfer or assignment, stating the name and address of each such transferee and identifying the securities with respect to which such registration rights are being transferred or assigned and (b) each such transferee or assignee assumes in writing responsibility for its portion of the obligations of such Holder under this Agreement by executing a Joinder in the form attached hereto as Exhibit A (the "**Joinder**"); *provided further* that nothing in this Section 2.10 shall limit a Holder's rights set forth in Section 2.01(b) and Section 2.02(a) in connection with a Member Distribution.

Section 2.11 Information by Holder. Any Holder or Holders of Registrable Securities included in any Registration Statement shall promptly furnish to the Company such information regarding such Holder or Holders and the distribution proposed by such Holder or Holders as the Company may reasonably request and as shall be required in connection with any registration, qualification or compliance referred to herein, including but not limited to information related to the number of Registrable Securities beneficially owned by the Holder.

Section 2.12 Limitation on Subsequent Registration Rights. From the date of this Agreement until Payment in Full of Term Loan Debt (as defined in the Credit Agreement), the Company shall not, without the prior written consent of the Holders, enter into any agreement with any current or future holder of any securities of the Company that would allow such current or future holder to require the Company to include securities in any Piggyback Offering by the Company for its own account on a basis that is *pari passu* in any material respect to the Piggyback Offering rights granted to the Holders pursuant to Section 2.02 of this Agreement.

ARTICLE III MISCELLANEOUS

Section 3.01 Communications. All notices or other communications which are required or permitted hereunder shall be in writing and shall be deemed to have been given if (a) personally delivered, (b) sent by nationally recognized overnight courier, (c) sent by registered or certified mail, postage prepaid, return receipt requested, or (d) sent by email. Such notices and other communications must be sent to the following addresses or email addresses:

if to the Company to:

Alto Ingredients, Inc.
1300 South Second Street
Pekin, Illinois 61554
Attention: Auste Graham, General Counsel
Email: agraham@altoingredients.com

Troutman Pepper Hamilton Sanders LLP
5 Park Plaza, 14th Floor
Irvine, California 92614
Attention: Larry A. Cerutti
Email: larry.cerutti@troutman.com

if to OIC to:

OIC Investment Agent, LLC
292 Madison Avenue, Suite 2500
New York, NY 10017
Attention: Ethan Shoemaker, Mimi Powell and Grace van Bark
Ethan@OIC.com; Mimi@OIC.com; Grace@OIC.com

And with copies to (which will not constitute notice):

Kirkland & Ellis LLP
609 Main Street, Suite 4500
Houston, Texas 77002
Attention: Julian J. Seiguer, P.C. and Noah Allen
Email: julian.seiguer@kirkland.com; noah.allen@kirkland.com

if to any Holder: at its address listed on the signature pages hereof or Joinder, if applicable;

or to such other address or email address as the party to whom notice is to be given may have furnished to such other party in writing in accordance herewith. Any such communication shall be deemed to have been received (a) when delivered, if personally delivered, (b) the next Business Day after delivery, if sent by nationally recognized, overnight courier, (c) on the second Business Day following the date on which the piece of mail containing such communication is posted, if sent by first-class mail or (d) on the date sent, if sent by email during normal business hours of the recipient or on the next Business Day, if sent by email after normal business hours of the recipient.

Section 3.02 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the permitted successors and assigns of each of the parties, including subsequent Holders of Registrable Securities to the extent permitted herein.

Section 3.03 Assignment of Rights. All or any portion of the rights and obligations of the Holders under this Agreement may be transferred or assigned by any Holder only (a) in connection with a Member Distribution or (b) in accordance with Section 2.10 of this Agreement and in each case, in accordance with all applicable federal and state securities laws. The Company may not transfer or assign any portion of its rights and obligations under this Agreement without the prior written consent of the Holders holding one percent (1%) or more of the voting power of the Company's outstanding Equity Securities.

Section 3.04 Change of Control. The Company shall not merge, consolidate or combine with any other Person unless the agreement providing for such merger, consolidation or combination expressly provides for the continuation of the registration rights specified in this Agreement with respect to the Registrable Securities or other Equity Securities issued pursuant to such merger, consolidation or combination.

Section 3.05 Specific Performance. Damages in the event of breach of this Agreement by a party hereto may be difficult, if not impossible, to ascertain, and it is therefore agreed that each party hereto, in addition to and without limiting any other remedy or right it may have, will have the right to an injunction or other equitable relief in any court of competent jurisdiction, enjoining any such breach, and enforcing specifically the terms and provisions hereof, and each of the parties hereto hereby waives any and all defenses it may have on the ground of lack of jurisdiction or competence of the court to grant such an injunction or other equitable relief. The existence of this right will not preclude any such party from pursuing any other rights and remedies at law or in equity which such party may have.

Section 3.06 Recapitalization, Exchanges, Etc. Affecting the Common Stock. The provisions of this Agreement shall apply to the full extent set forth herein with respect to any and all shares of capital stock of the Company or any successor or assign of the Company (whether by merger, consolidation, sale of assets or otherwise) which may be issued in respect of, in exchange for or in substitution of, the Registrable Securities, and shall be appropriately adjusted for combinations, recapitalizations and the like occurring after the date of this Agreement.

Section 3.07 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. This Agreement may also be executed and delivered by facsimile signature or other electronic means and in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 3.08 Headings. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

Section 3.09 Governing Law. This Agreement is governed by and construed and enforced in accordance with the Laws of the State of Delaware, without giving effect to any conflicts of law principles that would result in the application of any Law other than the Law of the State of Delaware.

Section 3.10 Jurisdiction. Each of the parties irrevocably agrees that any legal action or proceeding with respect to this Agreement and the rights and obligations arising hereunder shall be brought and determined exclusively in the Court of Chancery of the State of Delaware or, if such Court does not have subject matter jurisdiction, to the Superior Court of the State of Delaware or, if jurisdiction is vested exclusively in the Federal courts of the United States, the Federal courts of the United States sitting in the State of Delaware, and any appellate court from any such state or Federal court. Each of the parties hereby irrevocably and unconditionally agrees that all claims with respect to any such claim shall be heard and determined in such Delaware court or in such Federal court, as applicable. The parties agree that a final judgment in any such claim is conclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law.

Section 3.11 WAIVER OF JURY TRIAL. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW THAT CANNOT BE WAIVED, EACH PARTY HEREBY IRREVOCABLY WAIVES AND COVENANTS THAT IT WILL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE) ANY RIGHT TO TRIAL BY JURY IN ANY FORUM IN RESPECT OF ANY ISSUE, CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING IN WHOLE OR IN PART UNDER, RELATED TO, BASED ON, OR IN CONNECTION WITH, THIS AGREEMENT OR THE SUBJECT MATTER HEREOF, WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN TORT OR CONTRACT OR OTHERWISE. ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 3.11 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF EACH SUCH PARTY TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

Section 3.12 Severability of Provisions. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting or impairing the validity or enforceability of such provision in any other jurisdiction.

Section 3.13 Entire Agreement. This Agreement is intended by the parties as a final expression of their agreement and intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein with respect to the rights granted by the Company set forth herein. This Agreement and the Credit Agreement supersede all prior agreements and understandings between the parties with respect to such subject matter.

Section 3.14 Amendment. This Agreement may be amended only by means of a written amendment signed by the Company and the Holders of a majority of the then outstanding Registrable Securities.

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Section 3.15 No Presumption. In the event any claim is made by a party relating to any conflict, omission, or ambiguity in this Agreement, no presumption or burden of proof or persuasion shall be implied by virtue of the fact that this Agreement was prepared by or at the request of a particular party or its counsel.

Section 3.16 Obligations Limited to Parties to Agreement. Each of the Parties hereto covenants, agrees and acknowledges that no Person other than the Holders (and their transferees or assignees) and the Company shall have any obligation hereunder and that, notwithstanding that one or more of the Holders may be a corporation, partnership or limited liability company, no recourse under this Agreement shall be had against any former, current or future director, officer, employee, agent, general or limited partner, manager, member, stockholder or affiliate of any Holder or any former, current or future director, officer, employee, agent, general or limited partner, manager, member, stockholder or affiliate of any of the foregoing, whether by the enforcement of any assessment or by any legal or equitable proceeding, or by virtue of any applicable law, it being expressly agreed and acknowledged that no personal liability whatsoever shall attach to, be imposed on or otherwise be incurred by any former, current or future director, officer, employee, agent, general or limited partner, manager, member, stockholder or affiliate of any Holder or any former, current or future director, officer, employee, agent, general or limited partner, manager, member, stockholder or affiliate of any of the foregoing, as such, for any obligations of a Holder under this Agreement or for any claim based on, in respect of or by reason of such obligation or its creation.

Section 3.17 Independent Nature of Each Holder's Obligations. The obligations of each Holder under this Agreement are several and not joint with the obligations of any other Holder, and no Holder shall be responsible in any way for the performance of the obligations of any other Holder under this Agreement. Nothing contained herein, and no action taken by any Holder pursuant thereto, shall be deemed to constitute the Holders as a partnership, an association, a joint venture or any other kind of group or entity, or create a presumption that the Holders are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by this Agreement. Each Holder shall be entitled to independently protect and enforce its rights, including without limitation, the rights arising out of this Agreement, and it shall not be necessary for any other Holder to be joined as an additional party in any proceeding for such purpose.

Section 3.18 Further Assurances. The Company and each of the Holders shall cooperate with each other and shall take such further action and shall execute and deliver such further documents as may be reasonably requested by any other party in order to carry out the provisions and purposes of this Agreement.

Section 3.19 Legend Removal. Any restrictive legend on any Registrable Securities shall be removed if (i) such Registrable Securities are sold pursuant to an effective Registration Statement, (ii) (A) a Registration Statement covering the resale of such Registrable Securities is effective under the Securities Act and the applicable Holder delivers to the Company a representation letter agreeing that such Registrable Securities will be sold under such effective Registration Statement, or (B) six months after the date of this Agreement, such Holder has held such Registrable Securities for at least six months and is not, and has not been in the preceding three months, an Affiliate (as defined in Rule 144) of the Company, and such Holder provides to the Company any other information the Company deems reasonably necessary to deliver to the transfer agent an instruction to so remove such legend including, without limitation, a representation letter agreeing that such Registrable Securities will be sold under Rule 144, (iii) such Registrable Securities may be sold by the Holder thereof free of restrictions pursuant to Rule 144(b) under the Securities Act or (iv) such Registrable Securities are being sold, assigned or otherwise transferred pursuant to Rule 144 under the Securities Act; provided, that with respect to clause (iii) or (iv) above, the Holder of such Registrable Securities has provided all necessary documentation and evidence (which may include an opinion of counsel) as may reasonably be required by the Company to confirm that the legend may be removed under applicable securities law. The Company shall cooperate with the applicable Holder to effect removal of the legend on such Registrable Securities pursuant to this Section 3.19 as soon as reasonably practicable after delivery of notice from such Holder that the conditions to removal are satisfied (together with any documentation required to be delivered by such holder pursuant to the immediately preceding sentence). The Company shall bear all direct costs and expenses associated with the removal of a legend pursuant to this Section 3.19.

[Signature pages follow]

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IN WITNESS WHEREOF, the parties hereto execute this Agreement, effective as of the date first above written.

ALTO INGREDIENTS, INC.

By: /s/ Bryon T. McGregor
Name: Bryon T. McGregor
Title: Chief Financial Officer, Vice President and
Assistant Secretary

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HOLDERS:

ORION ENERGY CREDIT OPPORTUNITIES FUND III, L.P., a
Delaware limited partnership

By: Orion Energy Credit Opportunities Fund III GP, L.P.,
its general partner

By: Orion Energy Credit Opportunities Fund III Holdings, LLC,
its general partner

By: /s/ Nazar Massouh
Name: Nazar Massouh
Title: CEO

**ORION ENERGY CREDIT OPPORTUNITIES FUND III GPFA
PV, L.P.**, a Delaware limited partnership

By: Orion Energy Credit Opportunities Fund III GP, L.P., its
general partner

By: Orion Energy Credit Opportunities Fund III Holdings, LLC,
its general partner

By: /s/ Nazar Massouh
Name: Nazar Massouh
Title: CEO

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**ORION ENERGY CREDIT OPPORTUNITIES FUND III GPFA,
L.P.**, a Delaware limited partnership

By: Orion Energy Credit Opportunities Fund III GP, L.P., its
general partner

By: Orion Energy Credit Opportunities Fund III Holdings, LLC,
its general partner

By: /s/ Nazar Massouh
Name: Nazar Massouh
Title: CEO

**ORION ENERGY CREDIT OPPORTUNITIES FUND III PV,
L.P.**, a Delaware limited partnership

By: Orion Energy Credit Opportunities Fund III GP, L.P., its
general partner

By: Orion Energy Credit Opportunities Fund III Holdings, LLC,
its general partner

By: /s/ Nazar Massouh
Name: Nazar Massouh
Title: CEO

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EXHIBIT A

FORM OF JOINDER AGREEMENT

[DATE]

The undersigned hereby absolutely, unconditionally and irrevocably agrees to be bound by the terms and provisions of that certain Registration Rights Agreement, dated as of November 7, 2022, by and among Alto Ingredients, Inc., a Delaware corporation, and the Holders (as defined therein) set forth on the signature page thereto and any other Person who become party thereto from time to time upon the execution of a Joinder (as defined therein) in accordance with Section 2.10 thereof (the “**Registration Rights Agreement**”) and to join in the Registration Rights Agreement as a Holder with the same force and effect as if the undersigned were originally a party thereto.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has executed this Joinder Agreement as of the date first written above.

Name:

Address:
